WORK HEALTH AND SAFETY BILL 2019

Returned

Bill returned from the Council with amendments.

As to Consideration in Detail

On motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, resolved —

That the Council's amendments be considered in detail forthwith.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Clause 2, page 2, line 8 — To insert after "Royal Assent;" —

(***assent day***)

No 2

Clause 2, page 2, after line 8 — To insert —

(aa) Part 14, other than Divisions 1 to 3 — on the day after assent day;

No 3

Clause 2, page 2, after line 9 — To insert —

(2) However, if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

No 4

Clause 4, page 7, lines 11 and 12 — To delete the lines and substitute —

industrial manslaughter — see section 30A;

No 5

Clause 5, page 12, after line 15 — To insert —

(7A) A strata company that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.

(7B) Subsection (7A) does not apply if the strata company engages any worker as an employee.

No 6

Clause 5, page 12, after line 16 — To insert —

strata company means a body corporate established under section 14 of the *Strata Titles Act 1985* on registration of a strata titles scheme;

No 7

Clause 12A, page 15, lines 4 to 9 — To delete the clause.

No 8

Clause 12B, page 15, line 21 — To delete the line.

No 9

Clause 30, page 34, after line 26 — To insert —

serious harm, in relation to an individual, means an illness or injury that —

(a) endangers, or is likely to endanger, the individual's life; or

(b) results, or is likely to result, in permanent injury or harm to the individual's health.

No 10

Clause 30A, page 35, line 3 — To insert after "crime" —

(***industrial manslaughter***)

No 11

Clause 30A, page 35, line 12 — To insert after "of" —

, or serious harm to,

No 12

Clause 30A, page 35, line 19 — To delete "an offence under section 30B(1)." and substitute —

a Category 1 offence, a Category 2 offence or a Category 3 offence.

No 13

Clause 30A, page 35, line 20 — To insert after "crime" —

(***industrial manslaughter***)

No 14

Clause 30A, page 36, line 7 — To insert after "of" —

, or serious harm to,

No 15

Clause 30A, page 36, line 12 — To delete "an offence under section 30B(3)." and substitute —

a Category 1 offence, a Category 2 offence or a Category 3 offence.

No 16

Clause 30B, page 36, line 13 to page 37, line 10 — To delete the clause.

No 17

Clause 31, page 37, line 17 — To delete "serious harm to" and substitute —

the death of, or serious harm to,

No 18

Clause 32, page 38, line 16 — To delete "a Category 2 offence" and substitute —

an offence (a ***Category 2 offence***)

No 19

Clause 33, page 39, line 2 — To delete "a Category 3 offence" and substitute —

an offence (a ***Category 3 offence***)

No 20

Clause 216, page 143, line 11 — To delete "an industrial manslaughter offence" and substitute —

industrial manslaughter

No 21

Clause 223, page 146, after line 9, the Table after item 5 — To insert —

5A.	Section 155A(6)(b) (decision to withhold approval of legal practitioner on other reasonable grounds)	The witness.

No 22

Clause 230, page 159, lines 11 and 12 — To delete ", other than an industrial manslaughter offence under section 30A,".

No 23

Clause 230, page 159, lines 21 to 23 — To delete the lines and substitute —

(3) Nothing in this section affects —

(a) the ability of an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)) to commence or conduct a prosecution for an offence against this Act; or

(b) the functions of the DPP under the *Director of Public Prosecutions Act 1991*.

No 24

Clause 231, page 159, lines 27 and 28 — To delete "an industrial manslaughter offence," and substitute —

industrial manslaughter,

No 25

Clause 231, page 160, line 17 to page 161, line 10 — To delete the lines.

No 26

Clause 232, page 161, lines 15 and 16 — To delete "an industrial manslaughter offence under section 30A," and substitute —

industrial manslaughter,

No 27

Clause 232, page 161, lines 31 and 32 — To delete "an industrial manslaughter offence under section 30B, or for a Category 1 offence," and substitute —

a Category 1 offence

No 28

Clause 232, page 162, lines 5 to 21 — To delete the lines and substitute —

(3) Subsections (4) and (4A) apply to proceedings (the ***relevant proceedings***) against a person for a Category 1 offence, a Category 2 offence or a Category 3 offence in relation to any conduct (the ***relevant conduct***).

(4) The relevant proceedings may be brought after the end of the applicable limitation period in subsection (1) if —

(a) either —

(i) the DPP has considered whether proceedings for industrial manslaughter should be brought against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct, and has decided not to bring those proceedings; or

(ii) the DPP has discontinued proceedings for industrial manslaughter against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct;

and

(b) the relevant proceedings are brought no later than 6 months after the day on which the DPP made that decision or discontinued those proceedings.

(4A) Despite section 230(1), the relevant proceedings may only be brought under subsection (4) by an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)).

No 29

Clause 232, page 162, lines 22 to 26 — To delete the lines and substitute —

(5) A person may be convicted of an offence as provided for by section 30A(2) or (4) despite subsection (1) and section 10A(2) of *The Criminal Code*.

