INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

Second Reading

Resumed from 11 November.

The ACTING SPEAKER: I give the call to the member for Riverton. Members, if you are going to have a conversation, please take it outside the chamber.

DR J. KRISHNAN (Riverton) [4.13 pm]: I rise today to support the Industrial Relations Legislation Amendment Bill 2021, which contains a few proposals. I will start with compliance and enforcement. An inquiry into wage theft in Western Australia proved that, yes, wage theft is happening in Western Australia. Compliance and enforcement provisions need to be reviewed on a regular basis, but, unfortunately, the last increase in penalties was more than 18 years ago.

The current penalty for failure to comply with entitlements under an award, agreement or statutory minimum conditions of employment is $2 000. This bill proposes to increase the penalty to $13 000 for an individual and $65 000 for a body corporate. There is no penalty for failure to comply with the Long Service Leave Act 1958; the proposal in this bill is to introduce penalties of $13 000 for individuals and $65 000 for a body corporate. The current penalty for failure to comply with recordkeeping obligations is $5 000. The proposal is to increase the penalty to $13 000 for an individual and $65 000 for a body corporate. The bill contains accessorial liability provisions for third parties. For example, the end user of labour hire could be held liable. This amending bill will allow industrial inspectors to give infringement notices on the spot. These measures are required to make sure that employers in Western Australia are compliant. The proposed changes will make sure that enforcement happens in a proper way.

During the election campaign, the McGowan government made a commitment to make Easter Sunday a public holiday. Not all workers work in seven-day industries. Those people work five days over Easter, but until Easter Sunday is announced as a public holiday, they will not get a penalty rate. They may get a penalty rate for working on a Sunday, but it is not as high as it would be if they worked on a public holiday. Many states have already done this; we should follow them and keep the promise we made during the election. Individual businesses will have to assess whether it is viable for them to open their business on Easter Sunday. Many industries, such as hospitality and tourism, already add a surcharge when services are provided on a Sunday. This amendment will bring about Easter Sunday as a public holiday.

I turn to equal remuneration. Over the weekend, I attended a Bizcon event at which my daughter spoke. She is 22 years of age. She has been looking after my business in the last year and was invited to speak about women in business. I should acknowledge that she was a bit nervous, given that it was her first time speaking in front of a big audience. But I will remember her closing statement for life. She said, "I hope in future we do not have a discourse about women in business and we instead discuss people in business." It touched my heart and I will remember that for a very long time. The issue of equal opportunity often comes up: why should there be a difference in the remuneration of a male or female when the work that is done is the same? There is a 22 per cent difference in the pay of females and males in Western Australia. If a female worker does the same job as a male worker, she is paid 78 per cent of what the male worker would receive. It is our duty as lawmakers to make this correction and bring about equal remuneration.

I turn to unpaid family and domestic violence leave. I have learnt a lot about domestic violence and the difficulties that follow after my association with Zonta House in my electorate, which does a fantastic job in supporting people who are affected by domestic violence. There is a lot of emotional turmoil and a lot of personal issues that need to be sorted out. It is only about them having access to leave. It is not even paid leave; it is unpaid leave to address an important issue, and that is also what this bill is about. I am totally supportive of that.

There are also amendments that will have effect on local government. The Industrial Relations Legislation Amendment Bill 2021 will enable certain employers to be declared not national system employers. There is a difference between a national system employer and a state system employer. The bill makes provisions to declare that employers are not on the national system. Upon moving to the state system, a modern award or enterprise agreement that applies to a local government under the Fair Work Act 2009 will continue to apply in the state system for a maximum nominal period of two years. That provides sufficient time to adapt to changing from the national system to the state system.

With regard to the protection of employee rights, this Labor government has always undertaken to take care of employees. Every employee in Western Australia is much better off under this government. Again, this bill will make amendments following the recommendations of the 2019 inquiry into wage theft in Western Australia. They will prohibit employers from taking "damaging action" against employees, and the definition of "damaging action" includes dismissing an employee or altering an employee's position to their disadvantage. It also prohibits employers from dismissing employees in order to engage them as contractors, and from advertising a job at a rate that is less

than the minimum wage for that position. These actions will be prohibited by the actions that will be brought in under this legislation. Again, penalties will apply if employers do not comply.

Lastly, the bill removes exclusions from the definition of "employee" in the Industrial Relations Act and the Minimum Conditions of Employment Act. This is not theoretical. In 2021 the Fair Work Ombudsman successfully prosecuted Sydney businessperson Tony Lam for underpaying his Filipino nanny and domestic worker. When I say "underpaying", the amount was more than $100 000. She was paid an annual wage of $12 574. This amending legislation will bring about minimum conditions of employment and also the exclusion of people in certain categories, including nannies and domestic workers. Australia is not compliant with the International Labor Organization's Protocol of 2014 to the Forced Labour Convention, 1930. This legislation will allow the Western Australian government to be compliant. The commonwealth government twice wrote to the Minister for Industrial Relations to make this amendment so that we could comply with the protocol.

There was another incident in 2021 in which Melbourne couple Kumuthini and Kandasamy Kannan were jailed for enslaving a Tamil woman for eight years. I watched that news story with tears in my eyes for the conditions that woman endured. It was fortunate that she was still alive after such bad treatment. These amendments will bring about change to protect employees to the maximum extent.

Before I conclude, I will make some comments about stopping bullying and sexual harassment. We are aware that there is currently a committee inquiry into sexual harassment in the mining industry. We need to understand why these amendments are required. They will reduce lost time, productivity and staff turnover; result in fewer worker compensation claims; and create positive cultural changes in the workplace. Workers often do not have easy access to legal help. There are delays before they can seek help when there is bullying or harassment happening. This bill will allow those things to be ironed out to protect workers. I commend the bill to the house and thank you for the opportunity, Mr Acting Speaker.

MS C.M. COLLINS (Hillarys) [4.25 pm]: It is my honour to speak to the Industrial Relations Legislation Amendment Bill 2021. I am confident that this body of work will be seen as one of the lasting achievements of the McGowan Labor government. I would like to acknowledge Minister Johnston and Minister Dawson for their tireless work in bringing this bill to the house, and the many hours of consultation they conducted with working people across this state. The outreach for this legislation went far and wide, and I therefore also recognise all the Western Australian unions and professional associations that undertook internal discussions with their membership on how to make working life better.

We were very fortunate last week to hear from members in this house who have vast experience and expertise in the area of industrial relations. I note in particular you, Mr Acting Speaker (Mr D.A.E. Scaife), a former industrial relations lawyer, and, of course, the member for Mirrabooka, a former secretary of UnionsWA. I am much less experienced in this area, but I, too, am a very proud member of the WA Labor Party—a party that understands the need to improve the lives of working people and create a fairer society.

When I decided to speak on this bill, I put out a call to the constituents of Hillarys to provide me with some of their worst work horror stories. In just 24 hours, my inbox was inundated with accounts of bullying, sexual harassment, understaffing, not receiving entitlements such as superannuation or annual leave, wage theft, unsafe work environments and unfair dismissals, just to name a few. The conditions in workplaces and working rights are fundamental to the aim of pursuing the equitable sharing of the commonwealth for all. The contents are clearly written on the label; it is in our very name. The Commonwealth of Australia is a societal pool of wealth that is common to all Australians, or at least it should be. As other members have pointed out, WA continues to have a wider gender pay gap than that of any other state. By eliminating inequities, unfairness and loopholes, and disallowing poor treatment of Western Australian workers, we can create an industrial landscape that rewards hard work. Simply put, if we have workplaces in which hard work is rewarded and exploitation is punished, a greater share of our society will prosper.

I would like to address some of the important areas that these reforms relate to in our efforts to create a fairer set of rules for all. Firstly, the legislation will insert new provisions to prevent bullying in the workplace. I personally believe that the word "bullying" is somewhat too suggestive of schoolyard harassment to capture the true depths of this form of abusive behaviour that evolves in adulthood in the workplace. I think every working Western Australian has seen some form of bullying or harassment at work. Toxic workplaces can have severe psychological repercussions for workers. Nobody wants to wake up in the morning and dread going to work—a place where they may forfeit their dignity and not be treated with respect by their co-workers or managers. Unfortunately for workers and the unions that represent them, it is notoriously difficult to get action against bullying in workplaces. So often the complaint is met with a counter-complaint of bullying or the persecution is channelled against the complainant. This is obviously not the way we should handle real and problematic psychological hazards in any workplace. As part of any occupational health and safety guideline, we would always take swift action if there was a spill or a sharp object, so why can we

not take similar swift action against cruel, vindictive behaviour that is designed to belittle fellow co-workers and, equally, causes long-term damage and inefficient production in the workplace?

Systemic bullying is also a terrible drain on our businesses and workplaces. It leads to high staff turnover, increased illness and increased take-up of personal leave as staff often dread coming to work. These reforms are necessary because they will help employers identify and act on bullying behaviours in their workplace. They will offer a protective legal framework to address this debilitating behavioural pattern. This will encourage every workplace to examine its organisational culture and assess damaging leadership styles or outdated modes of leadership. It is estimated that work life takes up 60 per cent of most working adults' waking hours. In the twenty-first century, we must do all we can to ensure that this time is spent both productively and, more importantly, happily and free from abuse. This approach is about prioritising the psychological health of staff in every WA workplace.

The Industrial Relations Act will also be amended to provide the Western Australian Industrial Relations Commission with the power to deal with sexual harassment claims. Like many other Western Australians in their early 20s, I worked in the hospitality sector in a number of hotels, bars and restaurants. I was very much aware of the sexual harassment, both serious and casual, that permeated the industry. I experienced and witnessed managers making inappropriate comments to and inappropriate physical contact with young female staff members. The harassment was often couched as simple playfulness by over-friendly managers. However, it was based entirely on the abusive power dynamics of a poorly regulated industry consisting mainly of young and vulnerable staff working away from home and, in many cases, foreign backpackers with minimal English.

I want to recognise all the hardworking female unionists who fought so many battles to make working life better for younger women and men entering the workplace. The Sex Discrimination Act 1984 went so far as to prohibit sexual harassment in the workplace and to allow more women to succeed and achieve in their respective fields. It also created the strong tradition of the office of the Sex Discrimination Commissioner, a role that has led to years of effective work in removing discrimination and intimidation from the workplace.

The Australian Human Rights Commission undertook a body of work in 2019 to survey members of the Shop, Distributive and Allied Employees Association of WA about their experiences of sexual harassment. The rate of workplace sexual harassment in this group of workers during the last five years had been six per cent higher than that of the normal working population. This survey uncovered that 65 per cent of SDA members had experienced sexual harassment at some point in their lifetime and three out of four female SDA members had been sexually harassed. In 42 per cent of these instances, inappropriate physical contact had been initiated with a female staff member, and one in seven female workers reported that they had experienced actual or attempted rape or sexual assault at some point in their lifetime. Clearly, ongoing efforts are required at a state and federal level to make our workplaces safer. The respect at work amendments, which were brought forward this year in federal Parliament, provide for victims of sexual harassment to seek access to the Australian Human Rights Commission. This is an important and powerful avenue of assistance for vulnerable staff. This measure complements avenues that already exist for Western Australians, such as taking the complaint to WorkSafe or the Equal Opportunity Commission.

This bill will also amend the Minimum Conditions of Employment Act 1993 to provide five days of unpaid family and domestic violence leave. This will no doubt protect workers when making arrangements to escape domestic violence. A recent November 2021 analysis of workplace agreements for the family and domestic violence leave review was conducted by Kate Seymour and associates of the social work innovation research group for Flinders University. Seymour and her team found that only 43 per cent of agreements included paid FDV leave and 55 per cent of agreements included unpaid FDV leave. Their analysis shows that Australia has a long way to go, but these reforms will deliver a new standard in Western Australia to support workers who have become victims of family and domestic violence.

The bill will alter the minimum conditions of employment in Western Australia, which is absolutely necessary to ensure that employers do not force employees to pay them for their benefits or that employers do not deduct wages. These amendments will very much take action against the predatory cashback schemes. Cashback schemes are simply a fast way to paying workers below the minimum wage, while having all the legal appearance of meeting all the requirements under the law. They are exploitative—plain and simple. I have spoken about how this exploitation harms the workers, but let me take a moment to illustrate just how some of these problems harm industries and our economy.

In the report *Inquiry into wage theft in Western Australia*, there is a discussion about the industry-wide problem in horticulture of undercutting labour costs. I will paraphrase the report. The continued operation of a subset of horticulture growers who do not comply with Australian workplace standards presents a danger to the future viability of the Western Australian industry. Undercut labour costs lead to produce being sold at a lower price. Such growers exploit workers and take advantage of vulnerable groups, such as undocumented migrant workers or working holiday makers. The principle of fair competition that the efficiency of the market is based upon is damaged. Honest

businesses are placed at a disadvantage and the industry therefore develops upon an inaccurate and highly precarious foundation. We really need to protect honest businesses and ensure that they are not left at a disadvantage to those who employ workers using dirty tricks. Better protection for workers will mean stronger, accurate pricing based on the true cost of production and therefore will result in resilient exports and efficient industries.

