

INSURANCE COMMISSION OF WESTERN AUSTRALIA AMENDMENT BILL 2013

Second Reading

Resumed from 25 June.

HON KEN TRAVERS (North Metropolitan) [5.05 pm]: The Insurance Commission of Western Australia Amendment Bill seeks to provide for the Insurance Commission of Western Australia to pay a dividend to the government based on its annual profits. It is a bill that is part of the list of broken promises announced in this place by the Barnett government since the March 2013 election. In less than four months we have seen over 15 significant commitments given before the election broken. That alone is grounds for this chamber to reject this legislation. The government went to the polls making a very clear commitment, in writing in the case of this legislation, to the RAC, which is a large organisation with some 700 000 members in Western Australia. It gave that commitment to those people and made sure it was publicised. For the government to then break that promise within four months and without any explanation is a disgrace. This house, as a house of review, should send a very clear message to the government—the executive—that that is not acceptable behaviour. How do we tell young people that they should tell the truth when the government engages in activity like this? There has been no significant change in circumstances, but that is only one reason this house should oppose a piece of legislation like this.

It is also bad policy for a range of reasons. It is bad policy because it will increase the cost of third party insurance for people in Western Australia. That is the reality of this bill and I intend to show the people that if this bill was not in this place, the government would not have had to increase insurance premiums by 4.5 per cent—well above the rate of inflation—back in May this year. This bill is bad policy because the government claims it is based on a need for competitive neutrality. Where is the competition in third party insurance in Western Australia? There is none. It is a compulsory scheme with a single insurer, the Insurance Commission of Western Australia. We do not need competitive neutrality for ICWA because it is not in competition. If it is the government's will and desire to bring in a situation, similar to other states in Australia, to allow competition in third party insurance, it is at that point we should deal with introducing a dividend—if that was to be the case and if that is what the government wanted to do. It would be a very silly policy, because one thing about Western Australia's third party insurance system is that we have relatively good premiums compared to the rest of the country.

It is ironic that the minister handling this bill for the government in this house is also the Minister for Disability Services. On Sunday the Western Australian government committed to the National Disability Insurance Scheme and signed up to trials. Part of the National Disability Insurance Scheme will be hopefully to move to a no-fault position in Western Australia with respect to third party insurance. Currently, drivers of vehicles have to be able to demonstrate another driver's fault. There have been debates about what the cost of that implementation would be. If we were not to pass this bill today, the money saved and kept in ICWA could be used to fund that part of the National Disability Insurance Scheme, to move into the no-fault policy, without having to increase premiums for Western Australians. That is something we could be doing. It could be a positive outcome so we would not have to increase premiums. We could use these profits to up-fund that policy without increasing premiums.

It is interesting that when this bill went through the other place, the government refused to detail the expected dividend. After the government in the other place made an absolute mess of the legislation and failed to get it through even the other place, let alone through this house, before the end of the financial year, it was finally revealed to the media—I assume by the government—that the premium it hoped to get into its budget to try to prop up its surplus for the 2012–13 financial year was about \$25 million to \$30 million. I do not know whether the minister is in a position to confirm that figure for us, but I hope that during this debate we can now get the figure that was the estimation of what the government hoped to get as a dividend for the last financial year. Let us think about that \$25 million to \$30 million, members. Just over two million vehicles in Western Australia would be part of this third party compensation scheme, which would be paid at various rates dependent on the type of vehicle. Two million into 30 million equates to somewhere in the order of \$10 to \$15 a vehicle in Western Australia that will be taken out. In May this year, by how much did the government increase third party insurance? The increase was \$10 a vehicle or 4.1 per cent above the rate of inflation. That is money that could have, this year alone, assisted families to deal with the cost of living. By leaving those profits in the Insurance Commission of WA, we would not have needed to increase premiums by that amount, as we have not done for the last two years because there is surplus money and good investments. It is my view that the Insurance Commission of Western Australia Amendment Bill 2013 will, on average, add about \$15 per annum to the cost of third party insurance premiums. The government has always tried to refuse to acknowledge that and said that it will have minimal effect on premiums in Western Australia. I have just done some back-of-the-envelope

calculations but if the minister has the real figures, I challenge her to reveal them. When the government takes that money out every year, it is my view that it will work out at about \$10 to \$15, or four per cent, per annum added onto the cost of our third party premiums.