No. 30

Clause 272A, page 178, line 7 — To delete "$55 000" and substitute —

$51 000

No 31

Clause 272A, page 178, line 8 — To delete "$285 000" and substitute —

$255 000

No 32

Clause 274, page 179, after line 21 — To insert —

(7) The Minister must make available on the WHS Department's website, without charge —

(a) a copy of each code of practice that is currently approved; and

(b) the identity of each document applied, adopted or incorporated (to any extent) by an approved code of practice and, unless doing so would infringe copyright, a copy of that document.

No 33

Clause 277, page 181, line 24 — To delete the line and substitute —

on which this section comes into operation; and

No 34

Clause 277, page 181, after line 32 — To insert —

(3) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.

(4) When the report is sent to the Clerk of a House it is taken to have been laid before the House.

(5) The laying of the report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

No 35

Clause 288, page 186, lines 7 to 21 — To delete the clause.

No 36

New Clause 288, page 186, after line 21 — To insert —

288. Section 96A deleted

Delete section 96A.

No 37

Clause 417, page 249, lines 10 and 11 — To delete the lines.

No 38

Clause 417, page 249, line 28 — To delete "health and safety".

No 39

Clause 417, page 250, line 4 — To delete "health and safety".

No 40

Schedule 1, page 253, lines 1 to 31 — To delete the Schedule.

No 41

Schedule 2, page 273, line 23 to page 274, line 10 — To delete the lines.

No 42

Long Title, page 1, the 4th bullet point — To delete "and" the second time it occurs.

No 43

Long Title, page 1 — To delete the 5th bullet point.

The ACTING SPEAKER: Members, we have before us message 140, the schedule indicates the amendments made by the Legislative Council to the Work Health and Safety Bill 2019. What is the first clause we want to look at?

Mr W.J. JOHNSTON: I have just given a list of notes to my good friend the member for Hillarys with some suggestions of how to group these amendments. If he is happy to do so, I am going to proceed in that way.

Mr P.A. KATSAMBANIS: I am happy with the list the member has provided.

The ACTING SPEAKER: The minister has to seek leave to do it as a list.

Mr W.J. JOHNSTON — by leave: I move —

That amendments 1 to 3 made by the Council be agreed to.

These amendments are in response to the Standing Committee on Uniform Legislation and Statutes Review's recommendations that the WA act is automatically repealed if not operational within 10 years of assent. The other amendments arising from committee's report include the operation of the way the bill comes into effect after being assented to. The assent provision that was included in the bill, as presented, was exactly the same as a number of bills that were presented by the former Attorney General. The former Attorney General, Hon Michael Mischin, was the chair of the committee and insisted that these amendments be made. They were moved by Hon Nick Goiran and agreed to by the government because they have no practical impact.

Question put and passed; the Council's amendments agreed to.

Mr W.J. JOHNSTON: I move —

That amendment 4 made by the Council be agreed to.

This is a consequential amendment to amendment 16, which will be dealt with later in the bill.

Question put and passed; the Council's amendment agreed to.

Mr W.J. JOHNSTON — by leave: I move —

> That amendments 5 and 6 made by the Council be agreed to.

These amendments were moved by Hon Alison Xamon, MLC, to insert a subclause to clarify the circumstances in which a strata company is considered a person conducting a business or undertaking. They were to be dealt with in the regulations; therefore, the government has no objection to them and including them in the bill is fine.

Mr P.A. KATSAMBANIS: There is no objection from the opposition to these amendments. It is questionable whether they are necessary, but given that it is questionable it is better to include them than not include them. I understand that the minister was going to include them by regulation but being in the act is just as good so we are happy to support them.

Question put and passed; the Council's amendments agreed to.

Mr W.J. JOHNSTON — by leave: I move —

> That amendments 7 and 8 made by the Council be agreed to.

Schedule 1 is amended by amendment 40. This amendment is a consequential amendment and was a recommendation of the Standing Committee on Uniform Legislation and Statutes Review. It relates to a provision that would have allowed the bill to be extended to dangerous goods. That is the policy intention of the government but it would have required further legislative amendment in any case, and to remove any doubt, we will be removing schedule 1 when we get to it. This is a consequential amendment to deal with that. Amendment 8 is a consequential amendment and will remove the reference to "health and safety magistrates" in schedule 2, division 6. That amendment, which we will obviously come to later, is a result of correspondence from the Chief Magistrate, who, according to my notes stated —

> In my view, the inclusion of the provisions relating to health and safety magistrates are unnecessary. If these provisions are deleted, any offence created by the bill will be dealt with in accordance with the Criminal Procedures Act. Simple offences would be heard by magistrates, indictable only offences by the District Court and any either way offences by either court depending on the circumstance of a particular offence.

He went on to say —

> I support the deletion of schedule 2, division 6, and any reference to health and safety magistrates contained in the transitional provisions.

I make it clear that there is no principal impact other than there will be no health and safety magistrate in Western Australia. Some people think that having them would be a good idea but at this stage the government is not proceeding with that on the recommendation of the Chief Magistrate.