These reforms will also create stronger rules for employers to maintain proper records for their employees. This will lead to clearer and more accountable payslips that provide fairer transparency in pay. Unpaid overtime, docking pay and the exploitation of teenage staff who may know very little about their legal rights in the workplace are just some of the ways that wage theft exploits Western Australian workers. Theft is theft. Whether someone steals stock from a retail store or someone steals hard-earned wages from a working Western Australian, the treatment should be the same. Wage theft is not a minor administrative error to be hand-waved away—it is a crime. This measure is just one part of the plan to combat the insidious threat of wage theft across Western Australia and I commend the McGowan government for its actions during its first term of government to undertake the inquiry into wage theft.

I also commend the work of the former Chief Commissioner of the Western Australian Industrial Relations Commission, Tony Beech, and all Western Australian unions, which took time and effort to gather the experiences and stories of their members who had been affected by the crime of wage theft. The inquiry discovered this crime was prevalent in the retail, hospitality, cleaning and horticulture industries. It is an obvious fact that all the illegal and abusive practices highlighted and covered in this inquiry impact most profoundly on those sections of our workforce and society that are least able to afford legal representation. The inquiry found there was a real problem with compliance with existing industrial legislation. It also found both bosses and workers alike had a poor understanding of the industrial laws in place required to run a fair workplace. It highlighted that there are real areas of concern in fast food, hair and beauty, and retail, which are industries made up of young female migrant workers who speak a language other than English. This experience was linked to the reporting made by the Fair Work Ombudsman in November 2018, who found 38 per cent of businesses were still in breach of Australian workplace laws. Of note, many of these noncompliant businesses were nail salons and fast-food businesses, as mentioned before. Clearly, worker education will be very necessary to making these reforms as effective as they can be. These amendments will act on these findings of the inquiry into wage theft by delivering broader, more effective powers for public sector industrial inspectors.

To conclude, these amendments exemplify some of the best elements of the modern Labor Party. They are designed to further protect some of the most vulnerable members of our workforce and community and to close loopholes, address sexual harassment, improve fairness in accessing entitlements and so much more. They are a necessary step to creating a fairer playing field and to foster the equitable sharing of the commonwealth and prosperity of the working people in this state. I commend this bill to the house.

MR S.J. PRICE (Forrestfield — Deputy Speaker) [4.42 pm]: It is a pleasure to contribute to the debate on the Industrial Relations Legislation Amendment Bill 2021. I start by acknowledging the previous Minister for Industrial Relations for the great work he did in the last government in bringing this bill to the house back in 2020. Unfortunately, as we have all heard, it never made it through the other place, so we are back here again talking about the same issues we have previously. To be honest, hearing some of the contributions from the other side, it is a little bit like groundhog day. I am going to contribute by reading some excerpts from my contribution the last time the 2020 bill was before the house. I will give members a bit of background and history about how we ended up here, because, quite obviously, those on the other side do not understand the amount of work that went into ensuring that a significant amount of consultation and research was undertaken to develop this bill. I will enlighten them on that.

As we have heard, the bill came about in response to two reviews that the previous minister instigated when we were elected. The first was the ministerial review of the state industrial relations system, which was conducted by Mr Mark Ritter, SC, assisted by me. The second was the inquiry into wage theft in Western Australia, which was conducted by the former Chief Commissioner of the WA Industrial Relations Commission, Tony Beech. Both Mark Ritter and Tony Beech were very suitable, able, well-accomplished and respected members in the industrial relations community of Western Australia, so we could not have asked for two more prominent and respected people to carry out those investigations.

I will give members some information about the state jurisdiction. At the beginning of the review into the state industrial relations system that we undertook, it was a little bit difficult to identify the number of employees covered by this state jurisdiction. Some work was done by the secretariat, which I will mention later on, and it was estimated that between 21 and 36 per cent of employees in WA were covered by the state jurisdiction, which, in the scheme of things is a very significant number of workers in Western Australia covered by a very special state industrial relations system. Western Australia maintained its state industrial relations system when the federal WorkChoices legislation was introduced in 2005, and that has enabled us to ensure that we can look after people in Western Australia in the way they should be looked after, being in the jurisdiction of our own state as opposed

to it being done through the commonwealth. When we started the industrial relations review, Mark Ritter was announced as the lead person conducting the inquiry. Mr Ritter is very experienced and well respected. He was admitted to the Supreme Court of WA in 1985 and the High Court in 1986. From 2005 to 2009, he was the acting president of the WA Industrial Relations Commission. Between 1995 and 1998, he was a part-time judicial registrar at the Industrial Relations Court of Australia. From that, we can tell he has had a very long and distinguished career within the industrial relations profession.

The inquiry we undertook was very comprehensive. I will give members some of the detail about that shortly to alleviate and deal with this mistruth being reported by the other side that there was a lack of consultation on this bill. There has probably never been as much consultation on any bill with the people it is relevant to as there was on this one. We have Liz and Cara, who are part of the secretariat, seated at the back there, and also Lorraine, who is not here. The amazing work they did during that inquiry was outstanding, and without their assistance and input, it would never have happened at all. To fill in some of the gaps about this lack of consultation, when we undertook the inquiry, as part of the process we published an interim report with some of the findings, considerations and recommendations we were proposing for the final report. From that, we sought submissions and produced a final report that came out in June 2018.

I will talk about the amount of consultation that took place. On 30 September 2017, the review was announced in an advertisement in *The West Australian* and *The Australian*. The terms of reference and where additional information could be obtained were outlined. There were 215 letters sent to employer associations, industrial agents, law firms, not-for-profit organisations, public sector departments, unions and other people who might have an interest in the review. There was also correspondence and meetings with Chief Commissioner Scott, Senior Commissioner Kenner and Registrar Bastian of the Western Australian Industrial Relations Commission to get some basic information and statistics. The secretariat also asked a number of stakeholders whether they would like to meet with the reviewers to discuss the terms of reference prior to finalising their written submissions. Numerous stakeholders took up this opportunity. There were 13 meetings held between 13 November 2017 and 20 December 2017. The review then received 65 sets of written submissions from bodies, institutions and individuals. In addition to stakeholder meetings, there were informal private meetings and correspondence with people who had knowledge of, or past or present involvement with, the state industrial relations system. Invitations for submissions, comments or meetings about the interim report were sent out to interested stakeholders and individuals. We then considered and analysed all the submissions and other information provided and put that into an interim report.

Once the interim report was published, it was made public. All stakeholders were informed about the interim report and provided with an opportunity to make submissions in response to some of the proposed recommendations contained in that report. In particular, prior to publication. the reviewers wrote to each person, body and organisation that had provided written submissions to the review to advise them of the publication and the opportunity to make further submissions. More meetings were held. A number of stakeholders were asked whether they would like to meet again to discuss the interim report. Eleven meetings were held as part of that process. On top of that, we then received 49 written submissions in response to the interim report. Once we published, we then asked people to make further submissions about the submissions that we had received, so there was no secrecy to it; everyone knew what was going on. We informed people of the terms of reference, called for submissions, had meetings, discussed it with them, came up with an interim report, put out the interim report, called for submissions on the interim report, and then called for further submissions on the submissions we had received for the interim report. Everyone was involved and knew exactly what was going on. As a result of that whole process, we published the final report. That makes up a significant part of what we are talking about today.

If the previous government wants to talk about industrial relations, the state system has not been improved or updated since 2002. I will quote a short section of the interim report. It states —

> On 30 June 2009 the then State Government, through the Minister for Commerce, the Hon. Troy Buswell MLA, appointed Mr Steven Amendola to conduct a review of the Western Australian Industrial Relations System. Mr Amendola prepared and submitted his "Final Report" to the Government on 30 October 2009 … There was a considerable degree of inaction following the receipt of the Amendola Report. The Amendola Report was not published by the Government until 6 December 2010. At that time, then Minister for Commerce, the Hon. Bill Marmion MLA, announced by media statement that stakeholders would be consulted about "taking the recommendations forward" and the Government "plans to introduce legislation to Parliament in 2011". This did not, however, eventuate. No legislation was introduced and on 6 July 2011 then Premier the Hon. Colin Barnett MLA said the Government was not intending to act on any of the recommendations of the Amendola Report.
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> 29. In 2012, the State Government tabled … a draft Bill for public comment. This was the Labour Relations Legislation Amendment and Repeal Bill 2012, commonly called "the Green Bill".

Although the state system was reviewed in 2009, it was not updated; hence we are talking about this bill today. When the legislation came to this place last time, I could not find a contribution from the then Leader of the Liberal Party. The only other contribution from a member of Parliament from the other side who is still here came from the member for North West Central. He said in his speech back then—I am quoting from the *Hansard* of Tuesday, 18 August 2020 —

> I rise on behalf of the Nationals WA to voice our opinion on the Industrial Relations Legislation Amendment Bill 2020 … the National Party does not support the Industrial Relations Legislation Amendment Bill 2020 …

We know where the Nationals sit. I do not believe the Nationals have changed their position yet either. The lead speaker for the opposition at the time was the member for Hillarys. Once again, the Liberal Party came in here with all these amendments that it wanted to make and which it thought would improve the legislation. Once again, quoting the *Hansard* of Tuesday, 18 August 2020, the lead speaker for the Liberals at the time said —

> Hopefully, there will be some amendments either on the notice paper tomorrow or, if they miss the notice paper, on a supplementary notice paper tomorrow. I will outline them as we go along. As we consider the bill in detail over the next few days, we have some amendments that we think will improve the bill. I will make it very clear that, if those amendments pass, we will fully support the bill passing, but our support is conditional on those amendments being passed.

We heard a very similar contribution from the Leader of the Liberal Party just recently. In the Liberal Party's view, a number of amendments need to be made and it will not support the bill until those amendments have been made. I think that is very disappointing because the Industrial Relations Legislation Amendment Bill that we are debating today is the culmination of a lot of input from a lot of people—employers and employees of organisations within Western Australia. It is very comprehensive and very well thought out and addresses a number of shortcomings in the state industrial relations legislation that we have now, as other members who have already contributed have spoken very well about.

The legislation also deals with a couple of shortcomings in the state legislation that did not meet some of the protections that were already in the federal legislation. We have brought them back into the state jurisdiction to give people the same level of coverage, which are some very important aspects of the legislation. We have heard about some of the key proposals of the bill and some of the amendments that have been made. I want to touch on one in particular that the Leader of the Liberal Party expressed a little concern about during his contribution. That relates to paragraph 170 of the explanatory memorandum. Clause 24(5) seeks to amend section 49I(2)(c) of the Industrial Relations Act. I will read section 49I of the Industrial Relations Act. If members do not know what that section is, it is one of the better sections in the act. As an ex–union official, it is the one quoted to get onto a site to inspect some sort of breach, whether it be a safety breach or some sort of employment breach. Section 49I, "Entry to investigate certain breaches", states —

> (1) An authorised representative of an organisation may enter, during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of this Act, —

The Industrial Relations Act —

> the *Long Service Leave Act* … the MCE Act, the *Occupational Safety and Health Act* … the *Mines Safety and Inspection Act* …

One of the changes we are making is to bring the Construction Industry Portable Paid Long Service Leave Act into one of these ones that can be inspected as well. It goes on —

> (2) For the purpose of investigating any such suspected breach, the authorised representative may —
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> …
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> (b) make copies of the entries in the employment records or documents related to the suspected breach; and
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> (c) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach.

That is all very important when there is an investigation of an incident on a worksite, which is what the suspected breach is. Paragraph 170 of the explanatory memorandum sets out one of the changes we seek to make through this amendment bill. Clause 24(5) of the bill will insert the material I just referred to. The explanatory memorandum states —

> … to expressly provide that, when investigating a suspected breach, an authorised representative may use electronic means to record work, material, machinery or appliances.

This was a recommendation of the ministerial review and recognises that electronic recordings may be an accurate and efficient way of investigating a suspected breach and preserving evidence as opposed to relying solely on the visual observations of an authorised representative.

As a person who has been onsite to inspect safety breaches when there has been an injury or a death at a workplace, having an accurate record of the surroundings, the evidence of what has happened and where it has happened is

a much better approach than what we have. It will give authorised representatives the ability to ensure that we protect as much evidence as possible, whether it be for an OHS breach or a time and wages investigation searching for stolen wages.

[Member's time extended.]

Mr S.J. PRICE: The Leader of the Liberal Party raised concerns about the misuse of such electronic material. The act provides protections to alleviate that concern. Those protections relate back to the "authorised" person. In order to be an authorised person, a person essentially needs to have an entry permit to allow them to act on behalf of the organisation that they work for in representing the employees. Section 49J of the Industrial Relations Act, "Authorising authorised representatives", provides that the registrar of the state Industrial Relations Commission —

> … on application by the secretary of an organisation of employees to issue an authority for the purposes of this Division to a person nominated by the secretary in the application, must issue the authority.

