OCCUPATIONAL SAFETY AND HEALTH AMENDMENT BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MICHAEL MISCHIN: I will just further explore one of the three cases that have been cited by the government in support of the proposition that the current penalties do not meet community expectations and do not act as a sufficient deterrent. It is one of three examples that were cited by the government. The government said that in June there was a $7 500 fine when a labourer was seriously injured after falling through a skylight. The minister has provided some information about that offence, but perhaps we can just clarify a few things. Firstly, what was the offence charged and which relevant penalty provision was this offender subject to?

Hon ALANNAH MacTIERNAN: I will give a description of the breach: being an employee, failed to take reasonable care to avoid adversely affecting the health and safety of any other person through an act or omission at work and by that failure caused serious harm to a person contrary to sections 20(1)(b) and 20A(2) of the Occupational Safety and Health Act 1984.

Hon MICHAEL MISCHIN: That being so, it carries a penalty under section 20A(2)(a) and (b), where there is a breach —

Hon Alannah MacTiernan: I will help you out, member. I can help you out, if you'd like.

Hon MICHAEL MISCHIN: Yes, please.

Hon ALANNAH MacTIERNAN: As I said at the beginning, the existing maximum penalty for a first offence breach of those sections is $20 000. The penalty imposed was $7 500. The proposed new maximum is $80 000. It will increase from $20 000 to $80 000.

Hon MICHAEL MISCHIN: Does the minister have access to the magistrate's reasons for decision or for imposing that particular penalty?

Hon ALANNAH MacTIERNAN: The magistrate does not give a written reason, but I understand there was some reduction of the tariff because of an early plea of guilty. It was taken down from around $11 500, I believe, to about $7 500, but magistrates do not give written reasons. The accused entered a guilty plea.

Hon MICHAEL MISCHIN: Thank you. Is it the case that it was not an employer that was being punished in this case; it was employee—is that right?

Hon ALANNAH MacTIERNAN: The person was the operations manager, and was an employee.

Hon MICHAEL MISCHIN: The minister mentioned "tariff", but that has a particular meaning. I take it the minister meant the penalty, rather than the tariff?

Hon Alannah MacTiernan: Penalty, yes.

Hon MICHAEL MISCHIN: So the magistrate appears to have been considering a penalty against this operations manager—this works supervisor; this employee—in the order of $11 500, and reduced it to $7 500 because of the early plea of guilty.

Hon Alannah MacTiernan: I understand that to be the case. I do not have that in —

Hon MICHAEL MISCHIN: In future, if he again engages in this sort of neglect, which I understand was to fail to ensure that a safe working procedure was in place that required workers on this particular roof that day to use a fall injury prevention system, he would be subject to an $80 000 penalty. But was there anything in the magistrate's comments or remarks at the time of sentencing this employee that suggested that the penalty range was inadequate for a punishment of this offence, or that he was constrained by the upper limit that was then in place under the legislation?

Hon ALANNAH MacTIERNAN: There is no evidence that that occurred in this case, or indeed in the other two cases that are mentioned. The member is aware that this is about a process of harmonisation and contemplation of the issues of adequacy of this legislative regime that has gone on for over a decade now. We know that I think at the very outset of this process, more than 10 years ago, there was a case that I guess crystallised some of this thinking. I imagine that the member, as the former minister responsible for developing part this package, is aware

of that. But we will not be able to point out to the member a case in the last 18 months about which the magistrate has said that the penalty is inadequate. This has been the result of a lengthy process of consultation and consideration right across Australia. It has resulted in every other state making a change to its law. Western Australia is the only state that has not taken action to bring its standards up to those in the rest of Australia.

Hon MICHAEL MISCHIN: I thank the minister for that, but that is not the point. I have freely conceded—in fact, I think I said during my second reading contribution—that I can fully understand and accept the argument that the penalties have not been increased to a level commensurate with the value of the dollar over the last 14 years and there should be some jurisdictional harmony, if you like. I understand that for equivalent offences our proposed penalties are in some cases slightly higher and in some cases slightly lower than in other jurisdictions, but by and large there is some level of harmony; it is not an exact science. However, I am not the one who has promoted this on the basis of three examples without giving any detail about the cases involved, but only saying the current penalties do not meet community expectation and do not act as a sufficient deterrent. Examples include the three that have been mentioned. The second reading speech states —

> This government considers these penalties inadequate.

Now the minister is telling me that even with the increase in penalties in this case, there is nothing to suggest that the greater penalty would have been imposed.

Hon Alannah MacTiernan: I certainly did not say that.

Hon MICHAEL MISCHIN: What is the minister's evidence to suppose that this employee—the workplace supervisor, for the particular breach involved—would have had a greater penalty imposed? The magistrate had up to $20 000 to play with, selected $11 500 and dropped it by several thousand dollars by way of a guilty plea—we are talking about an employee here, not a multimillion dollar company—and the minister is saying that there is nothing in the magistrate's remarks that suggest he felt constrained by the upper penalty range or to say he would have imposed more under other circumstances. Is there any reason to suppose that an increase in the available penalty for this employee to $80 000 would have made the slightest bit of difference in the way the magistrate had dealt with it?

Hon ALANNAH MacTIERNAN: It is a general acceptance of the responsibility of this Parliament to provide the framework within which the judiciary operates. We set up a penalty framework and within that the judge has the discretion. We take the view, and I think it is generally accepted, that if Parliament has increased the maximum penalty and indicated by the level of the maximum that it has set that it has seen that this is a more serious issue, we would expect to find an increase in the penalties levied under this piece of legislation. It is a general jurisprudential principle. I cannot provide an algorithm, as I have said before, by which we can say if we increase that, this is going to happen. This is a general principle, and it is a principle that has been accepted by Western Australia in all its negotiations with the other states and the commonwealth. It is just that we have not got around to doing it yet. It is a principle that has been enshrined. As we have put it before, we believe that when a penalty is increased in this commercial environment, the level of risk with noncompliance is increased and we then find that flowing through into the socioeconomic and cultural environment in which a firm and individual employees operate.

We can have this to and fro, but that is really as much as we can put around this. This is a general principle and there are many pieces of legislation in which Hon Michael Mischin increased penalties when he was the Attorney General. We understand that at that time, similar arguments were raised with the member by some portions of this house. The member would well understand that I am not able to point to any formula, other than to say it is a general principle that if the envelope is larger, the overall framework that is considered by the magistrate will be larger. All these things are up to the judgement of the magistrate. If the worst possible egregious conduct would attract a penalty of $80 000, the magistrate might say, "In my assessment, I judge this to be halfway down the order of magnitude of wrongness and dereliction of duty, so I will set the penalty at around half that tariff, and I will then give a small discount for the entry of an early plea." That is how we believe it will work. The member can ask the same question over and over again, but I cannot give the member any more than that.

The DEPUTY CHAIR: Actually, the member cannot ask the same question over and over again, because he may annoy the Chair, but he can ask an alternative question.

Hon MICHAEL MISCHIN: Thank you, Mr Deputy Chair. I assure you I will not be asking the same question over and over again, but I will be teasing out some of the points that have been made by the minister. I note, to start with, that there is a distinction between cases that involve a breach of duty, which have a penalty range, and cases that involve other specific acts. For example, in the case of manslaughter or other acts of negligence, a range of penalties is available, up to a maximum. The courts have indicated repeatedly that for certain categories of offence, particularly for breaches of duty such as that, it is impossible to set tariffs—tariffs being the sort of penalty

we would expect in the "common or garden" or typical case—and judges work the penalty up or down as the case may be. What we have here is not a case for which one can set a tariff. Would the minister be able to confirm with her advisers whether there is any tariff for a breach of the duty illustrated in this case? I suspect there is not.

Hon ALANNAH MacTIERNAN: It is our very strong view that by increasing the maximum penalty, we expand the envelope. We want to make Parliament's intention clear. The role that we play in Parliament is to make a determination about what we consider would be the reasonable range of penalties. In any particular case, it will be up to the magistrate to make that assessment. It absolutely stands to reason, according to the normal logic of all normal people, that if we have indicated higher levels of maximum penalties, our expectation is that the fines for that sort of conduct will be increased, and that will apply right across the board. As I have said, that is a pretty basic and fundamental principle of the way in which we legislate in this place and the way in which we set penalties. We make a judgement about the order of magnitude of the issue, and we set a maximum penalty. We then leave it to the judiciary to operate within that framework. To me, it would be fairly obvious that a magistrate would have regard to what the maximum penalty was and how egregious the behaviour was in relation to the possible scale of conduct under that particular offence and would then make a determination.

The member appears not to believe that that is the principle, or believes that we could be doing some other thing. I have no idea what the member believes we could be doing here. We have made a determination that, in general, and in relation to each of these classes of offences, the level of penalty is too low, and does not indicate the seriousness with which these matters should be taken. The government, together with all the jurisdictions across Australia, has agreed to increase the penalties roughly fourfold. Every other state has agreed to do this, and the only state that has not yet done it is WA. The government now wants to move forward. If the member has another idea, or another plan, we would be interested to hear it.

Hon MICHAEL MISCHIN: I thank the minister, but I did not write the second reading speech that I am asking her about. She has presented it to this Parliament as a statement of the policy. I have already said—I do not believe I could make it much clearer—that I have no issue with the increase in penalties. I do have an issue with the justification that this government is coming up with—in order to send messages and whatever else it wants to do. It is said that this is one of three examples. I will read it again —

> The current penalties do not meet community expectations and do not act as a sufficient deterrent. Examples include …

This is one of the examples, and then the speech says —

> This government considers these penalties inadequate.

The minister has told me that these penalties are inadequate and that a fine of $20 000 rather than $7 500 should have been imposed. I do not know where that figure has been plucked from or what assurance there is that in the range of zero to $80 000 the magistrate would have picked $20 000 as opposed to $11 500; dropped to $7 500 for a plea of guilty for this particular breach. The minister cannot tell me anything about that. She stated at length that there is a deterrent element in this because workplaces—the nasty and negligent employers—will take it and accept it as an additional risk to their businesses and so will accommodate it, but we are talking about an employee here. Perhaps I will keep it simple. No, I will go back to the question I asked that the minister did not answer: is there a tariff for these types of offences, as evidenced by decisions of magistrates; and, if so, what is that tariff?