The reason that we have been so successful in this is that back in the 1990s, Western Australian drivers had a levy imposed on them called the WA Inc levy. The interesting thing is that was done at that time supposedly because of the books of ICWA. Since then, the assets owned by ICWA have increased in value to the point at which they now actually contribute to ICWA being able to keep premiums low for Western Australian drivers. That money should stay with ICWA to keep those premiums low, to give a dividend back to the drivers of Western Australia, or to allow ICWA and the government, without incurring a significant increase in the charges, to expand the benefits that Western Australian drivers would get by moving to a no-fault system.

The Insurance Commission of Western Australia Amendment Bill is bad policy because it will be another impost on families in Western Australia. This government is imposing fees and charges well above the rate of inflation across the board. It is something that the government before the election never told the people was going to occur. It was no surprise that in question time today the Minister for Agriculture and Food said that he could not explain to us why his department had increased some of his fees. That is in agriculture. We understand why the government is increasing fees with this bill; it is because the government has been unable to control its expenditure and has made commitments beyond what it can afford. Members might recall that when we were last in this chamber, I made some mention—briefly—of the fully funded, fully costed plan of the Liberal Party and what an absolute lie that was. There was not a fully funded, fully costed plan, or if there was a fully funded, fully costed plan, the government lied to the people of Western Australia because it did not tell them that part of its fully funded, fully costed plan included jacking up the premiums on third party insurance. The government in fact told the RAC the exact opposite. If it was part of the government's fully funded, fully costed plan—the secret bit in lemon juice at the bottom of the plan that we were never allowed to see before the election—then it deliberately lied to people when it said that it would not be doing this. The government cannot have it both ways; it either did not have a proper fully funded, fully costed plan, or it did and it lied about the revenue side. The bottom line is that the government went to the election, it made those commitments and it should be honouring them.

The other interesting element about this bill is that it seeks to implement an interim dividend and not just pay a dividend on the profits in the year after the profit was incurred. It is interesting in Western Australia that a number of corporate entities, such as port authorities, Western Power and Verve Energy, pay dividends to the government. They are in the commercial world; they compete with other entities. For instance, although all the ports in Western Australia are predominantly state owned, they compete against not only each other but also rail transport across the nation in how products are delivered into this state. So there are elements of competition that they face. Certainly, Synergy—Western Power less so—gets massive investment and it is probably not unreasonable for the government to expect to recoup in those areas some of its investment. Third party insurance, though, is effectively a mutual scheme in which we insure ourselves. My view is that we should leave the profits within that mutual scheme and not try to extract them; the profits should be left there for the mutual benefit of the people in that scheme, which is effectively what third party insurance is in Western Australia. But what the government wants to do with this bill is before the end of each financial year get an interim dividend. I look forward to the committee stage of the debate on this bill because I look forward to hearing from the government how it expects ICWA to predict what its dividend will be at the end of the financial year by February each year. It is my view that that is going to be very difficult. It is one thing for the Water Corporation to do that but I think it is a very different situation for ICWA. ICWA has the potential for claims and what may or may not happen in that six-month period with respect to not only the actuarial advice regarding claims but also its investments. If ICWA has to pay a dividend before the end of the financial year based on a prediction in February, I think that will be extremely difficult for ICWA to do.

My understanding is that in the private sector where interim dividends are paid, they are only ever paid on the estimated profit for the first six months of the financial year. I would have thought at the very least that that is what this house should be insisting upon, although if this bill is to be passed—my personal preference is that it is not—we should in this bill delete the capacity for even an interim dividend. When we get to the committee stage, I will seek to move those two options; first, to remove the interim dividend altogether or, second, if that is not the will of the house, to restrict the interim dividend to being no more than the estimated profit at the end of the first six months of the financial year. I think that they are both very sound propositions if we are to have the bill as proposed. Why do I say that? As I was saying earlier, a number of agencies in Western Australia pay dividends to the state. Some of them, such as Water Corp, pay an interim dividend because obviously the government wants to get its money as quickly as possible. Others, such as the port authorities, pay the dividend in the subsequent year. I think because of the nature of the business of ICWA, it would be best to wait until the

end of the financial year, work out what its profits have been in that financial year and then pay a dividend based on those profits. That is the safest way.