That authority can be taken away from people who misuse their rights as an industrial representative. The act provides protections to prevent the misuse of that provision. Therefore, the positives significantly outweigh the negatives.

I will not go on for much longer, because we have discussed a lot of aspects of this bill. The final point I want to touch on is bringing local government authorities back into the state industrial relations jurisdiction, with the approval of the federal Minister for Industrial Relations, of course. That is where local governments belong. They are part of the state. They are not federal or constitutional corporations that form part of the federal WorkChoices legislation. As an ex–union official who has dealt with local governments, I know that the confusion between those who think they are in the state jurisdiction and those who think they are in the federal jurisdiction is quite significant. Bringing local governments back into the state jurisdiction will provide a level playing field and ensure that everyone has the same understanding of the legislative requirements. It will put local government back as the third tier of government in Western Australia—federal, state and local. The other good thing about that, which the member for Cockburn touched on in his contribution, is section 44 of the state Industrial Relations Act, which deals with compulsory conferences. That is a very good mechanism to deal with issues at a workplace before they get too big and too out of control.

There are a lot of benefits in maintaining a state jurisdiction. This amendment bill proposes a raft of changes, many of which we have discussed, and I do not propose to go through them again. Those changes will significantly enhance the state jurisdiction and go a long way towards protecting the rights and entitlements of workers. They will also provide clarity to employers so that they will know what is expected of them. They will also know that should they not abide by the legislation, there will be consequences. In the bill that was introduced back in 2020, the Minister for Mines and Petroleum brought in a raft of other changes to the industrial arena at the same time to enhance worker safety and ensure clarity of the obligations of employers and organisations in Western Australia.

I conclude by, once again, thanking the current minister and his staff, the former minister and his staff, and the secretariat for all the help they provided to the inquiry that I was fortunate to be part of. I also thank Tony Beech and Mark Ritter for doing a great job. One of the benefits and what I have enjoyed the most about the contributions of members on this bill was to hear the new members of the Labor Party talk about how this is what the Labor Party is all about—we are the party of the workers, we were built from the workers, we protect the workers and we understand the workers. That is unlike those on the other side, who do not quite have the same view about workers as we do. We will always protect the working people of Western Australia. This bill reflects that. This bill will not only protect the workers of Western Australia, but also help and protect the employers of Western Australia. As I said previously, it will clarify their obligations. They will be under no illusion about what they should or should not do. If it was a bit of a grey area previously, it will not be grey anymore. Everything will be very clear. This is another one of the great pieces of legislation that we have brought to the house. It has not come from the Attorney General this time, which makes it even more special! On that note, I certainly thank everyone who was involved in bringing the bill to this place and everyone who has contributed to this debate. I commend the bill to the house.

The ACTING SPEAKER (Mrs L.A. Munday): The member for South Perth—sorry, Mount Lawley!

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [5.05 pm]: I have the great privilege of representing the extraordinary, diverse and wonderful community of Mount Lawley, and I am proud to stand once again to represent them.

In speaking on the Industrial Relations Legislation Amendment Bill 2021, I want to start by making a couple of observations. The first is to thank the member for Forrestfield. During his contribution, he alluded to the enormous amount of work that was undertaken by the McGowan government over the course of the fortieth Parliament to modernise our industrial and workplace health and safety regime. There was the inquiry that the member for Forrestfield participated in, with Mark Ritter, SC, an eminent senior barrister with expertise in industrial relations. There was the inquiry undertaken by Hon Matthew Swinbourn, member for East Metropolitan Region and Parliamentary Secretary to the Attorney General, into the protection of subcontractors. There was the work

health and safety inquiry that I was fortunate enough to participate in. There was also the Tony Beech inquiry into wage theft.

The reason I have to make that point at the outset is that the opposition appears to take delight in perpetuating the narrative that this McGowan government does not consult. Just because the opposition does not agree with us does not mean that we have not consulted. As the member for Forrestfield said, this particular bill was consulted on widely. People were given more than enough opportunity to make their submissions. If people are not happy with the final product, that is unfortunately how it goes. We listened to organisations. The opposition comes in here time and again and perpetuates this narrative that we do not consult. That is just a lie.

Mr P.J. Rundle interjected.

Mr S.A. MILLMAN: It is just not right. The fact of the matter is that the contribution that was made by the member for Cottesloe earlier in this debate was fundamentally wrong. We are now stuck in the situation that we have to not only legislate, but also educate. That is because you people do not know what you are talking about. You do not understand what is going on. It is exactly the same problem that the former member for Hillarys had as the lead speaker for the opposition when this bill came on in the last Parliament. The member for Cottesloe said that he wished he had had more time to prepare. Frankly, member, this bill is very similar to the bill that was introduced in the fortieth Parliament. The member for Cottesloe has had more than a year to prepare, yet he still gets it wrong. Therefore, it is with a great degree of reluctance and a fair degree of regret that I have to make a contribution to this debate.

Mr P.J. Rundle: You're a disgrace!

Mr S.A. MILLMAN: The disgrace is you! The disgrace is the opposition. All we have had is a litany of Liberal lies. The member for Cottesloe said in his contribution that he supported action to end modern slavery. He then proceeded—I do not know whether it was through ignorance or stupidity—to talk about the provisions that were specifically designed. Remember this, members: the Attorney-General's Department of the commonwealth Liberal government has provided advice to the state government that we cannot ratify the International Labour Organization's protocol on ending modern slavery unless we make all employees in Western Australia subject to our industrial relations system. It is as simple as that. This bill will achieve that, so that the commonwealth Liberal government can get in there and do the right thing by ratifying the ILO protocol to end modern slavery. The federal Labor opposition wants to end modern slavery. The federal Liberal government wants to end modern slavery. The state Labor government wants to end modern slavery. "Twiggy" Forrest wants to end modern slavery. The only people who do not want to end modern slavery are members of the Liberal and National Parties of Western Australia, because they continue to oppose this bill either through sheer bloody-mindedness or sheer stupidity.

Dr D.J. Honey: That is not true. We are not opposing the bill.

Mr S.A. MILLMAN: Why did the member vote against it?

Dr D.J. Honey: Because it was not amended the last time.

Mr S.A. MILLMAN: The member for Cottesloe's entire contribution was riddled with mistakes. Members who were here during the fortieth Parliament would have seen me contribute to numerous bills time and again. I got up and spoke about any number of issues that came before the fortieth Parliament. In this forty-first Parliament, I thought I would be able to sit back and focus my attention on some narrow portfolio matters and pare down the number of contributions I needed to make and listen to the brilliant contribution by the new member for Hillarys, who spoke eloquently about the importance of this legislation to her community, and the contribution of my former colleague and industrial lawyer, the member for Cockburn, whose erudite, thoughtful and intelligent contribution was right on point. The new member for Mirrabooka is a former union official who knows exactly what the consequences of this legislation will be.

I am really saddened that when the member for Cottesloe stood up, he said that he had listened closely to what all other members had said, but if he had, he would not have put his foot in his mouth as frequently as he did during his contribution to this debate, because he made many, many mistakes. He said —

> I have listened to the speeches of other members in this place.

Happily, he concedes—this is really important —

> I am not an expert on the existing industrial laws.

Well ain't that the truth, members! Do members know what he said? He said, "We in the Liberal Party are in favour of choice." Just do not be a woman seeking an abortion or someone with a terminal illness who wants to access voluntary assisted dying and the opportunity to die with dignity, because they will get no choice. What is hilarious is that he says local governments should have the choice—it is laughable—about whether they should be in the

commonwealth system or the state system. That one line exposes his shocking ignorance of this. It is not a choice, member; it is a question of constitutional fact. The member for Cockburn said this—I do not understand why I have to repeat it, but the member for Cottesloe missed it —

Dr D.J. Honey: I am sure you will.

Mr S.A. MILLMAN: I have to because that is the only way the member will learn. Otherwise, we will be subjected to a litany of Liberal lies time and again. Every time an employee of a local government authority has his or her employment dismissed and an application is made to either the state or federal commission to determine whether they have been unfairly dismissed, the first issue that has to be ventilated is whether the local government authority is a constitutional corporation. That is not a simple question to answer. That requires evidence, research, submissions and advocacy on both sides. The people who will suffer from this bill will be the industrial lawyers who make a fortune out of representing either the local government authorities or the employees who are suing them, because that issue will be taken out of the equation. As the member for Forrestfield said, this is precisely the sort of clarity and certainty we want to bring to the industrial arena so that we can reduce the incidence of disputation. The state Liberal Party is in favour of slavery, disputation and paying more and more money to industrial lawyers. We are in favour of tackling modern slavery by making sure that our industrial relations system is up to date with everywhere else in the world and with the advice that we have received from the Liberal commonwealth government.

I found it astounding that while confessing that he was unprepared to contribute to the bill, the member for Cottesloe then relied entirely upon the submission of the Chamber of Commerce and Industry of Western Australia and said that he was representing the chamber's legitimate concerns. We are happy to listen to the Chamber of Commerce and Industry and work closely with it. I think the member for Swan Hills is a former employee of the Chamber of Commerce and Industry. Just because we disagree with it does not mean that it is all over. We listen to the legitimate concerns that organisations raise. When the Transport Workers' Union of Australia said that it was in favour of Roe 8 and Roe 9, I said that I understood its position. It is representing the interests of transport workers. I get where it is coming from, but we need to save Beeliar wetlands. When the Maritime Union of Australia said that it had concerns about the outer harbour, I understood where it was coming from and that it has to represent the interests of its members, who are dock workers, and I understand that they might be interested to know what will happen with the outer harbour. However, we have a policy that we have taken to consecutive elections that says we are committed to the outer harbour. Those organisations raised legitimate concerns on behalf of their members and those concerns fell squarely within the concerns of those organisations. When the Chamber of Commerce and Industry makes gratuitous commentary—that is its prerogative, although I do not think it is responsible—we need to call it out rather than endorse it and use it as a shield to prevent this government from tackling modern slavery.

The opposition cannot walk on both sides of the street. It cannot support the Chamber of Commerce and Industry's position—that is not legitimate because it does not represent the interests of its members; it falls outside its obligation—and at the same time say that the opposition supports the abolition of modern slavery. They are logically inconsistent positions. If all the member for Cottesloe gets from my contribution is an appreciation and understanding of that, I will be happy, because then when we get to the consideration in detail stage, we can go straight past that provision and he will understand that the amendments are necessary to give effect to the advice from the commonwealth Attorney-General's office. Sadly, I will not be holding my breath because once he goes down that rabbit hole, he cannot resist the temptation because it feeds into the false narrative he has about the role of unions in society. Because he stands for nothing, all he does is stand opposed to unions. This legislation has the support of not only workers, but also industry. We know that because of the extensive consultation that was undertaken.

I honestly thought that the member for Cottesloe would have listened more carefully to the contributions that were made before mine and would not have made the litany of mistakes that he did. I have already spoken substantively on this bill during the last debate in the fortieth Parliament. I do not propose to say anything further. I just hope that the Liberal Party will learn the lessons so that we will not be subjected to a litany of Liberal lies the next time around.

MS C.M. ROWE (Belmont) [5.17 pm]: I rise this afternoon to make a contribution to debate on the Industrial Relations Legislation Amendment Bill 2021. I take this opportunity to congratulate the work of the Minister for Mines and Petroleum for again bringing this bill to the house. I acknowledge his commitment to improve the rights of workers in our state. I wish to also acknowledge the hard work of his team, who are in the Speaker's gallery today. They have really laboured over this bill.

Fighting to protect workers is incredibly important work. As a Labor government we have always been very clear about the importance of strong protections for workers. As a proud member of the Australian Workers' Union, I wish to acknowledge the tireless work of not only the Australian Workers' Union, but also all unions in our state. They do an enormous amount to protect the rights of workers to make sure that there are appropriate conditions and that every worker who goes to work comes home safely every day.

I would also like to put on the record that certainly the Labor members here are aware of the great history of the work done by the unions for all workers collectively across the state. If it were not for the work of unions, we would not be enjoying the benefits of paid sick leave, annual leave, long service leave, maternity leave, penalty rates and superannuation. Unions have fought long and hard to campaign for these benefits and we are all the lucky recipients of the unions' campaign to bring about those entitlements. I wish to acknowledge that in this place.

The bill before us today, the Industrial Relations Legislation Amendment Bill 2021, is about workers and, importantly, strengthening the protections for vulnerable workers, and modernising our employment laws. A critical element of this legislation is compliance and enforcement and enhancing the penalties of the IR act, which currently are deeply inadequate. I think many people would be shocked at how low some of the current penalties are. For example, for a failure to comply with long service leave provisions, there are absolutely no penalties whatsoever. Failure to comply with record-keeping obligations attracts a $5 000 fine. That can be considered quite paltry for many employers. Under this legislation, both those contraventions will result in a $13 000 fine for an individual and a $65 000 fine for a body corporate. The penalties for serious contraventions, or those that are knowingly committed and part of a systemic pattern of conduct, will be 10 times higher than they currently are. This goes a long way towards putting employers on notice. They cannot expect to exploit workers and have no consequences for such actions, or paltry fines. Industrial inspectors will also have enhanced powers to ensure compliance. For example, they can issue an on-the-spot infringement notice for contraventions. A range of new employment protections will also be introduced, including prohibiting employers from discriminating against an employee for making an inquiry into their employment conditions.