Hon ALANNAH MacTIERNAN: As I have explained, magistrates do not give written decisions. We are not suggesting that in any of those cases the magistrate erred. The magistrates were operating within the framework that had been provided by this Parliament. We are saying that we need to change that framework. The magistrates will then consider the appropriate penalty in the light of the maximum penalty. The member's basic proposition is that the magistrate said that $11 000, discounted to $7 000, is roughly right in some sort of absolute sense, without reference to the actual penalty regime. We do not believe that that is how the magistrates operate. We believe that the magistrates have regard to the framework and the maximum penalty, and that creates the framework in which they make their decisions, whereas the member's claim is that the magistrate would have looked at the facts, how severe the injuries were, and what the consequences were of not providing this harness, and then made almost a decision in a vacuum. He did not get the vibe of 11 years and think that would be sort of about the right figure. I do not believe and we are not basing this on any view that magistrates operate off a vibe in some sort of absolute structure that is independent of the penalty regime that has been laid down by this Parliament. We are saying that we believe that having a higher maximum penalty is going to inform the decisions that magistrates take. We believe that to be a well-entrenched principle. We do not believe that magistrates make their decisions in a total and absolute vacuum, regardless of what the penalty regime might be.

Hon MICHAEL MISCHIN: I am gratified that the government does not believe these things. I do not know whether anyone ever thought that magistrates did, but at least the government has given it some thought. The minister is saying that she would expect a penalty of about $30 000 would have been imposed in this case; is that right?

Hon ALANNAH MacTIERNAN: We are saying that we believe that would be possible. I cannot say in any particular case that a particular decision would have been made, but we do say that magistrates do not operate in a vacuum. Western Australia has been operating under this principle for some time and Western Australia, in agreeing to be part of the harmonised workplace health and safety regime, acknowledged the operation of that framework. It acknowledged that it was important that we increase the penalties, not just to send a message to the community, but also to ensure that adequate fines were imposed where serious injuries and death have occurred. We believe that will feed through to the very culture of occupational work and safety, from both the employer and employee points of view.

Hon MICHAEL MISCHIN: There is no tariff that the minister can point to for these types of offences. I have to challenge the idea that magistrates do not deliver written decisions. I understand that if they are required, they will. In any event, the legal officer attending as prosecutor would have taken some notes of the magistrate's reasoning in handing down that decision. Presumably, they would have given some consideration to the question of an appeal if it was thought to be inadequate. Can the minister tell us whether an appeal is considered; if not, why not; and, if so, what was the decision?

Hon ALANNAH MacTIERNAN: I have explained this, member, and I will explain it only one more time because I have referenced it on a number of occasions. We are not saying that the penalty was inadequate when we consider a maximum of $20 000. An appeal would need to be founded on the basis that the magistrate had really got the severity wrong in terms of the expected penalty from the most egregious case and working their way back. We did not believe that under those circumstances the finding of a penalty of effectively $11 500, with a discount for an early plea, would stand. But we were clear that we did believe that we needed to change the framework. If we had changed the framework and, indeed, that same penalty were imposed, we may well have taken an appeal on that case. I know Hon Michael Mischin does not accept that this is how things work, but we need to look at the maximum penalty, look at the seriousness of the breach within the range of possible breaches that could be described under that offence category and make a determination if it is reasonable. There was no appeal because we accepted that we have an inadequate penalty regime and that we need to fix that penalty regime.

The DEPUTY CHAIR: Before I give the call to Hon Michael Mischin, I have been listening very carefully to this debate and I think that is effectively the fourth time I have heard the same answer. I urge the honourable member to find a different line of questioning, even if he is not getting the answer he wants. I think we need to find a different way to ask a question that might elicit a different answer because we are becoming a little repetitive in the information before the chamber.

Hon MICHAEL MISCHIN: I take the point; it has become very repetitive and I am still not making much headway. Perhaps I am not making myself sufficiently understood. Anyway, we will leave all that.

It has been mentioned that because the increase in penalties presents a greater financial risk to employers, it will encourage employers to take extra special care and take workplace safety more seriously. That reasoning does not necessarily apply to an employee, does it, minister?

Hon ALANNAH MacTIERNAN: I think it does. I think it goes to the question of culture. If we listen to the stories of Hon Kyle McGinn, Hon Matthew Swinbourn and Hon Robin Scott, we can understand that what often happens at workplaces is that pressure goes on a worker who might indeed have concerns and might be under a fair amount of pressure to get a job done without regard to the proper occupational safety and health standards. I am sure that fantastic, dedicated workplace representatives—as I know Hon Kyle McGinn and Hon Matthew Swinbourn were—will be making sure that each and every one of the people represented by those organisations understands that these are the penalties that now apply. These are the personal liabilities that employees might find themselves with if they are not doing as Hon Robin Scott asked us to do; that is, to make sure that each and every worker understands they are responsible for their own safety. I would make them understand that they are also responsible for the safety of others they work with. This increase in penalty then becomes a very potent way of changing that culture and of making employees well aware that they, along with employers, have these responsibilities and that there are liabilities and that, indeed, they might not only lose their job, as Hon Robin Scott talked of, but, indeed, they could find themselves liable for these very significant penalties.

Hon MICHAEL MISCHIN: I have been provided with some information on this incident. I understand that the worker fell through a skylight, broke through the covering and fell some significant distance. He had been standing on a roll of insulation tape, forgot that a skylight was behind him and stepped back onto it. The failing on the part of the offender—in this case, the workplace supervisor and operations manager—was not putting in place a fall

prevention regime. As a result of the fall, the labourer suffered a fractured right upper arm, a fractured right shoulder blade, a fractured right elbow, a fractured right rib, a fractured right transverse process of the vertebrae L5, a fractured base of the spine, multiple fractures of the pelvis, pneumothorax and lung contusions, an adrenal gland hematoma and a large laceration to the liver. Without swift medical intervention, the injuries were likely to have resulted in lung failure, permanent liver damage or possibly even death.

But the minister is suggesting to me that the increase in penalty from $20 000 to $80 000 would have had a greater effect in deterring that supervisor from being negligent in his duties than would the fact that his co-worker, for whom he was responsible, almost died. Sending out the message that the penalty for such negligence is $80 000 rather than $20 000, he would have thought, "I suppose I had better go and do something about that and pay more attention." This suggests that there is a deterrent in the increase in penalty rather than in a sense of responsibility, shame and regret that he almost caused the death, if not the maiming, of his co-worker, his workmate, because of his neglect in one area—failure to pay sufficient attention. The minister is saying that the increase in penalties will achieve that because the supervisor would have paid more attention if he knew that the penalty was $80 000. Is that what the minister is trying to tell us?

Hon ALANNAH MacTIERNAN: I guess it probably has more chance of succeeding than does increasing penalties for multiple burglaries. I am not at all suggesting that people go to the workplace not mindful of the safety of their fellow workers and that the works operator—the gentleman involved in this case—was completely indifferent to the welfare of the people for whom he was responsible. I am suggesting—I believe it is just the way the world works—that if people start understanding that there are possibly much more serious financial consequences for these breaches, that will start informing the culture and the amount of care that is taken. It will inform the amount of risk that people are prepared to take.

I believe that I have a reasonable understanding of how the world works. It seems to be the general view around the country that if we increase the penalties, we will get an increased awareness, a heightened sensibility and a heightened understanding of the level of risk that is involved in this process. As I said, it was very instructive to listen to Hon Kyle McGinn when he was talking about the practical pressures on people in the workplace to perhaps put to one side the prospect of being personally liable and thus generating a far greater penalty. It changes the risk process. We all make decisions every day and we judge risk against the likelihood of something happening, and if it did happen, how big a consequence it would have. We believed, as did people around Australia and as we thought the previous government did, that this would make a difference to the way people judge risk.

Hon ROBIN SCOTT: I am sure that during the government's decision-making to go ahead with these large penalty increases, it must have consulted with various people. I am sure the government spoke to employers and I have no doubt it spoke to UnionsWA, but I would like to know how many employees the government spoke to, and where that consultation took place.

Hon ALANNAH MacTIERNAN: It is important to understand that this is really a decade-long process, with consultation around this development. Indeed, it was under the previous government, in 2014, with the production of the green bill, that general consultation with the community took place. It was agreed, as part of the green bill—which was a very public process, with everyone invited to make submissions—that it would go forward. There was general agreement and support for the green bill, and its principles were adopted by the previous government. When we came into government, I think we had committed to bipartisan support for the green bill, but just before we introduced it, we referred it to the Commission for Occupational Safety and Health, which is a tripartite body, with representatives from the Chamber of Commerce and Industry of Western Australia, the Chamber of Minerals and Energy and UnionsWA, and experts appointed to the commission. We put the specific legislation through that process, but the big consultation period had gone on with the development of the green bill. That is part of the green bill process; it allows us to say what we think the case is and for public input into that. There was general agreement across the board that we needed to move down this path.

Hon MICHAEL MISCHIN: For the record, I think this is important because of the emphasis that has been laid on these three examples in the second reading speech as being penalties that do not meet community expectations, do not act as a sufficient deterrent and that the government considers to be inadequate. We dealt with the second example, but can the minister tell us about the $9 500 fine in January this year it says—I presume that is January 2017—for failure to take reasonable care causing a workplace death?

Hon ALANNAH MacTIERNAN: Yes. This example is in relation to a car dealership where a parts manager was struck by a vehicle and dragged for around 11.5 metres from the work bay to the wash bay. The closed-circuit television footage showed that the vehicle reversed at speed from the work bay, colliding with another vehicle and then finally stopping when it collided with yet another vehicle, down at the wash bay. Fundamentally, the accused

had placed the vehicle into reverse, and when he pressed the accelerator rather than the brake pedal, the vehicle reversed at considerable speed and killed the parts manager. The accused was found guilty after a two-day trial.

Hon MICHAEL MISCHIN: So that it is plain which section we are talking about, what was the offence charged? Also, what was the applicable penalty?

Hon ALANNAH MacTIERNAN: The charge was under sections 21B and 20A(2), as in the previous case. It was exactly the same as the first offence. It was for breach of those provisions and the existing maximum penalty was $20 000.