Mr P.A. KATSAMBANIS: In relation to the consequential removal of schedule 1 later—we may as well deal with it now since the minister raised it—I realise that it is the policy intent of government to bring that dangerous goods regime into the work health and safety regime; however, as the minister himself pointed out, that would require some legislative change. On balance, it is better to deal with the subject matter that schedule 1 was trying to deal with at the time that the legislative change will be made so that there is absolutely no doubt that this WHS regime will apply once those legislative changes are made. Having them tucked away in a schedule and enlivening them by the passing of legislation may not trigger consciousness, if you like, of affected people. I think it will work better as a package if all the changes are made at the same time. I am supportive of the deletion of the clause and the further deletion of schedule 1. In relation to the advice of the Chief Magistrate, as the minister pointed out, we do not have especially appointed health and safety magistrates. The Chief Magistrate deals with these matters and appoints experienced magistrates to deal with them. It is a tidying up of the bill to ensure that it complies with the way that our Magistrates Court is administered in Western Australia. Again, we are supportive of that.

Question put and passed; the Council's amendments agreed to.

Mr W.J. JOHNSTON: I seek leave to move amendments 9 to 17 together.

Mr P.A. KATSAMBANIS: I am happy to say yes on the basis that we get an explanation about clause 9 individually during the explanation. I would really appreciate that.

Mr W.J. JOHNSTON — by leave: I move —

> That amendments 9 to 17 made by the Council be agreed to.

Amendment 9 inserts a definition of "serious harm" and is in division 5. It is consequential to including the term in clause 30A. This was a government amendment. Amendment 10 inserts "(industrial manslaughter)" and was recommended by the Parliamentary Counsel's Office. Amendment 13 proposes a similar amendment at line 20. It

makes it clear that this provision and the description relates to the crime of industrial manslaughter. That was a government amendment.

Amendment 11 includes serious harm as a knowledge element and is in addition to knowledge about death. It will be sufficient that the party being charged knew that the contravention of the work health and safety duty was such that it would likely lead to serious harm but they proceeded nevertheless. Amendment 14 proposes a similar amendment and it was also a government amendment. This is a very important amendment. An error was made by the government because the original provision said that a person had to know that the action they were doing would lead to a death and therefore it would be a defence to say, "I didn't know the person was going to die. I just thought they would be seriously harmed." Clearly, that would not be sufficient, so this amendment clears up that matter. Amendment 12 is a consequential amendment. During the committee stage, Hon Nick Goiran proposed amendments to delete clause 30B. I will talk about that in a minute. The Council supported those amendments. I must say that there was a similar government amendment that was an alternative to Hon Nick Goiran's amendment and I will talk about that soon. Amendment 12 was also proposed by Hon Nick Goiran and it is consequential to the deletion of clause 30B. The removal of clause 30B consequentially required that death be added as an element in clause 31 for persons conducting a business or undertaking. Amendment 15 also removes reference to clause 30B. Amendment 13 inserts "(industrial manslaughter)" and was recommended by the PCO. Amendment 10, which I just spoke about, proposed a similar amendment at line 3. It makes it clear that this provision and the description relates to the crime of industrial manslaughter. It was a government amendment.

Amendment 14 includes serious harm as a knowledge element. Amendment 11 proposed a similar amendment and I will explain why that was needed. Again, it was a government amendment. Amendment 15 is a consequential amendment and is consistent with amendment 12 and, again, it was an amendment of Hon Nick Goiran. Amendment 16 was proposed by Hon Nick Goiran to deal with the deletion of clause 30B and it is consequential to the deletion of clause 30B industrial manslaughter, simple offence. Removal of clause 30B consequentially required that death be added as an element of clause 31 for persons conducting a business or undertaking. Amendment 17 inserts serious harm and is a consequential amendment in the same way that I described previously. It is an alternative to clause 30B and the Council agreed to include the reference to death in clause 31. This was an amendment by Hon Nick Goiran and, as I indicated, the government moved an alternative amendment in very similar terms.

Mr P.A. KATSAMBANIS: Including the term "serious harm" in the knowledge element required in the industrial manslaughter offence at clause 30A is a significant improvement. As the minister indicated, it was a bit of an oversight that had not been picked up, but the government picked it up. As both the minister and I have agreed in the past, sometimes an industrial incident resulting in either serious harm or death is almost a matter of luck in the circumstances, and the knowledge element required in the original construction of clause 30A was that the person engaging in the conduct knew that the conduct was likely to cause the death of an individual. It is extended now. They knew that the conduct was likely to cause the death of or serious harm to an individual. It is really related to the knowledge element that a person is creating a dangerous workplace rather than the consequences of creating that dangerous workplace. We are supportive of that provision. In some ways it probably broadens the scope of clause 30A a little. The removal of clause 30B has been debated in this chamber and the other place. That amendment was moved by Hon Nick Goiran on behalf of the opposition in the other place as we had moved it here without success. We are satisfied now that the construction of clauses 30A and 31 are sufficient. In the other place, there was debate on an amendment to clause 31 that did not succeed. There is no point in reprising that debate now—suffice to say that we have reached the position in which both chambers have looked at it and this is the final construction of the clauses, and we will move on from there.