This bill also delivers on an election commitment to make Easter Sunday a public holiday. This will bring us in line with Victoria, New South Wales, Queensland and the ACT. Easter Sunday is a day of cultural and religious significance for many Western Australians, but it is not recognised as a public holiday. Therefore, employees may be required to work on this day, particularly those employees who work in hospitality or a big supermarket chain and the like. If they do work on Easter Sunday, they currently do not receive the penalty rates that they would normally experience on a public holiday. I think that is patently unfair to those workers, especially when they are oftentimes in those lower income brackets. In contrast, Easter Monday attracts higher rates, but workers who work in seven-day industries, such as those who work in restaurants and cafes and retail workers, should not be disadvantaged in comparison with those who work Monday to Friday.

Another critically important element of this bill is the power to make equal remuneration orders to reduce the gender pay gap in WA, which I feel very strongly about. This is a persistent issue. The pay gap in WA remains stubbornly high and a great concern to not only me but many members, both male and female, within Labor ranks in this place. This bill will introduce an equal remuneration jurisdiction for the Industrial Relations Commission. For those who are not aware, in WA the current gender pay gap is approximately 22 per cent, which is the highest of all states and territories. The current national gender pay gap is still unacceptable at 14 per cent, but ours here in WA is 22 per cent. That means, just to be clear, that for every dollar a man in WA earns, a woman earns 78¢.

Moving on, another important aspect of the bill is the provision of unpaid family and domestic violence leave. Domestic and family violence is a significant issue and it impacts families, most especially women, in very dramatic ways. This bill will provide five days of unpaid family and domestic violence leave a year to all employees. I think it is important that as a community, we are ensuring that people who experience family and domestic violence are supported through workplace policies and initiatives and that the trauma that they are going through is recognised and, as such, are provided with the leave that they will require. I think it is a really important step and one that I really wish to acknowledge the minister for including. We know that escaping a violent relationship is an incredibly difficult time when the woman who is the victim is incredibly vulnerable. It is a very high risk time for her, so to have time off, even though it is unpaid, is critically important. Staff experiencing family and domestic violence may also need time off to have special appointments, including doctors' appointments, but, most importantly, depending on the severity of it, obviously to re-establish their life. That can be a very dramatic time in their life. When the McGowan government was elected, we ensured that public sector workers in WA, including casual employees, who are experiencing family and domestic violence had access to up to 10 days of leave entitlements. This is a continuation along that vein.

Another area of the bill I would like to touch on is the measures to remove exclusions because certain categories of workers have no employment protections whatsoever under the current legislative framework. People who are engaged in domestic services in a private home simply have no protections from an industrial relations point of view and I think that in the modern era that is clearly unacceptable. I am really relieved to see that this will be rectified by this bill.

I acknowledge that this bill deals with some really significant and important things such as wage theft and so forth. I think that other members have done a terrific job covering those off, so I will finish my brief conclusion by talking about the bill's broadening of the WA Industrial Relations Commission's jurisdiction to consider matters of sexual harassment and bullying incidents in the workplace. According to a survey conducted by the Australian

Human Rights Commission on sexual harassment in the workplace in 2018—a couple of years ago—72 per cent of respondents who experienced sexual harassment were women, so it clearly is a gendered issue. The greatest prevalence of sexual harassment in the workforce occurs amongst women who are under 45 years of age. Of the women surveyed, 40 per cent of interviewees rated the sexual harassment experienced as "very intimidating" or "extremely intimidating" and 50 per cent rated the sexual harassment experience as "very offensive" or "extremely offensive". I want to pause and reflect on that, because it is deeply concerning that in 2021 we are still seeing that occur. That is a pretty steep number there. Disturbingly, of those who experienced sexual harassment, 50 per cent stated that the harassment continued for up to six months. That is a really long time to be harassed in any form, but especially through sexual harassment in the workplace. Another finding from this survey was that sexual harassment is prevalent across all employer sizes and persists across nearly all industries. That is simply appalling. The consequences of sexual harassment can be very serious for victims, such as affecting a person's ability simply to function at work and do their daily work tasks, but it can also lead to things such as depression and, in severe cases, post-traumatic stress disorder.

Given that sexual harassment is evidently still an everyday experience for so many women in our community, it is very troubling that so few people formally come forward. According to this survey by the Australian Human Rights Commission, only 17 per cent of the people they surveyed who experienced sexual harassment in the workplace came forward to pursue that in formal avenues. According to the findings, it was predominantly due to the cost of litigation and the time that it was anticipated to take. This bill will provide workers with an inexpensive and quick avenue, via the commission, to address sexual harassment in the workplace. I am very, very proud of the inclusion of those elements within the bill. On that note, I really do wish to commend the bill to the house. Thank you.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [5.28 pm] — in reply: I rise to conclude the second reading debate on the Industrial Relations Legislation Amendment Bill 2021. I will start by thanking the following Labor members for their contributions: the members for Mirrabooka, Victoria Park, Cockburn, Riverton, Hillarys, Forrestfield, Mount Lawley and Belmont. What I reflect on is that each of them brought a unique perspective to the discussion. The member for Mirrabooka is the former secretary of UnionsWA and a former senior official with the Australian Services Union, to which I belong. She has had a lifetime of experience in the not-for-profit sector and brings a particular perspective in that she has the most ethnically diverse electorate in Western Australia. The member for Victoria Park has a small business history and, again, she worked in the not-for-profit sector. She has an extensive background and is a highly regarded and well-respected person.

Prior to his entry to Parliament, the member for Cockburn was my solicitor, as I have commented before. He has a wealth of experience in the technical aspects of industrial relations law. The member for Riverton is a businessman who has an ethnic background. The member for Hillarys outlined issues for young people and women who are subject to harassment. The member for Forrestfield was, of course, the co-author of the report done by Mr Ritter. He is a former secretary of the Australian Workers' Union and has a lifetime of experience on the tools in the mining sector. The member for Mount Lawley was a very experienced industrial lawyer prior to entering Parliament. The member for Belmont again went through, in quite an impassioned way, the challenge of the gender pay gap in Western Australia and noted that this bill, in its own small way, will help us move down the path of narrowing that gap and assisting in giving people more options when dealing with workplace sexual harassment issues.

I pause there for a moment and make the comment that when the last Parliament dealt with the 2020 legislation, which is different from the 2021 legislation but in great regards very similar, the shadow minister at the time, Peter Katsambanis, asked me whether forum shopping was being introduced because we were putting the matter of sexual harassment in the Industrial Relations Act 1979. The point I made to him was that, in fact, we were empowering people to make their own decision about how to enforce their rights, which is not forum shopping. Of course, if their rights are enforced under this legislation, they will not have their rights enforced under another piece of legislation. This is not forum shopping; rather, it is about empowering people to make decisions for themselves.

I want to go through the discussion about modern slavery. In his contribution as the lead speaker for the opposition, the member for Cottesloe said —

> At the outset, on the nominal issue of dealing with modern slavery, obviously, on this side we are concerned no more and no less than the government that this is dealt with properly …

The member for Cottesloe actually voted against this legislation in the last Parliament. When he was presented with the opportunity to deal with modern slavery in August last year, he made his choice and he voted against the legislation. The shadow minister at the time said that the opposition was going to put up amendments on a range of issues and then said, "But if you don't agree to the package, we're going to vote against the legislation." That was the opposition's decision. The opposition said that unless we did what it told us to do with local government, it would vote to perpetuate modern slavery, and that unless we voted with it on technical matters to do with union

organisers, it would vote to perpetuate modern slavery. Not only did the opposition say that it was going to do that, it did that. The member for Cottesloe came in here and voted to perpetuate modern slavery in Western Australia.

The member for Cottesloe discussed modern slavery on a number of occasions during his second reading contribution on this bill. Having said that he supported action on modern slavery, he referred to comments from the Chamber of Commerce and Industry of Western Australia. He said —

> It also raised the issue of domestic workers. It explains —

He then quoted from the CCI —

> 23. The Bill seeks to remove the current exemption under section 7(1) of the Industrial Relations Act **(IR Act)** which excludes "*any person engaged in domestic service in a private home*" as an employee.

I tried to make a point to the member for Cottesloe and he said —

> I did understand that, but, equally, perhaps the chamber saw it as a greater good. Lots of people in this place make comments about things that are not specifically within their bailiwick.

That is to say that he understood why the Chamber of Commerce and Industry would say these things, even though it was not representing the interests of its members. He went on to say —

> Nevertheless, the chamber —

That being the CCI —

> has raised that as an issue and it raises some legitimate concerns in the document.

Let me make it clear: the provision to change the definition of "employee" to remove the exemption is the process that is being used to remove modern slavery in Western Australia. That is the provision that will achieve the outcome. When the member for Cottesloe came in here and quoted the Chamber of Commerce and Industry, it was obvious that he simply did not understand any of the words on the piece of paper from which he was reading. That is why all the former union officials and others involved, such as the member for Mount Lawley, who were in the chamber at the time were aghast at what he said, because he was actually arguing against what he said he was going to do. He said that he supported getting rid of modern slavery and then he quoted the Chamber of Commerce and Industry and argued against that provision. The member for Cottesloe said that he wants to be educated. I hope he understands how embarrassing that was for him—not for anybody else in the chamber. He came in here and quoted a document that said that we should not remove modern slavery from Western Australia. He quoted the CCI's alleged position.

I want to make this clear about the alleged position of the Chamber of Commerce and Industry. I invite any chairman of any listed company that is a member of the Chamber of Commerce and Industry of Western Australia to write to me to say that they endorse the CCI's submission. I do not believe that any listed company in Western Australia would support the CCI's submission. I believe that it is a fancy of the executive of the chamber and that the submission does not represent the views of its members. It is doing exactly what it claims unions do—that is, not acting on behalf of or in the interests of its members. As I said, I invite any listed company chairman to write to me and tell me I am wrong, because I do not believe a single company listed on the Australian stock exchange believes that we should not end modern slavery. It is bizarre that the CCI continues to perpetuate the ridiculous position that Western Australia should not outlaw modern slavery and therefore prevent the commonwealth government from ratifying the relevant International Labour Organization conventions or whatever the proper word is. It is not a convention; it is a protocol to the convention.

I make it clear that after the legislation passed this chamber, it went to the upper chamber in August 2020. I think 45 or 50 bills were pending in the upper house because of the work-to-rule by the shop stewards up there, led by the chief shop steward at the time, Hon Nick Goiran, who refused to do anything other than work-to-rule. As a former union official, I admire work-to-rules, but one cannot argue that those members had proper understanding of these bills. Let me make it clear: I made four separate offers, all of which were rejected by the Liberal opposition. The first one was that if the opposition agreed to let the bill go through straightaway, I would move the amendments that I had proposed here during consideration in detail. The Liberal Party said no, so when the member for Cottesloe asked me during his contribution the other day why I did not bring in those amendments, the point is that they were rejected by the Liberal Party.

I made a peace offering to the Liberal Party, and it said no. I then said, "All right; given that the real motivation is that you don't want to deal with local government, we will bring that back after the election if we are elected, so if you move to remove that provision and accept the amendments that we discussed, will you let the bill through?" Remember, there were hardly any days left and we did not want a repeat of what the opposition did to the Work Health and Safety Bill—clogging up progress with unnecessary delay through work-to-rule. We asked, "If we do these

things, will you let it through straightaway?" The opposition said no; it rejected that. I said, "All right. How about we just deal with the modern slavery arrangements to bring ourselves into compliance with the demands of the commonwealth government and raise the age for the commissioner's retirement to 70 so that Commissioner Scott will not be forced out of the commission?" It rejected that as well. I then went back and said, "Look, how about we just deal with Commissioner Scott? Forget everything else and just let Commissioner Scott stay on."

Let me make something clear about Pamela Scott. She came to the Western Australian Industrial Relations Commission from the Chamber of Commerce and Industry of Western Australia. In fact, she was the manager of the Retail Traders' Association of WA; when I was an employee of the Shop, Distributive and Allied Employees Association of WA, she was the negotiator on the other side of the table from me. This is not a person who came out of my back pocket; this is a great technician of the industrial relations world who beat me as many times as I won an argument. She is a formidable person; she is not some Labor stooge. I was trying to keep her on at the commission because she was doing a fabulous job. My fourth position was: "Given you've rejected everything else, how about we just let Commissioner Scott stay?" The Liberal Party rejected that as well, because it was interested only in work-to-rule. If it is written in the agreement, that is all it does.