I do not expect the government will admit this, and government members will be the only people in Western Australia who do not understand this, but we all know the reason this bill was brought in with such haste before the end of the financial year with a provision for an interim dividend was so that the government could get some money in to try to balance its budget because throughout the last year it had failed to deliver on the promised efficiency dividends. We know the government did nothing for nine months of the financial year and then in the last three months of the financial year, after the election, it had to bring in these emergency measures to try to contain and control the budget and to come in with a surplus. We will find out on Friday whether or not the government was successful in achieving that. Regardless of that, the government had to take emergency measures because its policy had failed. This bill was part of those emergency measures. The government was not able to pass this bill through the Parliament before the end of the financial year because of its incompetence. If we were to delete the requirements for the Insurance Commission of WA to pay an interim dividend, the government would be in the position, going forward each year from now on, whereby it would be paid an interim dividend on the previous year's finances. That makes sense. Otherwise, in this financial year, the government will effectively get two dividends—one for this year and one for last year. I do not see why that is necessary, and it would make sound practice that from here onwards, as occurs with the port authorities—if the government must have this bill—to pay a full and final dividend in the year after the process has occurred. My preference is for this bill to be defeated, because it provides for another form of tax on the people of Western Australia. It is a tax they were not told about; in fact, the government actively denied it would impose this on Western Australians. Key stakeholder groups representing 700 000 members of the driving public of Western Australia were told before the election that what is proposed in this bill would not happen. This government has shown that it lied to them by coming into this place and doing something different. It is my view that we should not pass the bill.

I also wanted to raise an issue that we have talked about before. Legislation comes to this house of review and we should be using the committee system of this place more often. We should use the committee of the house structure more often. For the first 12 years I was a member of this place, the Standing Committee on Legislation was a hive of activity. Hon Sally Talbot will recall the days when the legislation committee was a very active and prominent committee that provided good advice to this chamber about complex or contentious pieces of legislation. For the last four years the government has refused to use the legislation committee for the purpose for which it was intended. Not so long ago we heard members effectively acknowledging in their valedictory speeches that that had been a bad outcome for not only the state but also the role of this house. The government has undermined the reason for the existence of this house; it has not used the legislation committee effectively or constructively to fully examine complex or contentious pieces of legislation.

It is my view that this bill should be one of those pieces of legislation that is referred to a committee. There is no rush to pass this bill now, because even if the government gets its way and this bill is passed so it gets the interim dividend, I do not think that will be paid until sometime toward the middle of next year. I do not know whether the government has included that dividend in the budget that is coming in on Thursday and has included estimated dividends as part of the budget structure or whether it has indicated it is a policy desire and has not booked money in as part of the budget. I do not know how the government will treat the ICWA dividends. I hope it will show some respect for this house and purely indicate its desire, but not seek to incorporate it in the budget process until the bill is passed. If that is the case, in my view, there is no rush to pass this bill. We could refer this bill to the legislation committee to look at all the issues, including competitive neutrality. If I am wrong, then so be it. The legislation committee could look at the impacts of an interim dividend or a dividend, and what will be the impact on third party premiums for Western Australians should this bill be passed. The government says the impact will be negligible, and if that is the case it should show us that. It is also interesting that when we have dealt with this bill to date, the government has been reluctant to provide any details on how it sees this scheme operating. Again, if this government wants members to pass this bill, I think that a parliamentary committee, and this house in particular, should demand basic information from the government on how this scheme will operate. What is the percentage of profit that the government expects to attract out of ICWA? I do not know if the minister will be in a position at the end of the second reading speech to tell us whether the dividend will be 65 per cent or 70 per cent or what percentage it will be.

I am sure the minister will try to refer to the clauses of the legislation that state that the commission is able to provide advice to the Treasurer. However, the way this bill is structured, no matter what advice is provided, the Treasurer can still demand the dividend the government sees fit. That is the bottom line of this legislation, but even more important than that in my view is where that dividend should be set. I can understand why the government might not include in the legislation all the details of how it expects either the interim dividend or the

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full dividend to work. Is it 65 per cent of the profits? I am happy to take an interjection from the minister. Is the minister going to be able to answer that question for me when we get to the end of the second reading debate?

Hon Helen Morton: I'm pretty sure I can.

Hon KEN TRAVERS: Will the minister be able to give us any idea of the guidelines for the payment of an interim dividend? Will it be 65 per cent of the full dividend or 98 per cent of the final dividend, as it is for the Water Corporation? Will it be 90 per cent, 60 per cent or 40 per cent? The minister should provide some indication of that to this house, and that should be subjected to rigorous review by members, having obtained expert advice about what the impact of all of that will be before a bill like this is considered by this house. At the conclusion of my speech, it is my intention to move that this bill be discharged and referred to the Standing Committee on Legislation for consideration and report. Again, I am more than happy to negotiate with the government on the time frame for that committee's deliberations.