Mr W.J. JOHNSTON: I will just clarify that clause 30A was unanimously supported through this chamber. The challenge was that the construction that was agreed by the chamber would have left the opportunity for somebody to defend the charge under clause 30A by arguing that they knew that the behaviour would cause serious harm but they did not realise that it would kill someone. Clearly, that was a mistake by all of us here.

I turn to the deletion of clause 30B. Let me make it clear that the government agreed to delete clause 30B because we were amending clause 31. We opposed the two amendments that went together in clauses 30B and 31, but we were defeated. That was the subject of discussion outside the chamber between the Labor Party and the Liberal Party. Let me make it clear that when the Liberal Party's amendment prevailed, I understood that the clause, as amended, would be supported. The longstanding practice in Westminster Parliaments is that if a party passes an amendment, it supports the amendment that it passed. The tradition in the Westminster system is that if a party has an amendment pass through a bill, it supports the entire bill. If other amendments are defeated, that is not an excuse to not support the legislation. In the Industrial Relations Legislation Amendment Bill, the member for Hillarys said that the package of amendments either all get up or they do not. Generally speaking, if a member moves an amendment and the amendment is supported, that is a commitment by the member to support the amended bill; otherwise, why had the member proposed an amendment? If a member proposes an amendment that they then want to vote against, that is a clear breach of understandings of the parliamentary system that we have inherited from Westminster.

What happened? After the government was defeated on clauses 30B and 31, because it was a package, Hon Nick Goiran immediately said that even though his amendment had just been supported through the chamber and the government had withdrawn its amendment, his amendment was not satisfactory. The question I have always had is: what was in his mind when he encouraged the chamber to support his amendment if he did not think his amendment was satisfactory; what was in his mind? That was a deceitful action; there is no other way of putting it. What occurred was unreasonable behaviour in anybody's language. The offence elements of clauses 30B and 31 were identical apart from clause 30B being about death and clause 31 being about serious harm. The elements of the offence for clauses 30B and 31 were the same. It is true that the member for Hillarys opposed clause 30B in the form that we presented it in in this chamber. I do not agree with him, but he is welcome to do so. Clause 31 was agreed to unanimously by us, but the elements of the offence were identical. They are actually the same, in effect, as the existing law in Western Australia. Then the Liberal Party immediately said that the amendment that had already been placed on the notice paper by Hon Rick Mazza should be supported. I was never told that by the Liberal Party in any of the meetings I held with it.

Mr S.A. MILLMAN: I would like to hear more from the minister on this point.

Mr W.J. JOHNSTON: Then there was a vote on the amendments. Firstly, a number of organisations in the community were saying that we were criminalising accidents. We were doing no more than taking the existing provision in the existing act that has been around since 1984 and increasing the penalty. We were introducing jail time and significantly increasing the monetary penalties, but the actual elements of the offence were the same. I made that point a dozen times or more. The members can read *Hansard* to see that the elements of the offence were not changing. Obviously, it was using new language because we had to accommodate the concept of a person conducting a business or undertaking, but the elements of the offence were not changing. Had this conduct by the Liberal Party prevailed, we would have had two offences with different penalty provisions but the same set of circumstances. The knowledge element in clauses 30A and 31 would have been the same. We would have then had two offences with different penalties that were the same. That meant that the existing offence for a workplace death at level 3 would have disappeared, and the most commonly applied offence would not have been accommodated by the Work Health and Safety Bill 2019 in Western Australia. That would have been a disgrace. Had that amendment been passed by that house, it would not have prevailed. It would not have been supported in this chamber. If the bill was defeated, that would have been the consequence because we could not have the most common offence cease to exist and only the knowledge offence continue. That would have been ridiculous. It would have left hundreds of cases of death with no possibility of criminal sanction. It would have been a disgrace.

Fortunately, when the amendment went to the vote, it was defeated. I have to acknowledge Hon Charles Smith who had great pressure on him at the time, but he supported the government's position. I was surprised but I am very pleased to say that the Nationals WA stood up for common sense and a good outcome in this situation, and the member for North West Central specifically asked me to acknowledge the work of the Nationals, and I do so. I have already done it once in this chamber, but I acknowledge that the Nationals supported it and so did the Australian Greens. It is a credit to the Australian Greens that their support for this provision never wavered. I am very proud to be the Minister for Industrial Relations who has made a real difference in this state, not because of my work but because I was allowed to have the right to bring this legislation through Parliament. I give credit to the people who got it to this point. I was at a Labor Party branch meeting on Sunday, and one of the rank and file members said to me, "This legislation is why you belong to the Labor Party. It is so fundamental to our DNA." That member who used to work at WorkSafe Western Australia, as it happens, made the comment that he had spent 40 years lobbying to get this done. I am proud that I was lucky enough to be the minister who, as part of a bigger team, brought it forward. The Labor Party is clearly the major supporter of this legislation.