I want to now pivot to local government. The member for Cottesloe talked a bit about local government, as we did the last time we debated similar legislation. He said —

> We know that the great majority of local governments fall under the commonwealth jurisdiction …

That is actually not correct, and that is the whole point. They are not constitutional corporations, and therefore they cannot be bound by an award or an order of the Fair Work Commission, because the Fair Work Commission derives its power and authority from the corporations power of the commonwealth Constitution. That is different from what happened with the Australian Industrial Relations Commission or the previous Australian Conciliation and Arbitration Commission. Those commissions drew their power from the industrial dispute provisions of the Constitution. That is a separate power. As a former union official, I can remember—I am sure the member for Forrestfield has had the same experience—roping employers into a federal award. In the 1990s, with the first, second and third wave of industrial relations changes, we were trying to create a federal award to cover retail shops in Western Australia, and the South Australian branch was trying to do the same, so we cooperated in trying to create the dispute. We actually had the industrial dispute found, but, unfortunately, the commissioner issued the interim award arising from the dispute finding. If she had just waited and allowed us to have a hearing, we would have kept it. That was knocked off by the courts because it was not properly procedural. We never asked her to do it; it was very annoying, because we got one bit done, but we could not get the other thing done before the federal change of government, and we were done.

Anyway, that is another story. The point here is that we all remember that we had to make those claims to support a 20 or 30-year award, so some of the claims were ambitious, if I can put it that way. It was a technical process to create an industrial dispute across state lines, and that is what happened for local government. Local government had regularly been covered by federal awards, but that was under the disputes power, not the corporations power. Local governments are not corporations. If they were corporations, they could not charge rates. Rates are charged under the taxing power, and corporations cannot tax. It is fundamental. This is not a discussion; it is just a simple fact. I do not know why the executives of the Western Australian Local Government Association oppose moving to the state system. They are fixated on that.

During the last election campaign, I met with WALGA—both elected reps and some of the executive—and I said, "Listen, you get any local government to come and tell me they're opposed to this and I'll listen to them." When we debated the bill in August last year, I gave the same invitation. Just before we had the debate in August last year, I met with four councils: Gosnells, Canning, Armadale and Serpentine–Jarrahdale. I met with their CEOs and either their mayors or presidents, depending on which one it was, and not one of them raised this issue with me.

No local government has ever raised this issue with us. I understand that WALGA has, but it is not explaining that to its members. I have seen the stuff it puts out to its members. It is simply technically wrong. It claims that there will be higher wage costs. How will there be higher wage costs? There is a transition provision that WALGA helped design. A task force, of which WALGA was a member, designed the transitional provisions. Tell me how it will increase costs. That is just wrong; it is just not correct. There is also a claim that there was a lack of discussion. The member for Forrestfield outlined in detail—I do not need to go over it again—the unbelievable level of discussion that has happened here. There have been two separate inquiries, working parties and engagement with organisations. The idea that there has not been any discussion is just fanciful.

Not only that, but we did the first and second readings of the 2020 bill at the start of August last year, and then we had the debate. We then had an election campaign during which we made further industrial relations commitments, including —

Mr S.A. Millman: It was 25 June.

Mr W.J. JOHNSTON: The second reading was on 25 June; there we go. There was months and months of discussion and negotiation, and that was after introducing the bill. We then made further industrial relations commitments during the election campaign, and number one at the top of the list was the reintroduction of this legislation. The idea that people were not consulted is just fanciful.

This is not directly related to the bill, but I note also that the member for Cottesloe complained about not having any resources. The staffing resources of the Leader of the Opposition's office are exactly the same now as they were when we were in opposition. Not only that, but between 2013 and 2017, when I was shadow minister, there were 21 of us; in the last Parliament, there was 19 members of the opposition. We had only 11 members in the upper house, and the opposition had more, so it actually had more members of Parliament in the last Parliament than we had in the one before that. Do not talk to me about resources; I know exactly what it is like to be in opposition. What the member has to do is work. I acknowledge that he is not the shadow minister, and I do not criticise him for not being across the detail, but he cannot tell me that the Liberal Party does not have the resources to do what it needs to do.

The member also stated —

> I am interested in whether any analysis has been done on the impact that these proposed changes will have on jobs and the economy.

I am indebted to the department, which pointed out that analysis has been done on that topic. I want to also refer to something else. The department undertook a regulatory assessment of the proposals in the bill that are seen as having a significant economic impact. Those included the question of Easter Sunday public holidays, for which there is an estimated wage aggregate of $28.88 million; the ability for the WAIRC to make an equal remuneration order, for which there is no immediate financial impact, contingent on an order being made, and we do know whether that will happen; and the removal of exclusions of certain categories of employees, which is simply not possible to quantify. That document is available on the department's website to download and read.

Mr S.A. Millman: So transparency as well.

Mr W.J. JOHNSTON: Transparency indeed.

I want to draw members' attention to the Nobel prize for economic sciences that was granted this year to an American economist called David Card. The reason he is famous is that in 1992 he did the first academic analysis of the impact of raising the minimum wage. He and his colleague Alan Krueger sought to evaluate the impact of the minimum wage increase for New Jersey and eastern Pennsylvania. It was during the period of Bush Senior's presidency. The federal minimum wage had not been increased since the election of Ronald Reagan in 1980. New Jersey increased its minimum wage, so there were two communities on either side of the state boundary that were effectively the same, but one with a minimum wage of $US4.25 and one with a minimum wage of $US5.05. They studied 410 fast-food restaurants in New Jersey and eastern Pennsylvania before and after the minimum wage rise in New Jersey. They chose the fast-food industry for a number of reasons: it is the leading employer in the area of low-wage workers, it complies with minimum wage regulations and is expected to raise wages only in response to a rise in the minimum wage, and the job requirements and products of fast-food restaurants are relatively homogenous, making it easier to obtain reliable measures of employment wages and product prices. This research showed that there was no evidence that the rise in New Jersey's minimum wage reduced employment in the fast-food restaurants in the state. In fact, despite the increase in the minimum wage, full-time equivalent employment actually increased in New Jersey relative to the employment levels in Pennsylvania. The whole point is that the only academic research anywhere in the world that looked at real-life cases, not some mathematical model, shows that increasing the minimum wage leads to more employment. I know that a lot of employer associations do not like that conclusion, but I point out that Professor Card has been awarded the Nobel prize for economic sciences for that research, as well as his lifetime of research in other areas.

Dr D.J. Honey: I just have a comment on the point that I was making. I did not express concern about the impact on wages. My concern was that if there were onerous provisions, it would discourage households from taking on casual employees.

Mr W.J. JOHNSTON: But there are no onerous provisions. There is a misunderstanding of what is being provided for in the bill. The argument from the Chamber of Commerce and Industry of Western Australia is that people might not hire people to work at their house if they have to keep employment records. But they have to keep employment records today; otherwise, how do they know how much superannuation to pay or how much tax to pay to the Australian Taxation Office? How can they prove that the person received a particular payment? They need records because they have to protect themselves under their existing obligations as an employer. The chamber of commerce gets confused on this issue. It asks: how does the person know whether they are an employer or are engaging a subcontractor? That question does not relate to this bill. We are not creating employment relationships. We are recognising employment relationships. The employment relationship already exists or it does not, depending on the control test, which is well understood in industrial law. The chamber of commerce says that an individual might not understand the control test; that is true, but that is true today. Whether someone is an employee or

a subcontractor will not change under this legislation. Under this legislation, we are extending protections to those people who are employees. We are not creating an employment relationship. The employment relationship does or does not exist today. That is not what this bill deals with. This bill will remove the exemption that currently applies to people who are employees for industrial rights. That is what we are doing. Whether or not they are an employee will not change, and that is why the chamber of commerce's submission is so pointless. I do not get why an organisation as big as it is does not understand the fundamental facts of industrial law today. Not one person covered by that provision is currently a member of the chamber of commerce, because they are not eligible to join the chamber of commerce. The chamber of commerce has no legal ability to represent those people because it can represent only the people covered by its constitution, and its constitution cannot cover people who are not in industry, and these people are not in industry.

The member for Cottesloe also talked about the penalties in the bill. He said —

> If my reading of the bill is correct, the penalties have not just been brought in line with modern-day penalties, they are potentially many, many times greater than what would be considered to be modern equivalent penalties under, say, federal legislation.

I just want to make a point here. We are not introducing minimum penalties; we are introducing maximum penalties. It will be the magistrates who decide what is fair and equitable in the circumstances. That is for them to decide, not for me to decide, and we are not trying to deal with that.

The member also discussed the right of entry for inspectors. He said —

> In particular, clause 65 will amend section 98 of the Industrial Relations Act 1979 to allow industrial inspectors the power to enter someone's private home.

We went over this in great detail last year. The industrial inspectorate already has the power to enter a home if industry is being conducted. The example we talked about last time followed on from a case in the northern suburbs. Let us imagine that someone puts 10 sewing machines in their double-car garage and they pay people to do sewing in their garage. That is industry. The inspectorate has today—not will have after this legislation passes—a right of entry. We are rephrasing the existing right, and we have to because we are introducing a different right. The rephrasing is not a new power. We debated this for hours last time. It is not new. We are providing a new provision for when the inspectorate needs to go into a home, not for somebody engaged in industry but for somebody who is currently not covered by the industrial relations arrangement but from now on will be—so, for domestic service. Then we circumscribe the circumstance in which the inspectorate can enter the home, so there is no automatic right of entry. There is a procedure for the right of entry. That is what we are providing for. We are not changing the existing right of entry; we are simply changing the phrasing because we are introducing a second power, which is the right of entry when it is not industry but it is domestic service, and then we have to set out the circumstance. We had a long debate last year about the question of emergency and I made that offer, but it was rejected by the Liberal Party. The member quoted me in his speech. He said —

> … the minister of the day said —
>
> > … 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.

Let me make it clear: I never thought it was needed. If that was a genuine complaint and the Liberal Party was going to support the legislation, I would have made that amendment. The member will have to ask the new minister what his perspective is, but I do not see any reason that we need to amend the bill; it is not needed. The provision as presented is fine and I would not encourage the new minister to make any amendment, particularly because the Liberal Party said no to the amendment. It was not the Labor Party that rejected the amendment; it was the Liberal Party that rejected the amendment, so it is a bit rich to demand one now.

The member also said that no reconciliation had been provided to the Liberal Party about the difference between the 105 clauses in last year's bill and the 129 clauses in this year's bill. Actually, it was; it was provided to the shadow minister.

Dr D.J. Honey: When was that, minister, because I actually asked him just before I spoke?

Mr W.J. JOHNSTON: It was on 9 November 2021. I am happy to table that when we get to consideration in detail. I think I can do that—nobody at the back of the chamber is saying anything bad to me.

In terms of the union right of entry, yes, we are providing a right for union officials to use contemporary equipment to record what happens when they go on site. I do not know why that is objectionable. The member for North West Central made lots of commentary about things that are happening at the moment with the use of recordings. I make the point that that is irrelevant to this bill because that is happening now and we have not passed the legislation. Whatever the member is complaining about is not related to this provision. This provision is about authorising the

collection of data in a twenty-first-century manner. They are already entitled to collect the data, but at the moment they cannot use recording methods. When the member says that they might video a trade secret, at the moment they could draw a picture of a trade secret, they could describe a trade secret or they could memorise it off by heart.

Sitting suspended from 6.00 to 7.00 pm

Mr W.J. JOHNSTON: I will not speak for much longer, because I am not allowed to, but I want to turn to the question of long service leave. The Long Service Leave Act currently applies to casual and seasonal employees. That is not a new decision because of this legislation. I am advised by the Department of Mines, Industry Regulation and Safety that there have been express provisions for casual employees and long service leave entitlements in the private sector award since April 1958. That was also the case in the long service leave general order of 1977 and in the Long Service Leave Act when the general order was repealed in 2006. This amendment specifies that the term "employee" includes casuals or seasonal employees so that the common misconception that they are not covered is removed. It will not create a provision; it is simply clarifying it.

On the hours of work, I am shocked that the Chamber of Commerce and Industry of Western Australia apparently does not understand how long service leave arrangements are calculated. An employee's entitlement to leave is based on their ordinary hours of work. If their average hours of work are very low, then their entitlement is very low, but that is the case today. It is not a new provision. Nothing in this bill means paying employees for more hours than they work. If someone works an average of whatever hours over a period, the eight and two-thirds of a week is calculated on their average hours. As a former union official, I can tell members that I often had trouble establishing exactly what those average hours were because employers might not have kept accurate records. Sometimes employers offered to pay higher average hours because it was easier for them than going through the rigmarole of doing the back calculation of the average number of hours. It is not a new provision and I am not sure why the CCI thinks it will create a new provision. We will deal with that further if there are more questions.

In his contribution, the member for Cottesloe suggested that if somebody works six weeks each year, they will receive the same long service leave entitlement as someone who works full-time. That is simply not correct. It is not correct under the existing provision and it will not be correct under future provisions. If a seasonal employee with continuous service over 10 years works for six weeks each year and they work for 40 hours a week during that six-week period, it would be averaged over that number of hours. It is not that they are suddenly full-time for the calculation of their long service leave. That is not correct now and it will not be correct in the future.