It is my view we could give that committee two or three months to consider this bill. I do not think it would need any longer than that. If the government believes there is a pressing need to get a decision before that time and feels it needs an earlier date for the committee to report, then I would be more than happy to look at that. It is my view that a two or three month inquiry to report back before the end this calendar year would give the house plenty of time to consider this legislation and for the committee to properly complete the job it is employed to do. Certainly, my intention is to move that this bill be discharged and referred to the Standing Committee on Legislation for consideration and report. I suggest as a starting point that it report no later than November, which would give us the opportunity to consider the bill in the last sitting week. This is an opportunity for the house to show whether it is a genuine house of review or whether it has become nothing more than a rubber stamp for a rampaging executive. That is where we are up to these days. I have seen very little in this chamber that shows that it is operating as a house of review in the way I believe it should.

I have a range of questions about how this bill will operate. It is certainly my intention to ask whether we should amend this bill during the committee stage. It is a bad bill. It should be rejected or, at the very least, referred to a committee. In fact, I am happy to complete the second reading stage before sending the bill to a committee, but I think the committee should have the opportunity to look at the policy of the bill.

In summary, this bill is a broken promise. Firstly, this is directly contrary to what this government said it would do four months ago. Secondly, this bill will add about four per cent per annum to premiums for every motor vehicle in Western Australia. That is well above the rate of inflation. This is nothing more than a backdoor taxing bill by this government. The third issue is in the detail of this bill. It is poorly constructed. What will happen if there is an agreement to pay a dividend, the government is so short of cash that it refuses to change it and the Insurance Commission of WA has to pay an interim dividend but it does not make the estimated profit because circumstances change in the second six months of the financial year? What will happen if ICWA operates with a deficit? Will it meet its requirement to have sufficient cash at hand? How will that operate? We could deal with those issues during the committee stage or we could refer the bill to a committee to consider those issues. As I say, if we are to pass this bill, it would be a very good start to remove the provision for an interim dividend or, if we are not able to get the agreement of the chamber on that point, we should at least amend the bill to limit the dividend to no more than the profit established in the first half of the financial year.

I hope that the minister in her second reading reply can give us the information that the government has so far refused to give us—that is, to advise us of the estimated annual dividend it expects to collect from ICWA. I note that Thursday, 31 October is a sitting day. As I again indicate to the house, if the government is prepared to support the referral of the bill to a committee but wants the committee to report earlier, I am happy to have that discussion. But it is certainly my view that it report back no later than 31 October so that we have those sitting days in November to deal with the bill. I think that is an appropriate date.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON KEN TRAVERS (North Metropolitan) [5.35 pm]: I move without notice —

That the Insurance Commission of Western Australia Amendment Bill 2013 be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 31 October 2013.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [5.36 pm]: I seek to speak to the referral motion, but can I clarify that that does not preclude me from making a contribution to the second reading of the Insurance Commission of Western Australia Amendment Bill?

The DEPUTY PRESIDENT (Hon Alanna Clohesy): That is correct.

Hon SUE ELLERY: I want to speak in support of referring the bill to the Standing Committee on Legislation. This is a serious bill. It will make a major shift in public policy by what we would describe as raiding the reserves of the Insurance Commission of WA. Because of that major shift and because of the opposition of the RAC, I think it warrants further attention by a committee. We know that the government's position prior to Parliament rising at the end of June was that there was a time constraint. This was one of the bills that it initially said it needed to get through urgently before the end of the sitting, which is why the events in the other place and the various votes that were lost were described by commentators as government management of the Assembly in a shambles. That time constraint clearly does not exist, because the government has done its budget; it is off at the printers. The government is relying on this money. It did not need the legislation in place before it put its budget to print, so it is not limited by a time constraint. In any event, the date that Hon Ken Travers has proposed is not an onerous one. It is worth noting—I am sure that Hon Ken Travers referred to this in his remarks, but I was out of the chamber so forgive me if I repeat what he said—that the compelling argument is: who is the stakeholder affected by this and what has it said? That stakeholder is the RAC.

Prior to the last election, the RAC wrote to all parties asking about the parties' intentions on compulsory third party insurance. It sought commitments from both sides of politics about the future of the Insurance Commission of WA. It got a commitment from the government that the Insurance Commission of Western Australia Act did not include any provision to pay the government a dividend. That is what the Premier told the RAC prior to the election. Of course, the Premier was quite right; the current act does not include a provision to pay a dividend. What the Premier did, though, was bite his tongue and refrain from saying what he should have said to honour the question being asked of him. He should have said, "But it is our intention and we are currently drafting legislation to give effect to amending the ICWA act so as to pay a dividend to the government", because he was. He should have said that but he did not.