Secondly, I want to thank the union movement in Western Australia. The union movement has been single-minded on this for a long time. I am proud, as a former vice-president of the Trades and Labor Council as it was then—it is now UnionsWA —

Mr S.A. MILLMAN: Mr Acting Speaker, I would like to hear further from the minister on this point in particular.

Dr D.J. Honey: Where's the mercy rule?

Mr W.J. JOHNSTON: It is not a surprise that the member for Cottesloe does not care about working people. I love this. The member used to be in charge of residuals at Alcoa; now he is managing residuals on the backbench of the Liberal Party!

Let me make it clear: the union movement has a proud history in this state and is to be commended for the work it did to get this bill to this point. I do not want to thank all the union secretaries and union officials by name, but I particularly want to thank Owen Whittle, assistant secretary of UnionsWA, for his hard work, and Meredith Hammat, secretary of UnionsWA, for her great leadership, along with a range of other unions—the Construction, Forestry, Maritime, Mining and Energy Union; Australian Manufacturing Workers' Union; Australian Workers' Union;

Electrical Trades Union; United Workers Union; and State School Teachers' Union of WA—that have worked single-mindedly on this over many years.

I want to give my final thanks to the most important people in this debate, who had to sit at home and watch on the internet the embarrassing contribution by Hon Michael Mischin. This is a man who no Liberal wants to see in Parliament. This is a man who has been dropped to number 6 on the ticket and therefore will never be in Parliament again at the end of this Parliament, because the Liberal Party does not want him here. He said terrible things about the families and their loved ones. John Welch from my office was getting phone calls each morning from people who wanted to complain about what Hon Michael Mischin had said in the chamber. Those families were sitting at home watching the debate. Hon Michael Mischin's behaviour should be condemned by every right-thinking person. The other one we have to condemn is Hon Nick Goiran. Hon Nick Goiran purports to be a man of honour and a man with deep convictions. I do not understand why he tried to stand in the way of protecting the lives of working people. He says that he respects life, as do I, yet he tried to get in the way of this bill. That is a disgrace and he should be ashamed of himself.

I want to finish by thanking the families left behind, and particularly Regan Ballantine, who is with us in the chamber today. No family has suffered more or less than any other family that has been left behind; none of their sacrifice is more or less important than the others. But for a whole range of reasons—force of personality, attitude, time availability—Regan Ballantine has really driven the lobbying effort, and convinced me to support the introduction of an industrial manslaughter offence in this bill and a significant increase of the penalties for a level 3 offence. This bill will not bring back the life of any worker who has been killed—it will not bring back anybody's life—but it should be a reasonable tribute to the hard work of the families that have been left behind. At the date in the future when this bill is fully implemented, it will make a difference. It will make a difference in three ways. Firstly, the bill will significantly increase the penalties. Secondly, the prosecution process will be simplified because we have made it clear who is in charge through the concept of the PCBU, or person conducting a business or undertaking. Thirdly, we have sent a message to senior people in organisations—I know this is already having an impact on them—that everybody is responsible and that they really do need to do better in health and safety. We have done better on health and safety over the last 30 years than we did prior to the 1984 legislation. The fact that workers' compensation premiums today are the same, in dollar terms, as they were 30 years ago shows what we have done for health and safety in this state. But that does not mean we are at the finish line. We are not there yet. Even this bill will not be the finish line, but what it will do is to remind businesses that they have a principal responsibility to provide a safe workplace. That is their job. If they breach their obligations, they can be prosecuted. All we have done is to make those prosecutions clearer and to increase the penalties. I am very proud to be part of that.

Ms M.M. QUIRK: I believe the minister was just finishing off his very erudite remarks.

Question put and passed; the Council's amendments agreed to.

Mr W.J. JOHNSTON — by leave: I move —

That amendments 18 to 20 made by the Council be agreed to.

Amendment 18 is a drafting refinement recommended by the Parliamentary Counsel's Office. It is a government amendment. Amendment 19 is the same. Amendment 20 is consequential as a result of the amendments to clause 30A and, again, is a government amendment.

Question put and passed; the Council's amendments agreed to.

Mr W.J. JOHNSTON — by leave: I move —

That amendments 21 to 26 made by the Council be agreed to.

Amendment 21 is to clause 223, which is titled "Which decisions are reviewable". The amendment inserts item 5A in the table, which deals with clause 155A, titled "Supplementary provisions relating to appearances". Clause 155A(6)(b) provides the regulator with the authority to approve legal practitioners in prescribed circumstances. This amendment provides for the witness to be an eligible person to request a review of a regulated decision not to approve a legal practitioner, and was an amendment from Hon Alison Xamon.

The Director of Public Prosecutions advised that amendment 22 is necessary for the proper functioning of her role. The amendment authorises the regulator to commence charges in every instance, including for the indictable industrial manslaughter offence for a clause 30A prosecution. The DPP will assume conduct of the matter once disclosure is complete or the matter is committed to the District Court. This is consistent with the existing practice in criminal courts, in which the investigating agency, the WA Police Force, commences the charge in the Magistrates Court and the DPP takes over the proceedings once the matter is committed to a superior court. For almost all types of offences in Western Australia, it is not the DPP that initially brings the proceedings. To do otherwise would create various problems, including in relation to disclosure obligations. This is a government amendment.