Hon MICHAEL MISCHIN: Again, this was an employee who had negligently kept a vehicle's motor running, put the vehicle in reverse, invited the parts manager to check whether the taillights were working and pressed the wrong —

Hon Alannah MacTiernan: You've got all the details, haven't you?

Hon MICHAEL MISCHIN: I have all the details, but Hansard does not and nor does anyone reading the debate. All we have is the mention of this in the second reading speech as an inadequate penalty of $9 500 in January this year for failure to take reasonable care, causing a workplace death, which gives us no information about the level of the breach, what the substantive neglect of duty was or by whom. Reading this and having heard the minister's second reading reply, one would get the impression that these deaths were all due to employer negligence rather than employees in the workplace.

Hon Alannah MacTiernan: I specifically addressed this matter in my second reading response to issues raised by Hon Tjorn Sibma and I explained that it applies to employees.

Hon MICHAEL MISCHIN: I know that it applies to employees, but the second reading speech did not say anything about that. One reading the second reading speech or listening to the explanation would get the impression that these were all employer breaches, for which employers had been fined several thousand dollars for incidents in their workplaces causing death or serious injury.

This was after a trial, so there was no discount for a plea of guilty. Essentially, the neglect was failing to ensure that no-one was standing behind the vehicle while it was in reverse gear with the engine running and stepping on the accelerator, rather than the brake pedal. That is basically it, is it not?

Hon Alannah MacTiernan: Correct.

Hon MICHAEL MISCHIN: I do not want to trouble the minister to get up.

The DEPUTY CHAIR (Hon Dr Steve Thomas): We will call that an answer by interjection.

Hon MICHAEL MISCHIN: A fourfold increase in the penalty would take it up to around $40 000. Does the government regard it that if they were aware that they would get a fine of around $40 000, rather than $9 500, the employee would have taken extra care rather than kill his parts manager?

Hon ALANNAH MacTIERNAN: I have explained at length how we believe that works and the impact we believe it has on workplace culture. I have no intention of going through this for all these cases, as it is all the same.

Hon MICHAEL MISCHIN: I would like the minister to go through just one more case. It is the last one that she mentioned in the second reading speech as a current penalty that does not meet community expectations, does not act as a sufficient deterrent and is inadequate. All we know about it is —

> … in December last year, —

Which I presume means December 2016 —

> a $17 000 fine … for a workplace fatality.

Can the minister tell us a bit more about that? Can she tell us what offence was charged, what the relevant penalty provision was, the circumstances of the offence, and anything that can help us understand why the magistrate picked $17 000 as the penalty?

Hon ALANNAH MacTIERNAN: The offences and the maximum penalty were the same as the previous two. This occurred within a warehouse in Narrogin. He was an employee of a hay baling business. Large hay bales were brought in from paddocks on the back of flatbed trucks and offloaded to storage. It was the role of the forklift operator to load the feed tables to the hay presses using a forklift. The hay bales were then shredded. In this particular incident, the accused was collecting bales of hay using the forklift and putting them on the press table. The victim was operating his forklift. The victim was driving at approximately walking pace when he came to the end of press 1. He beeped his horn and proceeded towards the waste bunker at the opposite corner of the factory.

The accused had just loaded hay bales onto the feed table. This meant that the hay baling forks were approximately 1.7 metres high. The accused reversed away from the table and then set off in a forward direction to collect more bales. The accused drove forward with the hay baling forks raised approximately 1.5 metres to 1.7 metres above the ground. Travelling with those hay bale forks at that height caused the accused's view to be obscured. The accused then collided with the victim's forklift side on. One of the tines on the hay baling fork attachment pierced the victim's torso—he was seated in the front seat of his forklift. Substantial damage was also occasioned. Another fellow employee heard the collision and ran to the aid of the victim. The victim was trying to get off the forklift, however the accused's tine was still stuck in him. He pulled the victim off the tine and assisted him to walk outside. On arrival at the hospital, the victim was immediately operated on and subsequently died. It was said that the accused did not take reasonable care to avoid adversely affecting the health and safety of the victim by driving in a forward direction with a hay baling fork attachment raised more than 30 centimetres above the ground. The accused's failure to take reasonable care caused the death of the victim. It was foreseeable that driving in a forward direction with an inherently dangerous object, such as a hay baling fork attachment raised more than 30 centimetres from the ground, could cause serious injury and death. The accused had been warned about driving with forks raised on at least two occasions by supervisors at the workplace. Approximately six weeks prior to the incident, the accused was spoken to by the production manager after an informal discussion with other employees revealed that the accused was driving with his forks raised. He was also warned to drive with his forks lowered. It is quite a clear and serious case. He entered a plea of guilty and was convicted.

Hon MICHAEL MISCHIN: According to the information, I now confirm it is the same case that about two weeks prior, as a result of a complaint from another employee, he was spoken to by his supervisor who advised him not to drive around with forks in the air, that he had had the relevant licensing and accreditation to drive forklifts and part of his training and competency included not driving with forks raised more than 30 centimetres.

Hon Alannah MacTiernan: That is not different, really, from anything I said, is it?

Hon MICHAEL MISCHIN: No, it is not.

Hon Alannah MacTiernan: No; the member is just filling in time.

Hon MICHAEL MISCHIN: I am just adding to it because it is important to understand the circumstances. If there were a problem on the part of the employer in that case, it seems unusual that they kept him on as an employee at all rather than firing him for not listening to instructions and obeying the safety rules in his workplace that resulted in the ultimate death of a fellow employee.

Hon Alannah MacTiernan: That is one thing I would possibly agree with the member about and hopefully, under our regime, we might take further action. That is a point well made.

Hon MICHAEL MISCHIN: It was a plea of guilty, is that right?

Hon Alannah MacTiernan: Yes.

Hon MICHAEL MISCHIN: As I understand it, he was fined $17 000, but it was reduced for an early plea and other mitigating factors—I do not know what the other circumstances of mitigation were for this employee—to $11 000; is that right?

Hon Alannah MacTiernan: Correct.

Hon MICHAEL MISCHIN: The second reading speech says "a $17 000 fine was imposed for a workplace fatality", but that is not correct.

Hon ALANNAH MacTIERNAN: It depends technically on how one might read that, but there certainly was an initial fine of $17 000, which was then subsequently reduced.

Hon MICHAEL MISCHIN: That raises its own questions, if that is the way we are going to deal with the information in the second reading speech.

Sitting suspended from 6.00 to 7.30 pm

Hon MICHAEL MISCHIN: Just before the dinner adjournment, we were looking at the second reading speech and the three examples that the government put forward of penalties that do not meet community expectations and do not act as a sufficient deterrent. The minister told us that in the last example—the incident in December 2016, I presume—the magistrate was initially contemplating a $17 000 fine for a workplace fatality but, in fact, after mitigation and consideration of an early plea, a fine of $11 000 was imposed. We are told that it is still a fine because $17 000 was contemplated, but it is really just an error in the second reading speech, is it not?

Hon ALANNAH MacTIERNAN: I have explained the logic. It was seeking to show that the magistrate, in determining the matter, had gone to near the maximum of the prescribed penalty in the first instance but then made various calculations for an early plea and other mitigation, of which I do not have the detail. It was to demonstrate that the initial setting was near the maximum.

Hon MICHAEL MISCHIN: That is not what it says. Let me see whether I have got this right. The logic is that it is correct to say that in December 2016, there was a $17 000 fine for a workplace fatality when, in fact, the fine that was imposed was $11 000 and, by that same reasoning, in the first example, it would be a fine of $11 500 rather than $9 500. I cannot remember what the initial estimate was in the June case, but it was certainly not $7 500 as stated in the second reading speech. They cannot all be right. One or two of them have to be wrong. The second reading speech cannot say that there was a fine of $17 000, albeit translated to a fine of $11 000, while at the same time saying that there was a fine of $9 500 when, originally, for the same reasoning, it was around $11 500. Which is wrong?

Hon ALANNAH MacTIERNAN: I understand the member's point. There would be an argument that there should have been consistency across those examples. I say this again: it does not go to the substance of the argument. I know we have to occupy the crease for two hours and I know we have to find things to occupy the crease, particularly when the opposition had agreed to this legislation, but the opposition was, indeed, in the chair at the time this legislation and this regime of penalties were drafted. I know it is really hard to now find things to demur from that decision. The member is probably correct; there probably should have been consistency in the reportage of those three incidents. I accept that and I will certainly pass it on to the responsible minister, but it does not change the fundamental argument.

Hon MICHAEL MISCHIN: No, it does not, minister, but it is not hard to pick up things that are wrong in this bill, because the second reading speech was wrong. The minister just will not admit it.

Hon Alannah MacTiernan: I have acknowledged that you have a point.

Hon MICHAEL MISCHIN: Not a point; I am right! There is an error in the second reading speech.

The DEPUTY CHAIR: Members, we are in committee. Respond respectfully, please.

Hon ALANNAH MacTIERNAN: There is a more substantial point to be made here: this is legislation that the opposition agrees with. This legislation was developed under its term of watch. The opposition, when in government, did not take it forward—it did not bring it into Parliament—but it did develop the green bill. It supported the fundamental principle that we need to increase penalties and that we need to bring the legislation into alignment nationally. Members opposite are struggling to find things. Okay; I will take it back to the minister concerned and I will say, "Look, it would have been more desirable to put them all at what they were initially before they were discounted, rather than put in some that were discounted and some that were not." We take that point, but it does not go to the substance of the matter. It depends what the member is here for. It depends whether he is here just to waste everyone's time with these little points, or whether he is actually interested in the policy and detail of the legislation. I will concede that there has been an inconsistency in the setting out of the examples. Some have the actual tariff—sorry, I cannot use "tariff", I do not want to upset the member; the actual penalty—that was finally determined. Others have the initial penalty before it was discounted. Should we have had them all the same? Probably. I concede that point, but what has that to do with the price of eggs?

Hon MICHAEL MISCHIN: I will tell the minister what that has to do with the price of eggs. This just keeps getting better. It is like Humpty Dumpty. When I use a word, it means exactly what I want it to mean—nothing more or less. A $9 500 fine means a $9 500 fine.

Hon Alannah MacTiernan: I have conceded your point!