With those words, I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Dr D.J. HONEY: On the commencement date for the bill, I listened to the minister's second reading reply and I appreciate that, unlike some of his colleagues, he was temperate and made a genuine effort to try to explain some of my concerns. As the minister would know, a concern I have with the bill—not that I think it is a bad thing—is that the penalties have increased significantly. That can make it much more serious if there is a breach of the provisions of the bill. I heard what the minister said about the fact that many of the reporting requirements already apply, but I would be very surprised if many households in my electorate maintained detailed records for casual employment within their homes for people who do domestic duties, such as gardening and the like.

Regarding the proclamation of the act, given that any noncompliance will be a significantly more serious matter and that there could be more focus on this area, will there be any general community education? I appreciate what the minister has said, that yes, people should be doing this, but I suspect most people are unaware of it. Will there be some general education for the community and some time for employers to get up to speed with those requirements so that good-meaning people do not inadvertently end up incurring potential prosecution and penalties under the act?

Mr W.J. JOHNSTON: Thank you for the question. Before I answer, one thing I forgot to do during my reply to the second reading debate was table the documents provided to Hon Nick Goiran through his electorate officer on 9 November 2021. I table those documents.

[See papers 804 to 807.]

Mr W.J. JOHNSTON: Yes, there will be a public education campaign, to the extent that we are able to, to make sure that people are aware of the changed circumstance. One of the reasons that we need to change the definition

of employees is that there is now a larger cohort of people being directly employed by householders, and that is people providing services to National Disability Insurance Scheme participants. We will also be working with other bodies to help us get the word out. In the documents that I just tabled that were provided to the Liberal Party last week, as I said, was a copy of the prosecutions policy. That was something the Liberal Party asked for in the briefing. We want to make it clear what our prosecutions policy is, because this legislation is not intended to be used as a weapon. It is designed to provide proper protection for employees; it is not designed to be a weapon against employers.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 7 amended —

Dr D.J. HONEY: I jump to page 4 of the bill and the definition of "employer". Perhaps the minister can give me some indulgence on this particular question, in case I fall foul of not being in the right area. During his reply to the second reading, the minister talked a little about the types of work that make someone an employer. I think the minister knows where I am coming from. I understand the point that he makes, that if someone has set up a small factory in their garage, clearly they fall within the scope of an employer, and I fully understand that. But the area that I think people would be less clear on is the type of work that is done by house cleaners, babysitters, part-time workers or casual employees working as gardeners and the like. Will this legislation mean that ordinary householders employing those people are employers? I ask this having heard what the minister said, and for the sake of clarity, it is all those types of relationships.

Mr W.J. JOHNSTON: I think the member is asking the wrong question. He is asking: what is an employer? An employer is somebody who engages an employee. The real question is: what is an employee? The point I make is that an employee is —

(a) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or

(b) a person whose usual status is that of an employee;

The reason that is the definition is that it is a long-held and understood definition based on what is called the "control test". As the Chamber of Commerce and Industry of Western Australia can explain, the control test is well established. It has been around for 40 years. It is the idea of a person who is able to direct somebody in the performance of their duties, as opposed to a subcontractor who is engaged to do work but they are then in control of the way that they execute their duties. I am not a lawyer; I am not giving a legal opinion.

Mr S.A. Millman: The best most recent case is a High Court decision of Hollis v Vabu. The case involved a delivery rider. The court held that the employer exercised control over the way in which he performed his work and held that he was an employee accordingly.

Mr W.J. JOHNSTON: The problem here is that the chamber of commerce and others say, "Why don't you provide a clear definition?" It is a clear definition. I understand that some people do not understand it, but that does not mean it is not a clear definition. Basically, if a person is engaging someone directly for themselves, they are an employee, and if it is through an agency it is not a problem, but if a person is engaging someone who determines how to exercise their own obligations, they are a subcontractor. Again, I am not giving a legal opinion, but the courts have determined this over a long period. It is not in dispute. Just because an individual might not understand it does not mean that it is confusing. They are two separate issues.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 20 amended —

Dr D.J. HONEY: I am seeking clarity about clause 8, which is on page 11. The purpose of those proposed subsections is to provide a distinction between the hierarchy of the roles of commissioner and industrial magistrate. Why is that required in the bill?

Mr W.J. JOHNSTON: The explanatory memorandum explains what is intended here. It states that proposed sections 20(3) and (4) will —

(a) provide that the remuneration of a commissioner concurrently appointed as an industrial magistrate is the higher of that provided under s 20(2) of the IR Act or clause 5(2) of Schedule 1 to the *Magistrates Court Act* …

(b) enable the Chief Commissioner to approve additional paid sick leave to a concurrently appointed commissioner in exceptional circumstances …

That is consistent with the powers under the other act. It continues —

> Clause 8 also inserts new s 20(5) to provide that a commissioner appointed as an industrial magistrate may hold the office of commissioner and industrial magistrate at the same time, but not otherwise.

That is subject to a further clause that we will deal with later.

Dr D.J. HONEY: That was pretty well as it read in the clause. What I did not understand was the purpose of that. Why is that required? I understand the sick leave part—that is fine.

Mr W.J. JOHNSTON: For the first time ever, this will allow commissioners, if they are qualified, to be concurrently employed as industrial magistrates. A series of criteria will need to be met for a commissioner to be appointed as a magistrate. I am not qualified to be a magistrate so if I were a magistrate, I could not be appointed as a magistrate, but a number of commissioners have legal qualifications and experience that would allow them to be appointed as a magistrate. Because the industrial magistracy enforces not only the state act but also rights under the Fair Work Act, it is a busy jurisdiction. That workload is going to increase as more duties under the work health and safety legislation come through. We want to increase the pool of available people, and given that the case load of the commission is not as large as it used to be, there is potential capacity to appoint eligible commissioners as magistrates. Concurrently, appointed commissioners will be entitled to the same emoluments—the same salary—as a magistrate, including remuneration. The Solicitor-General provided advice to the government that as a matter of judicial independence, any person appointed as an industrial magistrate should be paid at the same rate as a magistrate. This provision deals with the advice the Solicitor-General gave us to make sure that we would not be in breach of the rules around judicial independence. But we are not going to pay them twice. A magistrate is paid more than a commissioner or senior commissioner, so they will receive the higher rate. If they are chief commissioner, the magistrate rate is lower so they will get the higher remuneration.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Section 23A amended —

Dr D.J. HONEY: Proposed section 23A(2) determines whether the dismissal of an employee is harsh. Proposed section 23A(2)(b) states —

> whether, at the time of the dismissal, the employee was employed in a private home to provide services directly to the employer or a member of the employer's family or household.

Could the minister explain what difference that will make in a determination? How will that make a difference? What is the likely impact of that?

Mr W.J. JOHNSTON: This provision was subject to extensive discussion in consideration in detail in August last year. I encourage the member to read that debate when he has time. I am sure it will be very enlightening for him.

Dr D.J. Honey: Like reading the Aboriginal heritage bill.

Mr W.J. JOHNSTON: Yes; that is good.

This is being included in an existing provision. At the moment, what is in paragraph (a) is already in the act; proposed paragraph (b) is being inserted. The section must be restructured because there will be two placitums rather than one. This section has been well litigated and it is understood that this is quite a high bar. Courts and tribunals have already dealt with what is in paragraph (a)(i) and (ii). Plenty of case law explains why it is effectively, not impossible, but very difficult to get reinstatement under this provision. Proposed paragraph (b) is for people who are currently employees but not covered by industrial arrangements; they will now be covered by industrial arrangements. We have to have the unfair dismissal provision because people cannot be dismissed on a harsh, oppressive or unfair basis, which is within the state jurisdiction. There cannot not be an arrangement; it has to be circumscribed. This is the way in which it is done. Obviously, the commission, in determining a case, will have to have regard to the fact that at the time of dismissal, an employee was employed in a private home to provide services directly to the employer or to a member of the employer's family or household. This will make it much harder to successfully sue for harsh, oppressive or unfair dismissal. This is a very significant protection for the employer. That is natural, because, obviously, it would be only in very, very exceptional circumstances that the commission would exercise its authority to reinstate, which is its principal authority under the state act.

Dr D.J. HONEY: To clarify, I assume that that is in recognition of the fact that it is obviously a more intimate relationship in that personal setting and, therefore, it recognises there needs to be good a relationship between employees and employers.

Mr W.J. Johnston: That is right.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Section 29 amended —

Dr D.J. HONEY: I am sure the minister will tell me that I should know this already—I assume this will be a short answer on the minister's part—but this covers an employee who may be a member of a union but also could be a member of a union. That being the case, when an employee could be a member of union, that entitles the commission or the inspector, but also a union official of the union that the employee could be covered by. It refers, at proposed paragraph (b)(ii), to —

> an organisation in which employees to be covered by the order are eligible to be enrolled as members;

In terms of coverage, I want clarity about whether this includes workplaces and, at least for the member, not only someone who is a member of a union, but also someone who could be a member of a relevant union, and that that would entitle inspection by that union.

Mr W.J. JOHNSTON: The question is misdirected because section 29 is about how to get matters to the commission. This gives the head of power to take new matters to the commission. It is not, otherwise, changing anything in the act. It is about what a person will be entitled to take to the commission. That is set out in section 29. All this is doing is including new things that they will be entitled to do.

Clause put and passed.

Clauses 14 to 36 put and passed.

Clause 37: Section 71A amended —

Dr D.J. HONEY: I am on page 16 of the bill. This clause has to do with private sector awards and the variations of the commission's own motivations. I am interested in what scope that will cover. I am trying to get a sense of when the commission will need to intervene in a matter and vary the scope of a private sector award of its own motion. I am trying to understand when that would occur.

Mr W.J. Johnston: I think you might be on the wrong clause.

Dr D.J. HONEY: Section 37D?

Mr W.J. Johnston: No.

Dr D.J. HONEY: This is not clause 16? Bugger!

Mr W.J. Johnston: I don't know. Can we rescind that vote?

Dr D.J. HONEY: The minister can do what he likes.

Mr W.J. Johnston: We can't go back.

Dr D.J. HONEY: That's okay. Bloody hell!

Mr W.J. Johnston: Perhaps we can recommit the clause at the end, can't we?

Dr D.J. HONEY: No.

Mr W.J. Johnston: Member, if you sit down, I will just make a comment and then you can do something.

Dr D.J. HONEY: Yes.

Mr W.J. JOHNSTON: I understand, because we have done this previously, that at the end of the debate, we can recommit the clause. I will be really generous and say I am happy to recommit clause 16 to allow the member to ask the question because I do not want to have an argument that we denied the member an opportunity to hold us to account. I understand from the Clerk nodding at me that we have to proceed, but we can come back to the clause at the end by recommitting it.

Clause put and passed.

Clauses 38 to 46 put and passed.

Clause 47: Section 83 amended —

Dr D.J. HONEY: The minister will recall that I raised the issue of penalties in my contribution to the second reading debate. The contention was put forward by others that there was a difference between the federal award and the state award; that is, under the federal award there was agreement that if someone committed the same offence over time, the fine would simply be the maximum penalty for a single offence and it would not be aggregated by day. The concern was that under the state award, the person could be subject to that offence as if it were a new offence occurring every day. On page 60, it shows that in the case of a body corporate, the pecuniary penalty is $650 000. It also refers to "not a serious contravention", but I will not go through them exhaustively. I want to understand whether under the state act those penalties could accrue on a daily basis and we could end up with multiples of the same

penalty over a period or whether it is a similar provision, as I understand it, to that under the commonwealth law in that if it were one offence that continued over a period, it would be subject to that one maximum penalty.

Mr W.J. JOHNSTON: No, there is not a daily penalty under this provision. If a person breaches a court order, there might be a daily penalty, but this provision does not provide for a daily penalty. It provides a penalty for each offence. The person bringing the prosecution would have to prove each offence. I can tell the member that that is not easy because they have to provide the evidence for each offence and it gets very complicated. Having done time and wages checks and prosecutions, I know it is extremely complex. Remember that the applicant, whether it is the union doing enforcement or the inspectorate, has to prove everything. The employer does not have to prove anything; it is the applicant who has to prove things. It is true that the federal act provides—I think it is called the course of conduct provision—that if a person does the same thing 20 times, they have one conviction for the 20 offences. That is not in this provision. However, in the end, the magistrate has to decide what is fair. We are providing maximum penalties; we are not providing minimum penalties, so we are giving the magistracy the tools to make a decision to penalise people when the magistrate believes that is appropriate. We are not directing magistrates to make any decision, so if the magistrate believed there was complete disregard of the harm being caused, of course, they could give a very, very large penalty, but it does not mean they must give a very, very large penalty; it will allow them to do that.

Dr D.J. HONEY: Just to clarify, under proposed section 83(6)(4A)(a)(i), the penalty for a serious contravention is $650 000. I would have thought that indicated for a set of events, which is just really a continuation, regardless of whether it is a mistake or deliberate, the maximum penalty will be $650 000. The concern is, to take an extreme example, that if it occurred over 10 days, so it was seen to be 10 contraventions over the 10 days, there could be a penalty of up to $6.5 million. I understand that the minister said that these are maximum penalties. I am wondering whether that amount is a possibility under these amendments.