Amendment 23 was initiated on the advice of the DPP and is also a government amendment.

Amendment 24 is consistent with the refinement of the definition of "industrial manslaughter" consequential to the removal of clause 30B. Again, it is a government amendment.

Amendment 25 is supported on advice of the Director of Public Prosecutions. A person who believes an industrial manslaughter offence or a category 1 or 2 offence has been committed but no prosecution has been brought will be able to write to the regulator to request that a prosecution be brought. The regulator must provide a response to the person within three months. Should there be any dispute about whether a charge is supported by the evidence, existing processes and practice will allow the regulator to seek advice from the DPP or, for simple offences, typically the State Solicitor's Office. Again, this was a government amendment.

Amendment 26 is a consequential amendment and is again a government amendment.

Mr P.A. KATSAMBANIS: I think these are very, very important amendments. As the minister has pointed out, many of the amendments in this group are on the advice and recommendation of the Director of Public Prosecutions. It is extremely important that we ensure that the provisions we are introducing into the legislation, especially new clause 30A, can be effectively prosecuted. It is interesting that although we went through quite a significant consultation process, including a ministerial advisory panel, these issues were not ventilated then. I recognise that at the time the panel was looking at the operation of work health and safety laws and how a national model law could be adapted to Western Australia from an occupational work health and safety perspective, not from a prosecutorial perspective. Perhaps it was a bit of an oversight. Through the Committee of the Whole House in the other place, issues arose about how the DPP would interact with this legislation and we had the opportunity to tidy them up. As I said, we fully support these amendments because they will make the prosecution sanctions work, as will some of the amendments coming up in the next batch.

Question put and passed. Council's amendments agreed to.

Mr W.J. JOHNSTON — by leave: I move —

That amendments 27 to 29 made by the Council be agreed to.

Amendment 27 is a consequential amendment as a result of clause 30B being deleted and "death" being included in clause 31. It is a government amendment. Amendment 28 provides the regulator with typically two years to bring a prosecution for a simple offence, which includes categories 1, 2 and 3. There will be no time limit to bring a clause 30A industrial manslaughter prosecution should the DPP decide to not commence a clause 30A prosecution or to discontinue an existing clause 30A prosecution. Assuming the two-year limitation period has expired for simple offences, the authorised officer is given a further six months to bring a category 1, 2 or 3 prosecution. It should be noted that the regulator is not an authorised officer under the Criminal Procedure Act. It is a government amendment. Amendment 29 is a consequential amendment that permits the court to impose alternative convictions for lesser offences when the relevant time periods have expired. Subsection (1) imposes a two-year limit for offences. Section 10A(2) of the Criminal Code makes reference to time limits. The time limits that might be relevant to industrial manslaughter prosecution are removed. That is a government amendment as well.

Mr P.A. KATSAMBANIS: Again, these amendments are supported. They come from that interaction with the DPP. They will make sure that if the DPP takes over a matter, and at some point in time determines not to bring proceedings or to withdraw proceedings, the effluxion of time does not limit the regulator from taking action under other provisions in clauses 31, 32 and the like. Again, it will give effect to the interaction between any potential District Court and Magistrates Court proceedings. The amendments are supported by the opposition because we recognise that they will make the legislation far more workable.

Question put and passed. Council's amendments agreed to.

Mr W.J. JOHNSTON — by leave: I move —

That amendments 30 and 31 made by the Council be agreed to.

Amendments 30 and 31 are to clause 272A and the penalty provisions. One penalty is being changed from $55 000 to $51 000 and the other from $285 000 to $255 000. There was a very, very long debate on this clause, which relates to insurance for penalties arising under the act. It was an inordinately long debate on that narrow issue. In the end, it came down to a debate about the penalties. The penalties of $51 000 and $255 000 apply under the identical provision in the New South Wales legislation. The Liberal Party said, through Hon Nick Goiran, that it would not oppose the clause if the penalties in WA were exactly the same as the penalties in New South Wales. For that reason, the government moved these two amendments; therefore, we seek the opposition's support in this chamber.

Question put and passed. Council's amendments agreed to.

Mr W.J. JOHNSTON: I move —

That amendment 32 made by the Council be agreed to.

This amendment places a duty on the minister to ensure codes of practice are provided but at the same time protects copyright. The amendments commit the minister to making relevant documents without infringing on the intellectual property of persons and organisations that have created the referenced or incorporated documents. This means that the WHS bill will be inconsistent with the model WHS bill; however, the government proposed the amendment in order to maintain consistency with the bill and ensure the availability of the codes of practice as widely as possible. Other publications and codes of practice that may be referenced have copyright issues. The amendment is appropriate as it balances this important aspect of Australian law and allows wide distribution of codes of practice. This is a government amendment.