Hon MICHAEL MISCHIN: If the minister wants to say something, she can get to her feet. I am on my feet and I have got the call; she might learn something. We are talking about the policy of the bill. The policy of the bill is set out in the second reading speech. The second reading speech provided inconsistent, misleading and wrong information to the house. It used a $9 500 fine as an example. It is one of the three big examples upon which this legislation is based. The second reading speech states —

> The current penalties do not meet community expectations and do not act as a sufficient deterrent. Examples include a $9 500 fine …

Actually, it was $11 500, but it was discounted because of mitigating circumstances and a plea of guilty. Another example is a $7 500 fine. It was initially a lot higher than that, but once again it was discounted. Another example is a $17 500 fine, which in fact is not a $17 500 fine; it is an $11 000 fine. The best I can get is, "Oh, I probably should have been consistent. There may be a point." It does not mean what it says and it is wrong. But even trying to get that concession out of the minister seems to be very, very difficult, yet we are supposed to rely on all the rest of these justifications, including the one that if we quadruple the maximum penalties, somehow these penalties will go up. We have a media release from the Minister for Mines and Petroleum in which he stated —

> The amendments will increase penalties for businesses …

That is right. These examples were given as being derisory, egregiously low penalties that are out of step with community expectations and are an insufficient deterrent. However, the government does not mention that they were all fines against employees. We hear a lot of talk about how a culture will change if businesses have a sufficient monetary penalty incentive to look after their employees and their workplaces. There is no mention of the facts and circumstances in these cases and how bizarre they are. This smacks of someone who has decided we need a good public relations exercise to say how terrible the last government was because it did not immediately increase penalties to increase workplace safety, so let us find a few examples. Someone has said, "That one looks low enough. We'll stick that one in. Do you want to know what the facts are, minister?" And the minister has responded, "Oh, don't trouble me with the facts. Never mind the quality, feel the width." The examples are fines of $7 500, $9 500 and $17 000. Now we find that we cannot even rely on that information. That is what this is about, minister.

Part of the job of the government is not just to proffer legislation. A bill comes with a thing called a second reading speech, which sets out the policy, the rationale of the government's decision and considered reasons for why it is doing something. It is not a matter of, "There are a few mistakes in it, but let's forget about that. Don't worry about that. Just look at the end product."

The $17 000 fine is, in reality, an $11 000 fine, there having been a plea of guilty by the employee and a reduction of the penalty for other mitigating factors. The minister says that it is close to the maximum, but it was not the maximum available to the magistrate. If the magistrate thought that particular breach of duty warranted the maximum, he could have said, "It's $20 000 discounted. I wish I could impose more, but I can't because the legislation is not good enough." I take it that the government did not note any comment in that regard. Was there a comment on the adequacy of the sentencing range available to the magistrate? A simple yes or no, please.

Hon ALANNAH MacTIERNAN: I remind the member this legislation was developed in 2014, before any of these cases. It was developed in a white paper under the minister with the avowed intention of having a uniform or consistent regime across the country, and there was an agreement across the country that this was appropriate. Let us say that this had not happened and that we had used exactly the same way of reporting all these three cases. That last case involved the death of a gentleman using a forklift. After being told on several occasions that this was the wrong thing to do, he drove around with his forklift bars too high; they should have been only 30 centimetres off the floor, but he drove the forklift with the bars over a metre off the floor, with the obvious potential consequences. If we had been consistent in the way that we had reported all those things, in that very last instance the court would have said $11 000, rather than $17 000. I put it that that would have further determined the case that we were making, which is that these penalties were indeed inadequate.

I understand that the member has the view that increasing penalties will not change the behaviour of the court. I really think the member is on the wrong tram if he thinks the whole reason we are bringing it forward is to show that he did nothing while in government. That is not what we are concerned about; we are simply concerned about getting something done that will bring us into line with the standard that has been accepted by WA and every other state and has been enacted by every other state. We have moved on, member. This is not about reviewing the member's performance; this is about trying to get a problem solved. If we had, as I said, put in $11 000 rather than $17 000, it would not have detracted from our case. Indeed, if anything, it would have made it clear that the fine regime is inadequate.

It is obvious that the member has read the case and has seen the sequence of events; although it was brought to that employee's attention a number of times that his behaviour was reckless, he, nevertheless, went ahead and drove in that manner and ultimately caused the death of one of his work colleagues. We will pay special attention and make sure that next time around, we concede—I will concede that, for consistency's sake, we should have put in $11 000 rather than $17 000. But I am making the point—the member cannot understand this, and this is his problem—that the member cannot actually make the distinction between things that are relevant and things that are not. He really wants to go on, but I am not going to.

Hon Peter Collier: You really don't want to get this through, do you?

Hon ALANNAH MacTIERNAN: No. I do want to get it through. I know that you guys have this special approach. You get up and hurl anything at us. When we respond by standing up and defending our position, you then say, "Well, we're not going to pass your legislation. We're going to behave unreasonably!" I am just hoping that most other members are reasonable people and want to see that this piece of legislation, which had its origins in the former government and which the former government and most members of this house supported, ultimately gets through. We know that any bill the opposition is involved in requires a minimum of two hours so that it can go through a lot of detail that does not go to the substance of the issues. We accept that that is just part of the work in this place. So we should have said $11 000, rather than $17 000; and, if we had said $11 000, rather than $17 000, it would have amplified our case. We have been guilty of not being clear about how bad the problem was.

Hon MICHAEL MISCHIN: There is a lot to be said about that! I have not made an issue about my performance as minister; it is the minister who has made an issue about it, by raising the subject on several occasions. I will leave that aside, because, as the minister has said, the matter before the chamber is something that we all agree ought to be done.

However, I am interested in the basis upon which the government has chosen to do it. I have said on numerous occasions that I agree that if it was a matter of consistency and taking into account the changing value of one dollar, then the penalties should increase. Yes, we did contemplate something like this, but I do not agree with providing this chamber with fabricated, nonsensical rationales to "send messages" that do not bear up under examination. The minister might think that the end justifies the means, but she has a responsibility in this chamber, as does the government. We did not bring in this legislation; this government brought in this legislation, and it purported to do so on the basis of a policy set out in a second reading speech that the more we look into it, the more flimsy it is. Yet the minister says, "Forget about all of that. You agree with the ultimate outcome of the bill. Don't worry about the second reading speech; it's just words. The McGowan government applies standards; it does not get bogged down in facts. Yes, fine means fine in that case, but not in that case." What else does not mean what it says in the second reading speech?

Hon Peter Collier: Imagine the vitriol if we had done that when we were in government.

Hon MICHAEL MISCHIN: We had to put up with far more than this when you guys were on this side of the chamber and with far more information being provided by us, rather than this self-justification for a sloppy second reading speech, which we cannot rely on to say anything.

Several members interjected.

The DEPUTY CHAIR: Members! We are in committee and Hon Michael Mischin is on his feet.

Hon MICHAEL MISCHIN: The key passage in this second reading speech is the one that I have read on several occasions. It appears that none of that can be relied upon at face value. Now I will go to the next sentence of the second reading speech, after it says, "This government considers these penalties inadequate." The house was not told of the nature or the extent of the breach, but simply that it fell within a range and that somehow if the range is increased, the government expects that the penalties will be increased commensurately. We will see about that. The one thing that the government has not mentioned as part of the sentencing exercise by magistrates is that they also look at the ability of the offender to pay. We are not talking about big businesses with millions of dollars of turnover each year, insurers and all the other things that this government is saying an increase in penalties will affect for the better; we are talking about employees. One of them, the forklift driver, probably should have been fired before the fatal negligent incident, but I expect that his union would have said something about that. In the other two cases, they were actions by employees as well, not by employers or rich companies so we could say that $7 500 was derisory. These are common citizens who have killed or injured a workmate. On an argument, yes, we could say that that is less than it ought to be. But it is utterly misleading to use these as examples of an inadequate range of penalties under the Occupational Safety and Health Act, especially when even the facts that are set out—what few facts there are in the second reading speech—are not even presented consistently. That is the point. This government has shown itself to be sloppy in a very important area, rather than putting up a proper argument.

I will go on to the next sentence after "This government considers these penalties inadequate." It says —

> They do not adequately penalise those who put employees —

It neglects to mention, and by implication suggests that it is, employers —

> and the general public at risk.

They are those penalties, minister. They are the ones that she cited in her second reading and the ones that she now says we cannot rely on because they are not consistently cited. It continues —

> They do not send an appropriate message to employees about the value of their health and lives. They do not send the right message to the families of employees who do not return home safely at the end of their day.

What is not clear among the clear messages that the second reading speech sends are the facts in it. That is part of the point. The minister is sending a clear message of vagueness, incompleteness and error.

Let us move away from those particular cases. Presumably there are other cases of bad penalties. Can the minister tell us what the penalties have been? How many prosecutions have there been over, say, the last 10 years? What have been the penalties imposed for breaches of duties by employers, for example? Can the minister give us any information on the sentencing ranges or trends for particular cases or how many there have been that support the minister's argument that the penalties imposed have been inadequate and not consistent with community expectations?

Hon ALANNAH MacTIERNAN: For some, I do not have the full fact situation, but a number of these relate to employers. For a case in 2017 under sections 19(1) and 19A, the penalty imposed was $70 000. I do not necessarily have the facts of all these, but there have obviously been quite a few cases when employers have been charged. I will see whether we can get some information on the Bradley case.

Hon MICHAEL MISCHIN: Thank you. That would be helpful. It is a pity it is not available now, because it seems to me that three cases that are totally inapt to the policy of the bill and what the government is claiming it is trying to cure have been cited as the foundation for this legislation. The only one the minister can come up with is an employer fined for something under section 19, which is —

Hon Alannah MacTiernan: No; we would argue that those three cases demonstrate the inadequacy of the fines, but they are not the only ones.

Hon MICHAEL MISCHIN: They were charged under "Duties of employers", and fined $70 000, but the minister does not know any of the facts. Just apropos that particular offence, what will the penalty be increased to?

Hon Alannah MacTiernan: Which one, sorry?

Hon MICHAEL MISCHIN: What was the penalty range for the example the minister cited, and what is it intended to extend the penalty range to?