Mr W.J. JOHNSTON: Although the bill does not contain a course of conduct provision, the Industrial Magistrates Court applies common-law course of conduct principles in the setting of penalties, as set out in the appeal decision of Janine Callan v Garth Smith 2021, 101 WAIG 1155. Common law provides the Industrial Magistrate with flexibility to have regard to a wide range of factors in order to arrive at a penalty that is appropriate in the individual case. I want to emphasise that it is not about the length of time that the conduct occurred; it is the occasion of the conduct. Let us assume we are talking about a worker who has been underpaid. They get paid weekly and have been underpaid every week for a year. That is potentially 52 contraventions. The applicant, whether it is the union or the inspectorate, would have to prove each offence separately. Just because it is proven for one week, does not mean it is proven for the next week. They have to provide evidence of the second contravention. If in the case of a body corporate having made a serious contravention, there is provision for a pecuniary penalty of $650 000. There is a series of elements there. The applicant has to prove the contravention and then show it was serious and then the magistrate will make a decision based on the maximum penalty. If it is not a serious contravention, the maximum penalty will be $65 000, not $650 000, but they will still have to do the same thing; they will have to prove the contravention. In this case, they would not have to prove it is serious, but the magistrate would have to decide whether it is worthy of the maximum penalty. We expect that in the same way as there is a variation in the penalties that are provided now, there will continue to be a variation in the penalties provided in respect of the evidence that is presented.

Mr S.A. Millman: As a matter of practice, there is often a separate hearing of penalties after the case.

Mr W.J. JOHNSTON: Indeed; that is quite common for all jurisdictions. The Industrial Magistrate would say, "These facts have been proved. Now I will hear submissions on penalties." That is the way the system works and it will continue to work in the same way.

Clause put and passed.

Clauses 48 to 50 put and passed.

Clause 51: Section 83E amended —

Dr D.J. HONEY: In clause 51, in the definitions, proposed section 83E(1B) states —

> A person is ***involved in*** a contravention of a civil penalty provision if, and only if, the person —

I move down to subsection (c) —

> is in any way, by act or omission …

I guess the concern is that seems to be extremely broad in bringing a person into contravention. I guess it is really around the definition of "is in any way". Perhaps, by way of example or otherwise, the minister could define that.

Mr W.J. Johnston: Sorry, I am having trouble finding it.

Dr D.J. HONEY: It is line 27 on page 64.

Mr W.J. JOHNSTON: All right, yes. I mean, the words mean what the words say. What it says is "in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention". It has to be "knowingly". Without being a lawyer, I bet it is very difficult to prove "knowingly".

Dr D.J. HONEY: I thank the minister for that clarification. That clause includes that the contravention has to be done knowingly. I know the minister has just said that; I just want to confirm that it must be knowingly in the way that that clause reads?

Mr W.J. JOHNSTON: Yes. I mean, an example might be a case in which someone deliberately ignores something. If the prosecution could prove that they have knowingly done it, they could be convicted. But, I mean, that is a very high bar.

Clause put and passed.

Clause 52: Sections 83EA and 83EB inserted —

Dr D.J. HONEY: Minister, at line 14 on page 66, proposed section 83EA(2) states —

> A contravention by a person is a ***serious contravention*** …

I am wondering whether it is possible to give an example—I can read the words on that page—of what would be a serious contravention for the purposes of that section.

Mr W.J. JOHNSTON: Unfortunately, we are only too aware of high-profile cases like that of 7-Eleven, which involved systematic wage exploitation and cashback schemes across the 7-Eleven network as well as the falsification of employment records. Other recent high-profile cases have included the Caltex and Domino's Pizza franchises. Since October 2019, industrial inspectors from the Department of Mines, Industry Regulation and Safety have been conducting a proactive compliance campaign in the hospitality industry involving physical workplace inspections of cafes and restaurants. Of the 234 businesses inspected between October 2019 and June 2021, around 80 per cent were noncompliant with their employment obligations. The department recovered just over $650 000 in underpayments for 865 employees. Clearly, that is very concerning.

Dr D.J. HONEY: I thank the minister for that explanation. I know that is an example of a serious contravention, but is that the sort of scale of contravention the minister would expect to fall under this provision, or could it be something that is relatively much more minor than that? I appreciate the minister cannot give definitive answers; just by way of reference.

Mr W.J. JOHNSTON: I am advised that under the similar provisions in the federal Fair Work Act, there has only been a very small number of successful prosecutions. That act covers the whole country and many, many more workplaces than the state act covers. Again, this is not expected to be a commonly used provision. It is a bit like when I dealt with the work health and safety legislation and we were putting industrial manslaughter legislation in; one would hope that it never gets used.

Clause put and passed.

Clauses 53 to 64 put and passed.

Clause 65: Section 98 amended —

Dr D.J. HONEY: I refer to the requesting of records. Clause 65(1)(b) refers to "any record accessible from a computer". Obviously, if someone is looking at a very small business or a private residence, a computer may contain all sorts of private information and private matters. What is the scope of accessing those records? Will it be union officials or inspectors coming in to access those records? Is it simply a request for records on a computer? I just want to understand the nature of that, please.

Mr W.J. JOHNSTON: Firstly, this clause relates to inspectors, not union officials. It is putting in additional powers for the inspectorate. I make it clear that this is about industrial locations, so it may be a home, but it is also an industrial location. I gave the example whereby a bunch of sewing machines were in the garage; that is an industrial location. Yes, it is a home, but it is an industrial location. It also could be that the records of the business might be kept at the home, because, obviously, if an employer keeps their business records at their home, then the inspectors need to get access to those business records. It is not the inspectorate's decision that the employer stores business records at their home; it is the employer that makes that decision. The inspectors have to have the power to access those records. If it is not an industrial location—if it is, say, a National Disability Insurance Scheme participant who employs somebody directly to give them assistance—then that is not an industrial location and these provisions are not the relevant ones. There is a separate procedure for that that involves 24 hours' notice or going through the commission to get approval. This is about industrial locations, but it includes homes because some businesses store

their records at home. In respect of the right to get access to the information, obviously, this clause provides the power for a public servant to get access to the information that they need. It is not a fishing expedition power; it is for the records that they require.

Dr D.J. HONEY: I thank the minister. I think that explains that. If we go to page 91 in the same clause, proposed section 98(3)(fa) refers to —

> post at an industrial location, in a place where it may be viewed by employees at the location, a notice containing information regarding any of the following —

What duration will that notice have to stay? For example, I anticipate or at least I understand the idea of this is that potential employees and other people will know that an employer has contravened the law in some manner or other, at least. Is that time bound? Does the notice have to stay for a period of months, weeks or years? Is it required for as long as that employer exists? Obviously, if the employer does not display it, they are committing an offence. But I would imagine that it would not be like machinery inspection certificates that are up on the wall—the employer would not have to have it there for all time.

Mr W.J. JOHNSTON: Again, this is a power for the industrial inspectorate. It will have its own procedures and policies to deal with those sorts of matters of detail. This clause gives the inspector the head of power to post the notice. It was a specific recommendation of the wage theft inquiry by Tony Beech and it is to make sure that there is accountability for the behaviour of employers to their employees.

Dr D.J. HONEY: Thank you very much, minister. But am I to understand that the minister is saying there would then be a regulation governing how long that notice has to be there? Would it simply be a policy or do we really not know?

Mr W.J. JOHNSTON: Again, it is a head of power for the inspectorate. As I said before, the inspectorate will have policies and procedures. Like the prosecution policy, which is available to people, these policies and procedures will continue to be available to the community.

Clause put and passed.

Clause 66: Section 98A inserted —

Dr D.J. HONEY: Minister, I refer to page 93, line 14 and down from there. The minister would know that one of the concerns that I raised in my second reading contribution was how information will be protected, and he has answered that in part. This proposed section refers to the industrial inspector, but I am wondering: is this a guarantee that that information will not be otherwise disclosed to anyone else? I must say that I could not find the relevant proposed subsection in relation to a union official, but perhaps the minister can direct me, or he can do whatever he likes obviously. However, I assume that the subsection has the same requirements in that a union official who accesses information cannot use that information for purposes other than inspection and perhaps prosecution. Otherwise, that information has to be kept confidential. Can the minister confirm that that is the case?

Mr W.J. JOHNSTON: Firstly, I can say that this provision relates to inspectors; it is not a provision that relates to anybody else. Proposed section 98A(1)(a) states it is for "an industrial inspector" or as in (b), "a person assisting an industrial inspector". An example might be a translator. Proposed subsection (2) provides the obligations for keeping the information confidential. It specifies the specific circumstance in which the information that has been obtained can be used, and provides for a penalty if that obligation is not complied with. Of course, there might also be other disciplinary action that could be taken against an inspector as well. Therefore, this clause is about the inspectorate and its rights and obligations.

Dr D.J. HONEY: Are there similar or parallel controls to those controls that are listed here in relation to a union official who obtains information from a workplace?

Mr W.J. JOHNSTON: This is not the provision that relates to union officials; this is the provision that relates to industrial inspectors. Industrial inspectors are more like the police than union officials are. Industrial inspectors act on behalf of the Crown to enforce the laws of Western Australia in an industrial area, and so, obviously, their powers are much greater than those that are given to union officials. Because their powers are more extensive than union officials' powers, this provision also has to be a proper protection for the broader community. This provision is a proper protection for the misuse of information gained by a servant of the Crown in the exercise of their extensive powers given to them by the people of the state to enforce the laws of the state.

Clause put and passed.

Clauses 67 to 80 put and passed.

Clause 81: Act amended —

Dr D.J. HONEY: Minister, this clause is a general provision around long service leave. I listened to the minister's second reading reply speech in relation to this in which he made it clear that this clause brings casual workers into the purview of the Long Service Leave Act—if I understand that that is what the minister said. The minister made it clear that if there were continuing employment, the assertion made by the Chamber of Commerce and Industry of Western Australia was that—I know the minister responded to this before—periods that intervened between employment would count towards long service leave provisions. The CCI interpreted that to mean that it would, in fact, be an additive time as if a person were employed. In the second reading speech, the minister made clear that the only time that would count towards accruing long service leave would be the time that the person was actually working, not the intervening period. Therefore, if I understand this correctly, although a person may accrue long service leave after working for 10 years, the long service leave that they would accrue would be calculated only on the days they were working and not the intervening period. I just wondered if the minister could confirm that, please?

Mr W.J. JOHNSTON: The member uses the interesting words "intervening period", but as a person is continuously employed, there is no intervening period. Of course they have not done hours, so when the average hours are calculated, clearly the average will be very low because they did not work on those days—but the employment is continuous. This goes to the heart of the question: what is a casual? I can tell members a story from my good old days about a warehouse in North Fremantle where a group of women used to work putting labels on baby clothes. They used to work for 12 or 13 weeks in the lead-up to Christmas and they would not work again until the following year, but they were always continuously employed. They were paid casual rates under the shop and warehouse award. They were still employed. They were not being called into work, but they had continuous employment, so that is an example of what we are talking about. There has to be continuous employment. The chamber of commerce says that if a person is a casual, they are not employed on the days that they are not at work. That is a moot question, and is a matter that is being considered extensively, including recently by the High Court. The CCI's interpretation of what employment looks like between shifts is an interesting question. I am not convinced that its understanding of the law is exactly the same as everybody else's understanding of the law. Indeed, under the Fair Work Act, federally, the High Court's decision has had an incredibly significant impact on employment, and now employers are going to all these efforts to overcome the decision of the High Court. The point I am making is that a person has to get the long service leave after the continuous employment. The question of what is continuous employment is an interesting one.

Dr D.J. HONEY: Can the minister confirm the comment he made in his second reading speech earlier that this provision will not in fact change how long service leave is calculated and will simply bring this class of employee into the Long Service Leave Act?

Mr W.J. JOHNSTON: That is correct. The advice I have from the department is that the amendment to specify the term "employee" to include a casual or seasonal employee was made because it is a common misconception that these employees are not currently covered by the LSL act. That is exactly what it will do. It will not create an entitlement; it will just remove the confusion for some employers who think that it does not apply when in fact it does. I am also advised that this is in line with every other state.

Clause put and passed.

Clauses 82 to 99 put and passed.

Clause 100: Section 3 amended —

Dr D.J. HONEY: I refer to clause 100 on page 163 and the changes to the definition of "employee", and in particular pieceworkers—that is, people who work in orchards and other places where they are paid for the number of pieces of fruit, or the like, that they collect. Does this amendment mean that that type of employment condition will not be legal? If it were under a state award, would it in fact eliminate the ability of horticulturists, for example, to contract pieceworkers? Will that type of employment contract disappear and will they have to pay them some minimum hourly condition or will it still exist?