I want to make it clear that this amendment was in response to some really ridiculous behaviour by Hon Michael Mischin. Through the Standing Committee on Uniform Legislation and Statutes Review, he attacked the important practice of issuing codes of practice. He wrongly thought that a code of practice was a regulatory instrument, when it is not. Codes of practice have existed in Western Australia for many years. In fact, as I understand, Hon Michael Mischin issued some of them while he was minister; certainly, many were enforced while he was minister. They are not a regulatory instrument; they are shield, not a sword. They prescribe defences if a person is brought for prosecution, so it not possible for them to be a regulatory instrument. If there were a regulatory instrument, people could be penalised for breaching them. As there is no possibility of a penalty for breaching them, they are a defence against the prosecution for failing to comply with a duty under either the regulations or the act. It was simply, completely and utterly a misunderstanding of what the purpose is. The fact that not a single employer association in Western Australia supported the amendments moved by Hon Michael Mischin on this matter shows how out of touch the Liberal Party is at the moment.

Question put and passed. Council's amendment agreed to.

Mr W.J. JOHNSTON — by leave: I move —

> That amendments 33 to 43 made by the Council be agreed to.

Amendment 33 sets out the counter for the five-year review from the assent day, rather than proclamation. The intention is that the assent day for the WHS act to commence will be as soon as possible after proclamation. The drafting of the WHS regulations will be a substantial project and could take some time to finalise; however, it is expected that the regulations will be completed within 12 months of assent. Depending on the proclamation day, the WHS act is likely to have been in operation for less than five years. In these circumstances, the review may be conducted before the issues with the WHS act have become apparent or are precisely understood. In these circumstances, government and private sector resources would not be used to best purpose. As drafted, the Work Health and Safety Bill is consistent with the established Parliamentary Counsel's Office drafting protocols. It is not clear why the amendment was proposed; however, apart from noting the potential for a reduced operation period, there are no particular objections. The amendment was moved by Hon Nick Goiran.

Amendment 34 prescribes procedures for tabling the report. There are no details about other legislation that includes this level of prescription. It is standard operating procedure for the department to provide any appropriate report to the minister once finalised. The normal procedure in forwarding the report to the minister is for the department to provide a letter referring the report to Parliament. The drafting of the proposed amendment would appear to mean that if the minister was of the opinion that a house of Parliament was sitting, there would be no prescribed 21-day requirement. It appears that the amendment is prescribing procedures for parliamentary processes. It is not known whether subclauses (4) and (5) are consistent with parliamentary procedures. During the Legislative Council debate, Hon Nick Goiran advised —

> The second amendment upgrades the statutory review clause to the new standard we are commonly aware of, particularly with regard to the out-of-session tabling provisions.

The amendment was passed, having been moved by Hon Nick Goiran.

Amendment 35 is consequential to the removal of the reference to health and safety magistrates. The reason for the amendment is explained on page 6081 of *Hansard* of 17 September 2020. I will not quote the comments. A number of subsequent amendments in the WHS bill proposed by the government are also consequential to the removal of the reference to health and safety magistrates. This is a government amendment. Amendment 36 is consequential to the removal of the reference to health and safety magistrates. It is a government amendment, as are amendments 37, 38 and 39, which were moved for the same reason.

Turning to amendment 40, on 29 June, I wrote to the Chair of the Standing Committee on Uniform Legislation and Statutes Review confirming that schedule 1 would be deleted from the WHS bill. This was in response to recommendations 4 and 5 of the committee's 126th report, "Work Health and Safety Bill 2019 and Safety Levies Amendment Bill 2019". As I explained, this was a provision to allow for a future date for the inclusion of dangerous goods. It would have required parliamentary legislation anyway, so it does not offend any government agenda.

Amendment 41 deletes reference to health and safety magistrates, as previously discussed. It is a government amendment.

Amendment 42 is to the long title. It is consequential to the removal of schedule 1. It removes reference to "dangerous goods and high risk plant" in the long title. Again, it is a government amendment. Amendment 43 is also to the long title and is consequential to the removal of schedule 1. It removes reference to "dangerous goods and high risk plant" in the long title and again is a government amendment.

I commend the amendments.

Mr P.A. KATSAMBANIS: The opposition supports these amendments. This finalises a long list of 43 amendments that came from the process of referring the bill from this house to the other house and to two committees. After lots of consideration, we have arrived at this point. I have often put on the record my desire to see the model law enacted as closely as possible in Western Australia so that we can have something that approximates a national regime of workplace health and safety. It would have been a travesty had the argy-bargy of politics stopped that from occurring, so I am very glad that we have arrived at this stage. It has been nearly 12 years since the first draft of the model law was agreed to by the various ministers at the time, so it is a long time coming for Western Australia.

I note that the minister put on the record his thanks to a number of people. I particularly want to commend Regan Ballantine for her really strong and very passionate advocacy. As is the case with many people who advocate for law reform, it would have been preferable had they never needed to do so. Obviously, embarking on that process, and right throughout that process, it evokes all those terrible emotions that came with the family tragedy that she and her family endured. As the minister rightly said, to advocate for change does not bring any of those people's loved ones back, but it is important for the long term. Well done to her and all the other people who campaigned with her.