Hon ALANNAH MacTIERNAN: I think the one I was referring to was Round Table Roofing. The penalty imposed was $70 000. The existing maximum is $400 000; the proposed maximum is $180 000.

Hon Michael Mischin: Sorry? So the proposed maximum will be less than the current maximum?

Hon ALANNAH MacTIERNAN: No; the existing maximum is $400 000, and the proposed maximum is $1.8 million.

Hon Michael Mischin: Oh, $1.8 million.

Hon ALANNAH MacTIERNAN: Yes.

Hon MICHAEL MISCHIN: So that would suggest that the breach, serious enough as it was—do we know whether it resulted in death, injury or what the outcome of that particular breach was?

Hon ALANNAH MacTIERNAN: Member, I think it would be unreasonable to expect me to have the full details of every prosecution under this legislation. I brought in, after discussion with the member, the details of the three contained in the second reading speech. We do not have here the details of every single prosecution that has been made by the respective agencies under this legislation.

Hon MICHAEL MISCHIN: I did not expect that the minister would. I hoped for at least some other examples of inadequate penalties, particularly involving employers, because that seemed to be the implication of many of the speeches we have heard today about unsafe workplaces. Out of a range of a maximum penalty of $400 000, a magistrate chose nevertheless to impose a fine of $70 000, which suggests that the breach, albeit serious enough to go into five figures, was not so egregious as to warrant anywhere near the maximum available, which in turn suggests that increasing the penalty to $1.8 million is not going to make much of a difference. I will not hold things up for this, but when this bill comes before the other place, it may be information useful for the minister there to have at his disposal.

The minister mentioned that the increased penalties under the act will have some relationship to increasing insurance premiums. Can she expand on the relationship between insurance premiums and penalties under the legislation? I thought that insurance premiums would be governed by assessments of the risk presented by the industry and the employer's behaviour in the past, and by payouts for workers' compensation or other civil liability. Premiums would be governed by a rational consideration of the risk to the insurer, not the potential one for a fine to be paid if there happens to be a prosecution on top of some civil case. I wonder whether fines are recoverable from the insurer anyway. Perhaps the minister can explain that.

Hon ALANNAH MacTIERNAN: I guess we are saying that risk has a number of components. Risk has a component that involves the probability of an event happening; that is one part of risk. The second part of risk is: if that event does happen, what is the likely financial consequence? These things quite logically would come into the risk profile of a business and would be a relevant consideration. Again, I honestly do not think we are going to be able to persuade the member about the policy informing this bill, because the policy informing this bill is an expectation that when there are significantly higher penalties, there is a different risk profile and a cultural response to that. We are not going to persuade the member of this. One case in point: he asked for an employer case and I have one here on which we have some detail because it was raised in the discussion today. That was the incident spoken about by Hon Matthew Swinbourn, which is the very tragic case of the two young Irishmen,

Joseph McDermott and Gerard Bradley. The offenders were charged under sections 21(2)(b)(ii) and 21A of the act. The maximum fine available was $400 000 and the fine issued was $160 000. Our proposal is that the maximum fine be increased to $2 million. I understand that the member's case is that there is no evidence that that would have any significant impact on the penalties that are determined. We do not accept that that is the case. I will say it one more time: we believe that by making this significant increase in the maximum penalty, Parliament is making clear the seriousness of these offences and the particular consequences that should be brought to bear. It is our view that, in a general sense, the judiciary will respond to that. The member trivialised the notion of sending a message to the community. We in this place frame legislation, and we make a decision that serious workplace accidents should attract a higher penalty. That is, indeed, the only way in which we can interact and communicate with the judiciary that our expectation, as the elected representatives of the community, is that these matters will be dealt with more seriously and attract a higher penalty.

Hon MICHAEL MISCHIN: Just so that I can understand, is it the government's argument that by increasing the maximum penalty from $400 000 to $1.8 million —

Hon Alannah MacTiernan: No; I think I said $2 million.

Hon MICHAEL MISCHIN: I thought it was $1.8 million. The minister said originally $180 000, and she then said $1.8 million. Is the minister now telling me it is $2 million?

Hon Alannah MacTiernan: I have no recollection of saying $1.8 million. I said the fine was $160 000, and the maximum penalty was $400 000. We are changing that maximum penalty to $2 million.

Hon MICHAEL MISCHIN: Does the minister expect that by increasing the sentencing range fivefold, the penalty in the case she just mentioned would also be some five times higher, for the same breach? Is that what the minister is expecting or arguing for? Would that be right?

Hon ALANNAH MacTIERNAN: As I have explained, no algorithm, equation or piece of algebra is available whereby we can say that if we increase a penalty by this amount, it will result in a judicial exercise that is entirely in line with that—that is, the judiciary will move algebraically to an equivalence. The principle that we are adopting is that we in this Parliament want to let the judiciary know—just as the member as Attorney General wanted to let the judiciary know in a heap of law and order issues, one after another after another—that the view of not only this Parliament but also the people is that this is a serious offence, and that the penalty regime should be higher; therefore, we will increase the maximum penalty. There is no algebra or algorithm; it is just the general principle. We would expect the judiciary to understand that we are the people who frame the legislation, and the judiciary needs to take into account the fact that we have decided to increase very significantly the penalties so that when these cases come before the judiciary in the future, it will increase the consequences for breaching this important legislation.

Hon MICHAEL MISCHIN: There is a very good argument that if the government had based its legislation and the policy behind it on taking into account inflation over the last 14 years, and otherwise bringing the penalties up to something comparable with those in other jurisdictions, I would have accepted that argument. As I have tried to point out, I cavil at the extraneous, unnecessary and wrong assumptions that are being put forward. Can the minister tell us what the comparable penalties are for these offences in other jurisdictions, so that we have an idea of whether they are the same or markedly different from those in other jurisdictions?

Hon ALANNAH MacTIERNAN: I do not intend going through every one, but I will give some examples. Occupational health and safety provision 3A(1)(a)(ii) is a level 1 offence. Our current penalty is $6 250. The model legislation has the penalty at $50 000. In our new provision it is $60 000. In New South Wales, South Australia, the Northern Territory, Tasmania and the Australian Capital Territory, it is $50 000. In Victoria the penalty is $285 426, and in Queensland it is $63 000.

Another example is the one that we were talking about before. A level 4 offence under provision 3A(4)(a)(ii) currently has a penalty under our legislation of a fine of $312 500 and imprisonment for two years. The model code puts the penalty at a $600 000 fine and imprisonment for five years. We are going for a $680 000 fine and imprisonment for five years. In New South Wales, South Australia, the Northern Territory, Tasmania and the ACT, the penalty is a $600 000 fine and imprisonment for five years. In Victoria the penalty is a fine of $285 000 and imprisonment for five years, and in Queensland it is a $378 000 fine and imprisonment for five years.

Hon MICHAEL MISCHIN: The minister gave us two examples involving employers. One had a current penalty of $400 000 that is going to be increased to $2 million, and I think she also said something about a penalty of $400 000 that was going to be increased to $1.8 million but she says that she cannot recall having mentioned $1.8 million. Can the minister deal with the example of the proposed $2 million penalty—the comparable penalties in other jurisdictions and in the model legislation, please?

Hon ALANNAH MacTIERNAN: Not every one of these cases has all the different categories.

Hon Michael Mischin: I accept that there are no direct equivalents in some cases, but something indicative.

Hon ALANNAH MacTIERNAN: We have chosen a midpoint. The member must have read the $1.8 million from this chart, which I presume he has, because I do not think I said it. The provision for section 3A(3)(b)(i) states that the penalty for the first offence of a body corporate was $400 000; the model Work Health and Safety Act has it at $1.8 million and we have rounded it up to $2 million.

Hon Michael Mischin: That is where the $1.8 million must have come from, minister.

Hon ALANNAH MacTIERNAN: That is right, but it did not come from me; I was not reading off this chart.

Hon MICHAEL MISCHIN: I distinctly heard the minister at one stage say $180 000, then she changed it to $1.8 million; anyway, that is beside the point. That is another example.

In respect of the three instances in the second reading speech in which the minister states that for employees, the current maximum is $20 000 and it will go up to $80 000, what are the equivalent penalties in the work health and safety model law and in the other jurisdictions, please?

Hon ALANNAH MacTIERNAN: Some of the provisions in the Western Australian legislation—the sets of duties in section 20A(1)(a), for example—are not covered under the model code. Because this is a piece of interim work, we have a whole range of duties and obligations in our legislation that do not have a direct equivalence with the model code. We have had to look at the scale of increases that we see generally in the model codes and introduce an equivalent regime in these provisions.

Hon MICHAEL MISCHIN: Thank you. In broad terms, where there were no precise equivalents—I accept that there appears to be a range of penalties in different jurisdictions, so there is no precise harmonisation anyway being achieved by this—and even where there are equivalent provisions, each jurisdiction has its own idea of where to set the maximum. Would that be correct?

Hon ALANNAH MacTIERNAN: Not in each jurisdiction. As I pointed out, New South Wales, South Australia, the Northern Territory, Tasmania and the ACT all have entirely harmonised provisions. Queensland has sought to harmonise, but because it has penalty units entrenched as its basic provision the penalty units have increased in value. That is why there is some small difference between Queensland's provisions and those in the other states. Most of the states, indeed, have a single system. I imagine that when we have the full legislative regime, we will aim to harmonise with these provisions.

Hon MICHAEL MISCHIN: That does surprise me, because I can recall going to a forum at the Housing Industry Association on 22 February 2017, before the last state election, at which several shadow ministers of the now McGowan government were represented, when it was volunteered to those there that if elected, the government would not pursue harmonised work health and safety laws. The idea of it being harmonised with legislation on which considerable work had been done to show that it may not be suitable to Western Australia's interests does come as a bit of a surprise, but that is for another day. It was emphatically and clearly stated that Western Australia would not be pursuing harmonisation in this area. I can understand some level of harmonisation with the resource industry legislation, and I can understand some harmonisation in the broad sense of having compatible provisions and the like, but the adoption of the model work health and safety laws was emphatically abandoned.

Hon Alannah MacTiernan: We are talking in a very general sense.

Hon MICHAEL MISCHIN: Maybe it is like the second reading speech. It means what you want it to mean.