Mr W.J. JOHNSTON: This provision is about the Minimum Conditions of Employment Act. People who work, say, as fruit pickers are already covered by an award, and the award applies. This provision is only for those who are award-free. We are just bringing the Minimum Conditions of Employment Act into line with obligations under the modern slavery provisions, because we cannot have people excluded from those arrangements. It would not apply in the case that the member referred to. Of course, there is action in the Fair Work Commission on people who might have been seen as not covered by an hourly rate of pay, but that is a separate issue and unrelated to this legislation. This provision is for those people who are award-free and protected only by the Minimum Conditions of Employment Act. It is a consequential amendment to extend the anti-slavery provision to those people because they have to be covered by a minimum hourly rate of pay.

Dr D.J. HONEY: To clarify: is it the minister's understanding that the majority of seasonal workers employed in legitimate horticultural businesses around the state will not be impacted, if you like, by this provision because they are already working under a federal award?

Mr W.J. JOHNSTON: Firstly, the overwhelming majority of people in the horticultural industry are proprietary limited companies and therefore covered by the Fair Work Act, so all those people are eliminated. Then we get to the question of the small number of businesses that are not "Pty Ltd". They will most likely be covered by an award. The award conditions would apply for that tiny number of people who are providing piece rates to people who are award-free, and we have to regularise their employment by applying minimum hourly rates of pay, and that is what this provision will do.

Dr D.J. HONEY: This question may go over to clause 101: will the provision impact on people who are working on commission, for example, or in some other way, or is that a totally different arrangement?

Mr W.J. JOHNSTON: Let us take the example of a real estate agent; that is a classic one that people talk about. This provision will apply a minimum rate of pay to them.

Dr D.J. Honey interjected.

Mr W.J. JOHNSTON: Yes, that is true.

I have not met a real estate agent who does not get at least the minimum rate of pay.

Dr D.J. Honey: It might be a very poor one.

Mr W.J. JOHNSTON: They would be. If the member thinks about it, this is a statutory minimum, which is below the award rate for almost every occupation one can imagine. In fact, I cannot imagine an award rate that is the state minimum wage. There are probably a couple of awards that have not kept up to that, but basically any functional award will be significantly higher than the minimum conditions of employment. Yes, one could come up with a hypothetical case of somebody getting a piece rate but does not get the minimum hourly rate. Guess what? We want them to get the minimum hourly rate. It is not a sin to say that people should get paid the statutory minimum rate of pay.

Mr S.A. Millman: In fact, if you listen to the Nobel prize laureate, it is a virtue.

Mr W.J. JOHNSTON: It is a virtue. Indeed, to go further, that is actually part of us becoming compliant with the modern slavery provisions. It is one of those changes that we need to do that. We have to have everybody covered by the minimum conditions.

Clause put and passed.

Clauses 101 to 108 put and passed.

Clause 109: Part 3 Division 2 inserted —

Dr D.J. HONEY: I refer to proposed section 17 under part 3 division 2, "Minimum pay for employee with disability". Proposed section 17(2) states —

> Except as provided in subsection (3), the minimum amount payable for each week worked by the employee is an amount not less than the amount in effect at that time under the IR Act … regardless of the number of hours worked by the employee during the relevant week.

I think I understand the intent of that subsection but I would like it clarified. A concern has been raised. Does that mean they will get paid a minimum weekly wage regardless of how many hours they work, or are they paid only for the number of hours they work in a week but they must be paid a minimum wage?

Mr W.J. JOHNSTON: The current arrangement is that that amount is $90 a week, so it is not a very significant amount of money. This provision reflects the federal arrangements for people in similar circumstances.

Dr D.J. HONEY: Is that regardless of the amount of time they actually work in that way, minister? Would that minimum pay be paid regardless of the number of hours that they work in that week?

Mr W.J. JOHNSTON: Yes, that is correct.

Clause put and passed.

Clauses 110 to 122 put and passed.

Clause 123: Section 3 amended —

Dr D.J. HONEY: Could the minister clarify the likely impact of this public holiday provision? I know some members have concerns about it. As I said in my contribution to the second reading debate, I think there are some

important days that should be regarded as public holidays. This will probably put me at odds with some colleagues and others! In any case, can the minister clarify the impact that he believes this provision will have?

Mr W.J. JOHNSTON: I am advised by the Department of Mines, Industry Regulation and Safety that the estimated total aggregate wage cost is around $28.88 million, covering both the private and public sectors. I make the point that although it may be a cost to some, it is a benefit to others. It is not a cost to the economy. It is zero cost to the economy, because if a higher amount is paid by employers to employees, by definition, those employees have more than they would otherwise have had.

Clause put and passed.

Clauses 124 to 129 put and passed.

Title put and passed.

Dr D.J. HONEY: It was my fault, but the minister has been kind enough to allow us to reconsider sections.

Mr W.J. JOHNSTON: To prove what a nice person I am, I will move that clause 16 of the bill be reconsidered in detail.

Dr D.J. Honey: Minister, I want to deal with clause 25, because we skipped over all those other clauses.

Mr W.J. JOHNSTON: I want to make sure this is what the member wants: he does not want to reconsider clause 16?

Dr D.J. Honey: No.

Reconsideration in Detail — Motion

On motion by **Mr W.J. Johnston (Minister for Mines and Petroleum)** resolved —

That clause 25 of the Industrial Relations Legislation Amendment Bill 2021 be reconsidered in detail.

Reconsideration in Detail

Clause 25: Section 49K replaced —

Dr D.J. HONEY: I am grateful for the minister's indulgence in this matter. This clause will delete section 49K and insert new section 49K, "No entry to premises used for habitation". I want to look at this a little bit just to clarify home access. On page 28 of the bill, the new section reads —

> (1) Except as provided in subsection (3), an authorised representative does not have authority under this Division to enter any part of premises principally used for habitation by an employer or a member of the employer's household (***habitation premises***).
>
> (2) An authorised representative may apply to the Commission for an order permitting the authorised representative to enter habitation premises under section 49I(1).
>
> (3) The Commission may make the order only if it is satisfied that exceptional circumstances exist warranting the making of the order.

I appreciate there is a hurdle, but if that hurdle is met, can any part of the house be entered if it is believed to be relevant?

Mr W.J. JOHNSTON: The clause means what it says: an authorised representative does not have authority to enter any part of premises principally used for habitation by an employer or member of the employer's household. They cannot go in. However, an authorised representative may apply to the commission for an order permitting the entry. That can occur only if the commission makes the order, and the commission can only make the order if it thinks exceptional circumstances warrant making the order. Again, this was extensively discussed in August last year.

This clause contains a number of protections. The commission must make the decision; therefore, it has to go through the procedures that apply, which means it has to have a hearing. That means that the person whose house it is has the right to be heard before the order can be made. It is not as though the commission can simply issue the order; there has to be a procedure to issue the order. The employer can go along and say, "Don't come into my place because of X, Y and Z." The commission might decide that is perfectly reasonable. The discussion we had in August last year was that maybe the representative only wanted to get access to a document, so the employer could say, "I can bring the document to the commission." If that were the case, the commission would not issue the order. It is only issued if the order is needed to do whatever it is that needs to be done, and then only if an exceptional circumstance warrants the order. The commission has to be convinced that, without the order, something bad will occur.

Just to give the member an example, let us say a person is employed directly for a National Disability Insurance Scheme participant, and the person says that every time they go into the shower at the house, their feet buzz because there is a short in the electrical system, but the employer says that is not true. That might be an example of when the commission will give an order, because then it can go in and look and say whether it is true. I am just giving an example. Maybe the commission would say that it would not do that, but it will get an EnergySafety inspector

to have a look. The commission would have to decide that the situation is exceptional to justify the order. It is not a power just to do something; it is an authorisation for the commission to take an action after it has considered the facts. That is a very, very high bar.

The member should read the long debate on this we had with Peter Katsambanis in 2020. I do not understand why people would say that the commission should not be empowered to do something when it is needed. But it is only when it is needed; it is not an automatic right. The commission has to decide that it is worth it and it is only worth it because of exceptional circumstances. For example, the taking of a document clearly will not be an exceptional circumstance, because the commission could issue an order saying that the employer needs to provide the document at a particular location. This is for exceptional circumstances. Having appeared in the commission for many years, I trust the commissioners to use common sense and their value judgement in making these decisions.

Dr D.J. HONEY: I thank the minister for the example. The minister said the householder would be able to represent themselves or otherwise in relation to that order being procured. Is it the case that the owner of the residence—whoever they might be—would always be aware that someone has applied for an order to enter their house, so it could not be a surprise? Someone could not turn up with an order from the court without the owner of the premises being aware beforehand.

Mr W.J. JOHNSTON: Firstly, there is an ex parte arrangement for the inspectorate if there is a reason, but that is completely unrelated. As I said at the time, the inspectorate needs that arrangement. If there is evidence of slavery, for example, they would not want to go to the slaver and say, "By the way, tomorrow we're going to come and look." The inspectorate needs the power to do that, but not union officials. Section 32 of the principal act is the provision that relates to how the commission operates and that makes it clear that the employer would have to be notified of the application, notified of the hearing and then represented at the hearing. Let us assume that the employer did not turn up. The commission would not just issue the order. It would go through the procedure because it is an exceptional power, so there has to be exceptional circumstances, not ordinary circumstances. Yes, the commission will ensure that the employer has their rights respected.

Clause put and passed.

The ACTING SPEAKER (Ms M.M. Quirk): That concludes reconsideration in detail.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [8.21 pm]: I move —

That the bill be now read a third time.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [8.22 pm]: First of all, I want to thank the minister for the very kind and gracious way in which he handled the consideration in detail stage and his reply to the second reading debate on the Industrial Relations Legislation Amendment Bill 2021. That is not something that has necessarily been demonstrated by all his parliamentary colleagues. The Attorney General was flawless in his response to this bill, without any criticism! Thank you very much, minister. I am also very grateful to his advisers, who have to wait around and get bored by us doing our work here. Thank you very much for that. This legislation is a significant change for the state, as I have said. I noticed some mocking from around the chamber on the modern slavery provisions. Clearly, no-one in this chamber supports slavery, but the ability for inspectors and, in particular, union officials to enter private residences has been a major concern. I think the minister has clarified the scope of that, but it is still possible. That can be very intimidating for people. The great majority of union officials, as I have said, conduct themselves responsibly. There are those who conduct themselves irresponsibly. I am reassured that a reasonable hurdle will prevent that from occurring willy-nilly; nevertheless, it can still be an apprehension.

There are real concerns, which have been raised here, around householders being aware that they will fall under the provisions of this bill. It will substantially increase penalties and some significant penalties will be available. I appreciate the minister's comments on someone conducting a full-scale business in a private residence. All of us would think that should be regulated and discouraged. Perhaps if it is discouraged, it might be a good thing, but when people are employing gardeners, cleaners and the like, I suspect in the great majority of households in Perth, the householders are unaware that they are considered employers and that they have all these requirements. I am not sure whether this has been tested but, I suspect, based on what I know of the households that I have been to, very few of them could produce records. They might be able to construct them but they would not be able to produce them. It is especially important that the government makes the requirements clear to all householders. It would be a shame if people who are acting in good faith and believe they are doing the right thing were inadvertently caught under the provisions that require record keeping and the like. As employers, they will fall under the new provisions in this act with potential substantial penalties. I suspect in many cases people may be employed under private arrangements. It is not part of an award; it is simply a private arrangement, but they could be in contravention of

this act. That would be done with the full knowledge and consent of both parties. If people are happy with such an arrangement, it is not a matter of abuse. Nevertheless, I appreciate there is a serious side to that. There is abuse, which this bill seeks to stamp out. That is very worthwhile. I will end my contribution on that note.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [8.26 pm] — in reply: To close the debate for the second time, even though we did the exact same thing in August last year, firstly, I want to thank the staff of the Department of Mines, Industry Regulation and Safety. Secondly, I thank John Welch from Minister Dawson's office. I also thank Minister Dawson. I want to say how pleased I was that he asked me to handle this bill. Having had a lifetime of engagement with the industrial relations system, it is great to have this opportunity.

I want to reflect on something the member for Cottesloe just said. I have a guy who comes and mows my lawn, but he is a contractor. If we look him up on the internet, it says "Blah Blah Mowing Service". He comes to my house, brings his own kit, mows the lawn, then he goes home. We do not, at the minute, have a cleaning lady—I wish we did. The cleaning lady we used to use was through an agency. We paid the agency, not the cleaner. Actually, most people who engage services in their homes will not be covered by these provisions. On a small number of occasions—for example, if someone directly employs a nanny—it will be appropriate that the employee gets the benefit. We should always be concerned about employers, but this provision is about employees.

The member for Riverton talked about the case of a Tamil woman who was held hostage in Melbourne. I quoted a case last year about the prosecution for modern slavery of a couple in Sydney. Sadly, these things occur. At the moment, Western Australia is the only state that actually permits that behaviour. Despite the Chamber of Commerce and Industry's argument against the reform, no thinking person would oppose it. The question then is: what are the circumstances? I accept that there is a debate on that, but I believe, as I did last year, that this legislation has a good balance between the ability to protect workers and the need to respect householders. I believe this bill provides that balance. I am very pleased to support the bill and commend it to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.