The other thing I want to put on the record is that despite the argy-bargy and the finger-pointing from one person to the other and from one chamber to the other, our parliamentary system is pretty robust and it works. Although this bill does not give the minister everything that he hoped for, and from our perspective it does not give us everything that we hoped for, we have arrived at a starting point. At the conclusion of this process, we will have a modern work health and safety regime that reflects our obligations as a state to abide by our agreement to introduce the model law, gives clarity and certainty to all participants and sends the message that the minister mentioned and I will reiterate to all employers that it is their responsibility to provide a safe workplace. It reinforces a multi-partisan belief by everyone in this Parliament and in the community that a person who goes to work, whether it is for the morning, afternoon or night shift, should leave home with an expectation that they will return safe and sound. That expectation should be met so that they and their family know that they are going to go to work and come home and that they will repeat the process the next day without risk of death or serious harm.

I think we have arrived at a really good point. It does not give everyone everything that they wanted, but from here we can move forward. I have often said that the successes in work health and safety over the last 30 or 40 years have been astounding and we have arrived at the point at which an industrial incident leading to serious harm or death is front page news because it is a horrific event and it should not have occurred, but it occurs infrequently. I wish we had done as well in the road safety area as we have done with work health and safety.

Dr D.J. HONEY: I would like to hear more from the member.

Mr P.A. KATSAMBANIS: But we should not rest on our laurels. There are sectors out there that can do a lot better. Again, that is where parliamentarians and members of the Western Australian community stand in unanimity. We are not divided on any of this. Let that message go across: the Parliament of Western Australia, whether members are Liberal, Labor, Nationals, Greens, Independent or whatever, supports a robust, strong and effective work health and safety regime. We encourage those sectors that are not doing so well, including some of the agriculture sector and some of the construction sector, to do better in the future. This bill can act as a strong incentive as both a guideline of what to do and a little bit of fear of the consequences if employers do not do the right thing. We are not divided on any of that.

With those words, I think the process has worked. We will have a workplace health and safety regime in this state that is significantly better than it has been in the past. Let us hope that those gains that have been made in the last four decades continue in a cooperative and collaborative culture whereby employers and employees continue to work together, because that is where we get the real gains. If we turn it into an us-and-them situation, we do not get gains; it becomes an argy-bargy and a bit of a bunfight, and nobody wins.

I have often said this and I will say it again: in the workplace health and safety space, the trade union movement right across Australia, including in this state, has done a lot of the heavy lifting. I do not resile from that. The minister has heard me say it before and I will say it again: trade unions have a very important part to play in that. All parties have an important part to play in that. Employers have an important part to play in that, particularly smaller employers. That is where we can all help and assist them. Government and the authority can also help to assist small businesses to comply with their obligations and make sure that their intentions and actions match. I look forward to continuing improvements in the future so that industrial incidents and workplace health and safety incidents are not just rare but are eliminated. I hope we get to that stage sooner rather than later.

Mr W.J. JOHNSTON: The member said that we all did not get what we wanted. I did. I got every single provision in this bill that I set out to achieve. In the end, the government did not have to compromise except in one regard, and that was I wanted to separate out the penalty for serious harm at a level 3 offence from the penalty for a death at a level 3 offence. Other than that, this is exactly the bill the government wanted.

I never thought that I would get a 20-year penalty for clause 30A, but it was agreed. I thought I would have to compromise on that, but I did not. I knew that I would have to compromise on the 10 years' jail for clause 30B, but it was beyond my wildest dreams that I would get a penalty. What has no jail time currently will now be five years' jail. Let us not kid ourselves that this was a give and take. Despite the fact that the Liberal Party set out to deliberately frustrate the passage of this bill by sending it to two committees—it wasted Parliament's time and came up with ridiculous committee recommendations to eliminate important elements of health and safety law in Western Australia, that being codes of practice—it was defeated. I think there were eight days of parliamentary debate in the other house. The only reason the bill got passed was because there was a tragedy at Curtin University. We would still be putting up with the empty drum of Hon Michael Mischin and Hon Nick Goiran today if it were not for that tragedy at Curtin University. What the Liberal Party did here was a bloody disgrace, if I can use that Australian term.

I am proud to stand as a Labor member and say that we achieved everything we set out to do. I again want to thank the WA Greens, the WA Nationals and Hon Charles Smith. I cannot believe that I am standing here thanking the National Party and Hon Charles Smith, but I am because they played a great role in this. They were honest in the way that they approached this bill and that is how we have achieved it. I am so proud that we were able to get everything we set out to achieve, without compromise, through this Parliament. The idea that somehow we did not get what we want, let us make it clear: we got everything we wanted through this Parliament. The reason we got everything we wanted through this Parliament was that we approached this bill in an honest fashion, we listened to everybody involved, we made the right decisions and we made a series of compromises before we came here to take account of the needs of industry in this state.

Let me make it clear about the word "industry". Industry comprises the social partners—employer reps and employee reps together. Everybody now interprets "industry" to mean employers; it is not correct. Industry comprises the social partners. Every representative of working people in this state should be proud of the fact that we got what we needed despite the despicable behaviour of the Liberal Party.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.