Regarding the last case the minister mentioned—the tragic incident of the concrete pad being dropped—for which the penalty was, I think, $120 000; was it not?

Hon Alannah MacTiernan: No; I didn't say that.

Hon MICHAEL MISCHIN: What was the penalty for that one?

Hon Alannah MacTiernan: It was $160 000.

Hon MICHAEL MISCHIN: Okay, I am sorry. It was considerably below the maximum available to the magistrate. Was an appeal contemplated against that penalty for inadequacy?

Hon ALANNAH MacTIERNAN: The advisers have no knowledge of whether an appeal was sought.

Hon MICHAEL MISCHIN: Does the minister happen to have a table of penalties that compare other jurisdictions that can be tabled for reference?

Hon ALANNAH MacTIERNAN: I do have one here. As I said, it does not cover all the provisions because they cannot all fit neatly into the legislation. I am happy to table this document.

[See paper 1686.]

Hon MICHAEL MISCHIN: A question may occur to Hon Tjorn Sibma, but, if not, I ask whether what is proposed by the Mines Safety and Inspection Amendment Bill will be comparable with the penalties proposed in this bill for equivalent offences, or will we again face a situation in which some of the offences are not precise equivalents?

Hon ALANNAH MacTIERNAN: The same circumstances will apply under the Mines Safety and Inspection Act. The range of duties that are legislated under that act do not precisely line up with the model code. Approximations had to be made about the offences and their equivalents in the model code.

Hon MICHAEL MISCHIN: That completes the areas that I was interested in, except for the two that I mentioned at the commencement about which law governs oil rigs and which law governs shipping.

Hon ALANNAH MacTIERNAN: There was some provision, but the officers do not appear to have a copy of that here. It is not covered by these bills, other than conduct on the wharf, obviously. Matters relating to the actual wharf come under WorkSafe. For matters relating to what occurs on vessels the Australian Maritime Safety Authority is the responsible entity, and on oil rigs and in petroleum it is the National Offshore Petroleum Safety and Environmental Management Authority.

As I said, I am happy to have the officers provide that in writing. The example used by Hon Kyle McGinn applies regardless, even if in those instances these particular pieces of legislation do not apply. The principle is nevertheless the same, and that is that pressure is put on employees to in many instances make shortcuts in occupational health and safety, particularly when jobs are under pressure and particularly when there is labour hire involved. Those sorts of circumstances frequently happen in situations governed by the Mines Safety and Inspection Act and the WorkSafe legislation.

For ships tied up at the wharf flying a foreign flag, it is the Australian Maritime Safety Authority. For ships loading and unloading, it is AMSA. Activity on the wharf is covered by WorkSafe. Responsibility for domestic commercial vessels, for example fishing boats, is shared by AMSA and WorkSafe, interestingly. It is WorkSafe for chemical guarding and manual handling. That does not sound very logical, does it? It suggests why it might need a degree of harmonisation. AMSA has responsibility for safety gear and vessel construction, and AMSA and WorkSafe share responsibility for fatalities and fatigue. If that were a domestic commercial vessel, WorkSafe would have been involved in looking at the fatality issue. Petroleum workplaces do not fall within the jurisdiction of occupational health and safety or the Mines Safety and Inspection Act. They come under the Petroleum Pipelines Act, the Petroleum (Submerged Lands) Act and the Petroleum and Geothermal Energy Resources Act.

Hon MICHAEL MISCHIN: If I understand that rightly, the issues that Hon Kyle McGinn has ventilated are nothing to do with state jurisdiction or failings on the part of the state anyway; they are commonwealth government responsibilities, rightly or wrongly, under the commonwealth regime—the Australian Maritime Safety Authority being a commonwealth body. What was the other one? I think the minister mentioned NOPSEMA; what is that?

Hon ALANNAH MacTIERNAN: Again, the member fails to grasp the principle and takes the approach of finding something to latch onto that is actually irrelevant to the policy consideration. As I said, the story that Hon Kyle McGinn told was about a fatality on a vessel that was in exactly the same set of circumstances. In fact, I have heard from people on mine sites very, very similar stories that come under this legislation—stories in which there is enormous pressure. Members will all recall the desire to get many of these jobs done during that period of massive expansion. Everyone was trying to progress their mine expansion. That particular incident occurred on a ship that may or may not have been domestically flagged. I do not know whether it was domestically flagged or flew a foreign flag. If it was domestically flagged it would appear that WorkSafe would have been involved in the inspection, but that is not the point.

This, I think, is the member's problem: he cannot distinguish between things that are relevant and central to the policy case and a degree of pedantry. Who cares if it was on a vessel? It is the attitude. It is the workplace relations. It is the distinction between what is said in an induction process and what happens in practice, whether it is out in a paddock, on a mine site or on a vessel. That is the point that Hon Kyle McGinn was raising. We could ask him one day whether it was a domestic vessel or a foreign-flagged vessel—I do not know—because they come under different regimes. I am advised that WorkSafe would be involved in a matter involving a fatality on a domestic vessel. I ask the member to think about the point of the example and not whether that particular incident would have been regulated under one safety regime rather than another safety regime. It is about the principles that govern occupational health and safety.

Hon MICHAEL MISCHIN: I have to say that that sort of thing makes me more concerned about this government's ability to have evidence-based legislation. The minister used an anecdote from Hon Kyle McGinn—I am not dismissing that what he said is correct—without the specifics of who the employer was and whether it was a domestic vessel or some foreign junk boat. An incident happened and she extrapolated that and told me not to worry about that or the circumstances—I should just get the vibe. She said that it is also applicable to other

workplaces and now we need to increase penalties and watch out for these sorts of things because everyone is guilty of it. It is absolutely astonishing. The minister took an example from one specific circumstance in one particular industry that is not even policed under our legislation, and she said from that —

Hon Alannah MacTiernan: You don't know that.

Hon MICHAEL MISCHIN: The minister does not know either.

Hon Alannah MacTiernan: I am saying that fatalities on domestic-flagged vessels are covered by WorkSafe. You can't see the principle, can you?

The DEPUTY CHAIR (Hon Matthew Swinbourn): Order, minister! Hon Michael Mischin has the call.

Hon MICHAEL MISCHIN: No, I do not know the answer to some of these things, but the minister certainly does not either. I certainly cannot rely on the second reading speech. The minister took one story of an incident in an unrelated industry and extrapolated that as an evil that needs to be purged in every industry. It is astonishing. The minister said not to worry about the detail or the facts such as where it happened, who was involved or which legislation governs it; that we should not worry about that sort of stuff and that what the government is saying is right and applies to everyone. That is the way that this government works: we should not worry about the facts in the second reading speech. The minister said that they could have been more clearly expressed and some of them are wrong and others are incomplete, but we should not worry about that; it is the vibe that is important. It is absolutely amazing. I will tell members something: if we had put up that sort of performance when we were in government, none of our legislation would have got through, having regard to the best efforts of the then opposition to stall it in any event. To come along and say, "Hey, look, sure, there are a few errors in there and you can't take that literally and that is a mistake or could be"—seriously! Is that the best this government can do? I have no further questions on clause 1.

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: Clause 2 states that the act will come into operation as follows —

(a) sections 1 and 2—on the day on which this Act receives the Royal Assent;

(b) the rest of the Act—on a day fixed by proclamation, and different days may be fixed for different provisions.

Why?

Hon ALANNAH MacTIERNAN: This is the standard provision. I understand that it reflects the necessity to make regulations. I am sorry. It appears that no regulations will come into play. Obviously, this is a very short bill. It is the government's intention to have this bill proclaimed as quickly as possible. I assure the member that there will not be a long time between the date on which the act receives royal assent, which will bring in clauses (1) and (2)—that is, the short title and the commencement—and the day of proclamation. This is a standard provision that is put in legislation. In this particular instance it is probably not necessary because there will be no regulations to draft. However, nothing turns on this because the guts of the bill are indeed created in clause (4) of both bills. We want clause (4) enacted as quickly as possible. A provision like this is probably not necessary in a short bill of this nature, but it is a standard drafting provision. Given that almost the entire content and substance of the bill is contained in one clause, we anticipate that proclamation will take place very soon after royal assent.

Hon MICHAEL MISCHIN: When I asked why it could not take effect on proclamation, the minister first ventured the idea that there were regulations. Then she realised that there were not any regulations. There is no good reason for the bill not being proclaimed on assent; it is just a standard provision. Is there any reason that this cannot be amended to make it effective from the date of assent? After all, this bill has not yet been returned to the Assembly. A government amendment to have this take effect from the date of assent would cure some of the concerns Hon Kyle McGinn has about the delay in effecting increases in penalties and this bill would take effect immediately, and there would be no need to go to the trouble of gazetting proclamation and the like. Is the minister prepared to entertain an amendment to have the whole act take effect on the date of assent?

Hon ALANNAH MacTIERNAN: The member should think about this. I will take him through this. There has been no change in the penalties since 2004. The work for the green bill occurred in 2014. It is now 2018. It would be ironic, and I think even he understands the paradox that would be involved, to delay this legislation for another two or three weeks so that it can go back to the Legislative Assembly to process a change that was designed to speed up the passage of the bill. I honestly do not believe that in this instance the member can be serious! Will we communicate with Parliamentary Counsel, to placate the member, in the future that if there are no regulations, could we perhaps just have a single assent? We are happy to take that back. But I very much urge the chamber to reject the notion that we make a trivial and unnecessary change here and in that process delay this bill by another

three weeks. I think that would be really quite reckless and I urge the member not to do it. I take the technical point: we could have done it; it could have been simpler. But let us not create a much more complex process in order to deliver an alleged simplicity.

Hon MICHAEL MISCHIN: I thank the minister for that. This bill was introduced in November and, nine months later, it has now come up. There does not seem to have been a great deal of urgency to have it progressed, important though it is. Can the minister tell us how many prosecutions relative to these penalties have occurred between the bill leaving the Legislative Assembly and it being dealt with today?

Hon ALANNAH MacTIERNAN: No, we do not have that list. I point out to members that we now have this bill. It has been talked about since 2014. We are now actually within striking distance of getting there and introducing the first update of the penalty regime since 2004—that is 14 years. Again, we do not have that list available. What could it demonstrate? Perhaps it would demonstrate that a variety of matters could have been dealt with under a higher penalty regime, although the member does not believe that the higher penalty regime will make any difference, so I am not quite sure of his point. Certainly, we have waited. We could argue about how many cases we have had since 2014, if we had brought in the legislation then. My trusty adviser has found that there have been seven prosecutions. We all want to get this done. Delaying the bill further by having a debate about how long it has taken does not add up in real-people land. We acknowledge that we had a lot of other legislation. Members opposite can attack us and say that we should have brought it on earlier. We could argue that it would have been nice if the former government, once it had done the green bill in 2014, had used the opportunity in 2015 and 2016 to introduce the legislation, but it did not happen. Let us forget that debate. Let us get on with approving this piece of legislation, which overwhelmingly we all agree with.

Hon MICHAEL MISCHIN: The minister is doing the talking and taking up the time. In any event, I take it that the short answer is no and she will not agree to an amendment.

Hon ALANNAH MacTIERNAN: I have explained to the member that that would add three weeks to the process to achieve nothing of practical import. We want to get it done. I know this whole concept of practical import and something that affects the real world —

Hon Michael Mischin: Keep going.

Hon ALANNAH MacTIERNAN: Okay!

Several members interjected.

The DEPUTY CHAIR: Members! Hon Michael Mischin has the call.

Hon MICHAEL MISCHIN: I beg your pardon. What was that? I would like to know what the minister had to say about our questioning of the bill.

Hon Sue Ellery: Not “our questioning”—you.

The DEPUTY CHAIR: Member, do you have a question about clause 2?

Hon MICHAEL MISCHIN: I asked a simple question—would the minister entertain an amendment. I got a lecture and I assume from that that the answer simply was no. That is all the minister needed to say. But, no, carry on. It is her time.

Hon Simon O’Brien: Perhaps she could elucidate a bit more.

Hon MICHAEL MISCHIN: Perhaps the minister could explain it again.

Hon Simon O’Brien: Tease it out a bit. It wasn’t quite clear to me.

Hon MICHAEL MISCHIN: Does the member want to go through it again?

The DEPUTY CHAIR: Hon Simon O’Brien, I think you may be distracting Hon Michael Mischin, who has the call.

Hon MICHAEL MISCHIN: From time to time I need to bear in mind his eloquence and his incisive appreciation of the issues.

In that case, it is unfortunate that it cannot be done on the day of assent, but the minister says the reason for it is that it is a standard form provision and no real thought has been put into whether it is suited to the circumstances. I have no further questions to ask on that.

Clause put and passed.

Clauses 3 and 4 put and passed.

New clause 5 —

Hon AARON STONEHOUSE: I move —

Page 4, after line 1 — To insert —

5. Section 18AA inserted

After section 18A insert:

18AA. Commissioner may accept undertakings for alleged offences

(1) The Commissioner may accept (by written notice) a written undertaking given by a person in connection with a matter relating to an alleged contravention by the person of this Act or the regulations.

(2) Subsection (1) does not apply if the person giving the undertaking is liable to a level 4 penalty for an offence against this Act.

(3) The person may withdraw or vary the undertaking at any time but only with the Commissioner's written consent.

(4) Neither the Commissioner nor a person authorised by the Commissioner under section 52 may bring a proceeding for an offence against this Act or the regulations constituted by the alleged contravention to which the undertaking relates.

This amendment was foreshadowed somewhat in my contribution to the second reading debate. For the benefit of members, I will quickly explain what it does. The government's proposed changes to the Occupational Safety and Health Act 1984 purport to bring the act into line with the federal government's model Work Health and Safety Act. But in reality the changes tackle only one aspect—standardising the increase in fines payable for infringements. The model act, as well as legislation in the majority of jurisdictions across Australia, including New South Wales, South Australia, Queensland and Victoria, allows that when a breach has been alleged, a company, or the alleged offender, can opt to negotiate a written enforceable undertaking with the relevant authority, rather than having the case dealt with by the courts. That is not currently the case in Western Australia, where an undertaking can be entered into only after the case has been tried at law and guilt assigned. I feel it would be beneficial to balance the government's proposed increase to penalties with a power to accept enforceable undertakings prior to cases coming to court, saving a considerable amount of time and money while making the OHS system less adversarial, more uniform and more focused on safety outcomes. My proposed amendment has been modelled on the legislation currently operating in Victoria, tailored to suit the particular institutional and legislative circumstances in Western Australia.

I can give an example of how enforceable undertakings work in other jurisdictions, to give a fuller picture for members who are unfamiliar with them as we do not really see them used too often in WA. On 30 June 2013, a worker employed by Great Northern Hotel in Sydney, New South Wales, sustained very serious injuries while cleaning beer lines, which burst, spraying acid. SafeWork New South Wales investigated, determining that Bambora Pty Ltd and Keep it Cummin Pty Ltd had contravened sections 19(1), 19(2), 32, 38 and 39 and David Richards contravened section 27(1) of the NSW Work Health and Safety Act 2011 in relation to the three entities listed. The company's director signed a written enforceable undertaking with SafeWork New South Wales, which included a commitment to establish a staff training and compliance module on beer line cleaning safety, to apply a physical change to the beer line cleaning procedure and equipment, to produce an industry cellar safety awareness campaign and to make a donation to the Save Sight Institute. The monetary value of these combined undertakings was assessed as being about $72 646.73. SafeWork New South Wales gave the following reasons for accepting the enforceable undertaking: the circumstances in this case were determined to be exceptional; the nature of the alleged contravention and the actions taken by the directors were assessed as being appropriate for consideration of an undertaking; the strategies proposed in the undertaking were assessed as likely to deliver long-term sustainable safety improvements in the workplace, industry and community; and the undertaking addressed the requirements contained in the New South Wales government's enforceable undertakings guidelines for appraising a work health and safety undertaking.

I go to my amendments. I might speak briefly to my second amendment while I am at it, because they work hand in hand. Part II of the act deals with the establishment of a WorkSafe WA commissioner and the powers invested in that individual. It therefore seems the most suitable place to include an expansion of those powers to include the option of accepting written enforceable undertakings prior to the commencement of legal proceedings. New section 18AA is titled "Commissioner may accept undertakings for alleged offences". This is the powers component of the amendment, setting out the powers granted to the commissioner in accepting enforceable undertakings prior to the commencement of legal proceedings. New section 18AA(1) allows the commissioner to accept, by written notice, a written undertaking given by a person in connection with a matter relating to an alleged contravention by the person of the act or its regulations. New subsection (2) exempts allegedly level 4 contraventions from being dealt with by way of an undertaking. This is intentional. This is because level 4 contraventions are the most serious

breaches and these will continue to be dealt with by the courts under my amendments. New subsection (3) allows that a person lodging such a written undertaking may withdraw or vary it at any time, but only with the commissioner's written consent. New subsection (4) allows that neither the commissioner nor a person authorised by the commissioner under section 52 may bring a proceeding for an offence against the act or its regulations constituted by the alleged contravention to which the undertaking relates. In other words, a person cannot enter into an undertaking in good faith, only to be later charged in court with the same alleged breach.

I will foreshadow the other amendment, because, as I said, they go hand in hand. New section 18AB is titled "Enforcement of undertakings for alleged offences". This is the enforcement component of the amendment, allowing for the manner in which enforceable undertakings are to be enforced once entered into. New section 18AB(1) allows that safety and health magistrate, as defined by the act, has jurisdiction to hear and determine the application under this new section. This aspect could alternatively be covered through an amendment to section 51C, but for both convenience and neatness it seems more logical to confer jurisdiction here. New subsection (2) allows that the commissioner, upon discovering that a person has contravened an undertaking previously accepted, may apply to a safety and health magistrate for enforcement of the undertaking, therefore allowing for court proceedings in the event of a contravention. New subsection (3) allows that having had an alleged contravention referred to the courts, a safety and health magistrate, upon being satisfied that the contravention has occurred, may issue an order enforcing the person to comply with the undertaking and/or make another order that the court considers appropriate. It is my view that enforceable undertakings will go some way towards encouraging cooperation rather than confrontation. I have given the example of New South Wales, which is making an investment into the rectification of problems, rather than spending money on costly court proceedings.

The decision to accept an undertaking will always rest with the WorkSafe Western Australia Commissioner, who must be satisfied that it is the best and most appropriate outcome. Enforceable undertakings are already accepted in Western Australia. However, they are accepted only after a conviction. In my view, that is somewhat counterintuitive, because the court proceedings will have concluded by that time. Enforceable undertakings are also an integral part of the model Work Health and Safety Act, which the government is keen to align Western Australia most closely with.

It is my contention that this amendment will more fully align Western Australia with the model Work Health and Safety Act produced by Safe Work Australia and with our sister jurisdictions. It will also allow for the potential streamlining of breach allegations; reduce the burden on the judiciary; and cut an unnecessary amount of red tape from the current system. Nothing in this amendment interferes with the existing right of the courts to accept an enforceable undertaking post-verdict, as laid out in sections 55H to 55R of the Occupational Safety and Health Act. I would argue also that this proposed addition to section 18A of the Occupational Safety and Health Act is entirely in keeping with the objective of the act as laid out in section 5(a) to (g).

Hon ALANNAH MacTIERNAN: I thank Hon Aaron Stonehouse for his proposed amendment, but we will not be accepting it. However, we agree that enforceable undertakings should be an important part of the regime going forward, and we expect that when we introduce the new legislation next year, enforceable undertakings will be involved. Hon Alison Xamon also talked about the importance of having that as part of the toolbox. Hon Aaron Stonehouse has focused very much on how that will improve the efficiency of the process by not tying up the time of the court. That is a valid point. Hon Alison Xamon spoke about the importance of also considering that the effect of a financial penalty on a small operation might be that it would cease to be able to operate and would be wound up. I am sure that would also concern Hon Aaron Stonehouse.

It is not that we think this is not a good amendment. However, we have given a clear undertaking to all the stakeholders that there will be consultation on all these proceedings, and a consultation process is currently underway. Sixteen public seminars have been held throughout the state, attended by 672 people. I have all sorts of digital data about the number of people who have engaged in this process. The submission period will end on 31 August. We want to bring this together as a job lot. The reason we have had to take this action is that many in the industry consider it a scandal that the penalties have not been updated since 2004, and we want to get that done. However, I assure the member that enforceable undertakings will be incorporated as part of the new legislative package.

One of the problems is that although it is true that enforceable undertakings will save court time, they will create an administrative load, because they need to be enforced. That will require the setting aside of personnel, resources and supporting costs to monitor and enforce these undertakings. As members can imagine, if the undertaking is in relation to a very serious event and it has been the substitute for a fine, there will be a high expectation that the monitoring will be quite intensive, at least for a time. We need time to provide that superstructure within the department to be able to do it. We are not at all opposed to the principle of what the member seeks to do, but we cannot support this amendment because we want to get the regime in place. We simply do not have the architecture in place to consider enforceable undertakings. I can give an undertaking—hopefully enforceable—that it will be incorporated into the

new legislation. I know that Minister Johnston's staff have been talking with the member and we are quite happy with that. We think it is quite valid to raise this amendment here today, but we want the member to understand that we cannot support the amendment because the implementation of the bill would be delayed while we sought to get that architecture in place. Also, it would not really hold faith with the process we have put in place in which the stakeholder group—the ministerial advisory panel—is working through all the submissions. If there is any other way in which we can incorporate the member into the process, we would be very happy to do that.

Hon MICHAEL MISCHIN: I welcome Hon Aaron Stonehouse's moving of this amendment. It is a matter that I have given some consideration to. The minister is quite right that the idea of enforceable undertakings was being explored as part of the broader work health and safety model and there are a lot of things to commend the idea. At the end of the day, there are a variety of means of trying to address work health and safety issues, including notices and all sorts of means of addressing problems that are identified, but once a breach has occurred, which could be the subject of prosecution, particularly one in which some harm has been effected, the only resort is to prosecution. Of course, civil action is available from the person harmed or, perchance, their family to seek a civil remedy of damages. In the meanwhile, there is also workers' compensation and other means of redress from a financial point of view. The offence provisions under the Occupational Safety and Health Act are there as a punishment for the breach of duty and, as the minister pointed out, with a view to guiding conduct and demonstrating that there are consequences that the state regards as serious in the event of a breach. It may be that the breach results in no harm, in which case, all to the good; on the other hand, if it does result in harm, there is an element of punishment involved to show the seriousness of that breach. I should stress, however, that the consequences of the breach—if it is harm or, particularly if it is death—may be disproportionate to the nature of the breach. It may be something as simple as failing to put away a power cord and someone trips over it. They fall down and happen to hit their head, sort of a one-punch but with a far more innocent cause; yet, that would be a breach of duty under the act. It is a question of whether it is punishable by a fine of a small or a large amount, looking at the consequences.

The point is that it is all, in any case, after the event and it is a very blunt instrument. The fine imposed may indicate the state's condemnation of the conduct to perhaps indicate to others to be more wary. It may highlight the nature of the breach—whether it is deliberate or negligent—but, in the end, the fine goes into consolidated revenue. Certainly, there is punishment, but there is not necessarily any reform. Of course, in the case of the three examples in the second reading speech, given they are employees, the fines imposed are probably very substantial for someone who after that event may have no job. To look at simply the quantitative amount is not to see the effect of that punishment on that person and the deterrent effect. For employers, it may be slightly different.

Nevertheless, we are looking at encouraging a culture in the workplace that is just as easily encouraged by way of enforceable undertakings and the like, and it is a far less expensive option. It will not benefit third parties such as lawyers; the amount expended will go to something that is worthwhile—Hon Aaron Stonehouse gave the example of the Great Northern Hotel, I think it was. The "message" is sent. The reform of workplace practices would take place. Some good could come out of it. It is a less costly, less blunt alternative to prosecution action. It would still allow the avenue of prosecution action in due course should the undertaking be breached, but in the meanwhile it would be a less heavy-handed approach. That raises an interesting problem for the government because relying on community expectations by way of penalties may have the perverse effect of undermining any regime of enforceable undertakings, because it is encouraging condign punishments that would not be there in the case of an enforceable undertaking. There would be the argument that someone has been seriously injured in a workplace incident but the offender is not being punished; therefore, what price their safety? The government—WorkSafe—would be seen to be taking the easy way out. It would not be dragging the offenders into court with all the risks that involves—the case may fail, the expense of mounting it, the inconvenience to witnesses, the need for expert testimony perhaps, the need to persuade a magistrate, the draw on the court system and the like. There would not be any of that. There would be a deal behind the scenes where all of that is in fact avoided, so the government would have to undertake a public relations exercise in due course to educate the public in that regard.

Unfortunately, with a second reading speech of the character we have been dealing with that focuses solely on penalties and monetary amounts and is saying that they are out of kilter with community expectations and are not sufficient deterrent to conduct, I think the government will have quite a job on its hands to then tell people in due course that there is a more cost-effective way of achieving workplace safety that does not involve any penalty at all. It involves some monetary compensation or some monetary commitment and the like on the basis of an enforceable undertaking—no court appearance, no shaming and so forth. Nevertheless, that is a problem for the government. It has gone down the path of saying that increased penalties are the solution and they will be the proper way of being a deterrent in a year's time or however long it takes to get the new legislation through. The government will then have to try to sell a different, more nuanced message.

At the moment I think there is considerable merit in Hon Aaron Stonehouse's proposal. I have received some representations from organisations that are concerned at the marked increase in the penalties, arguing that the increases proposed by the government are excessive, unwarranted and, if they are to be introduced, ought to be enforced in combination with a scheme like this—enforceable undertakings that avoid the need for court proceedings but achieve the ends. In the circumstances, the Liberal Party will support Hon Aaron Stonehouse's amendments. In the event that they fail, it will nevertheless be a worthwhile indication to the government that this is the path down which it should travel and explore. That should encourage the government to assemble a suitable scheme in due course that will achieve the same objectives as Hon Aaron Stonehouse has proposed. On that basis, I indicate that we will be supporting Hon Aaron Stonehouse's amendments.

Hon ALANNAH MacTIERNAN: I am very disappointed. I understood that we were going to get support for our legislation.

Hon Michael Mischin: You are.

Hon ALANNAH MacTIERNAN: This will mean that the legislation cannot be implemented immediately; it will have to go back to the Legislative Assembly. We have explained the reasons. Although we absolutely support enforceable undertakings in principle and we are working with the ministerial advisory panel, which has come together and has recommended it, we have a process underway in which all those panel recommendations are out for public engagement. We want to introduce those enforceable undertakings when we legislate next year. We do not have the architecture in place to implement those enforceable undertakings at this particular time.

I ask members to reconsider this amendment. As I said, there has been no increase in these penalties since 2004. We understood that this legislation had broad support. We have an amendment before us that will mean that this legislation cannot go forward at this point; it will have to go back to the Assembly. We are not in a position to deal with it. We do not have the personnel, the resources and all the intellectual capability needed to ensure that this amendment can take effect and have some meaning. We have to make sure that we have within our department the capability and the wherewithal to ensure that all the principles are adhered to. Although I understand the good faith in which Hon Aaron Stonehouse is introducing this amendment, it will not be beneficial for the legislation because we simply do not have all that wraparound stuff that we need to enable us to implement those enforceable undertakings. Whilst we support this principle and we have given a commitment that it will be an integral part of the legislation that we will be introducing this year, it is not something we can reasonably implement before we have undertaken that process.

Point of Order

Hon SUE ELLERY: Can I ask for a ruling on whether the amendment proposed is actually within the scope of the bill we are dealing with right now? I think it is arguable that it is not. Can I ask you, Mr Deputy Chair, to perhaps seek the advice of the President, if I may be so bold, and seek a ruling as to whether the amendment before us is actually properly within the scope of the bill.

Ruling by Deputy Chair

The DEPUTY CHAIR (Hon Matthew Swinbourn): I thank the Leader of the House. I am in a position to make a ruling on this now.

The amendment proposed by Hon Aaron Stonehouse is outside the scope and purpose of the bill. The standing orders allow an amendment to be moved to any part of the bill, provided the amendment is relevant to the subject matter of the bill. Schedule 3 of the standing orders defines "Subject Matter of a Bill" to mean the provisions of the bill as printed, read a second time and committed to the Committee of the Whole House.

The scope and purpose of a bill is determined by its clauses. When the purpose of a bill is restricted, the extent to which it may be amended is restricted. The second reading speech and explanatory memorandum will often assist in explaining a bill's purpose. The clauses of the bill increase penalties for offences under the Occupational Safety and Health Act 1984. The minister's speech for this bill states that the purpose of the bill is to increase penalties to better align with the penalties in the model Work Health and Safety Act, with a further increase for inflation since 2010. Hon Aaron Stonehouse's amendment for a new clause 5 proposes to impose an alternative process for dealing with persons who commit certain offences by providing the WorkSafe Western Australia Commissioner with the discretion to accept an undertaking given by an alleged offender in lieu of bringing a proceeding for an offence against the act or regulations. The amendment proposed by Hon Aaron Stonehouse does not fall within the limited purpose of the bill. The member seeks to introduce a new subject matter. I therefore rule the amendment out of order.

Committee Resumed

New clause ruled out of order.

Hon AARON STONEHOUSE: If I may, I just want to quickly clarify something the minister was saying before the Deputy Chair made his ruling —

The DEPUTY CHAIR: The ruling has been made.

Hon AARON STONEHOUSE: This is not on my amendment, Deputy Chair; it is just on a matter the minister raised during discussion of the amendment about the ministerial review. Can the minister advise the chamber whether she expects legislation to be introduced next year, given the ministerial review is being undertaken and I believe it is expected to be completed next year? Can she clarify whether that is the case?

The DEPUTY CHAIR: Minister, before you do that, the question that this be the title of the bill is the question before the house. The minister may respond to Hon Aaron Stonehouse.

Hon ALANNAH MacTIERNAN: A ministerial advisory panel was formed and that panel has worked in a tripartite way with all the stakeholders. It came out with a series of recommendations as to how the legislation was to be introduced in Western Australia. That is now out for public consultation—the extensive process that I described before—and a number of public fora and participants are involved. The submission period closes on 31 August 2018. It is the minister's intention to have the legislation introduced in this place by mid next year.

Title put and passed.