Nobody in this place needs me to tell them about the RAC, but I want to make a couple of points. Firstly, it has 720 000 members. It is not a small group. It is a really important group in our community. The RAC, like many other organisations, has conducted market research into what its members and Western Australians think about the organisation. The RAC is an innovative organisation, and constantly strives to provide its members and potential members the representation they seek. What that research told the RAC, something it is very proud of, is that ordinary Western Australians, whether members of the RAC or not, consider the RAC their most valued organisation. That is what the people of Western Australia think of that organisation. Of all the organisations in WA, whether it is the Girl Guides, Scouts or any other organisation doing good things in the community, Western Australians consider the RAC their most valued organisation—and 720 000 of them are members.

The RAC issued a media release on 30 June on this matter, which states —

Legislation changes surprise motorists

The RAC says motorists deserve a detailed assurance from the State government that the move to claim a dividend from the Insurance Commission of WA will not drive up Compulsory Third Party (CTP) insurance costs.

Legislation tabled in State Parliament yesterday will allow the State government to nominate a dividend to be taken from ICWA's annual profit.

RAC Head of Advocacy Matt Brown says the move by the government had come as a surprise to motorists.

"Prior to the State election the RAC sought assurances from both major parties that ICWA would not be used as a source of additional funds for government through the calling-in of special dividend payments," Mr Brown said.

"The RAC had been reassured by the State government's response that the *ICWA Act* did not allow the payment of such dividends.

"The new Legislation will now require ICWA to offer up a dividend to the government on an annual basis.

"A further concern is that the Legislation allows the government to nominate its own dividend amount if it is not happy with what has been recommended by the ICWA. ICWA is then required to pay the dividend amount determined by the government.

Mr Brown said any profits from the CTP scheme should be returned to the motoring public through lower premiums.

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“CTP Insurance is a significant part of ICWA’s business and is a government-mandated monopoly. Motorists can’t shop around for an alternative,” he said.

“While acknowledging that ICWA has been able to keep premiums increases to a minimum in recent years, we have significant concerns that the calling in of dividends from ICWA will impact on future premium increases.”

The RAC will continue to pursue the matter with the State government.

So the organisation that represents 720 000 Western Australians says that it continues to have significant concerns and wants to monitor this legislation. That is a significant reason for the house to refer the ICWA legislation to a committee.

The government is not constrained—it has made that perfectly clear—by the time it would take to conduct that review. We owe it to those 720 000 people for whom Matt Brown speaks to make sure their issues are properly aired and to canvass how this legislation will work, to examine what the money will be used for and to look at what modelling has been done on the impact on compulsory third party insurance.

Members have heard many words from members on the other side, including Hon Norman Moore on his way out and Hon Peter Collier on his way in, that government needs to reconsider the use of committees to examine legislation. The government has acknowledged that the Standing Committee on Legislation in particular needs to be used for exactly this purpose—that is, to hear evidence from organisations such as the state’s most valued organisation, the RAC, and to come back to the house with advice and recommendations on what should be done with this bill. This is a classic reason for the house to refer this matter to the legislation committee, and it is the first test for the government. Was the new leader dinkum when he said: Yes, I agree with Hon Norman Moore that this house should refer more matters to a committee?

I urge members to give proper consideration to this, because our most valued organisation is saying, “You did not tell us the whole truth”, and the opposition is concerned about what this means for WA motorists and for 720 000 members of the RAC. For that reason, I urge members to support this referral motion.

HON ROBIN CHAPPLE (Mining and Pastoral) [5.45 pm]: The Greens support Hon Ken Travers’ motion that the Insurance Commission of Western Australia Amendment Bill 2013 be referred to the Standing Committee on Legislation. In following the Leader of the Opposition, I am mindful of the words of Hon Norman Moore in this chamber at the end of the parliamentary term in 2005. That was a time when the committee system of this Parliament was used extensively. Hon Norman Moore said that it had been a pleasure to work in that Parliament because for the first time in a very long time this chamber was doing what it was intended to do—that is, scrutinise legislation. That is the function of this chamber. There may be political debate, but the notion of the Legislative Council, based on the Westminster system, is that it is a house of review, a house of checks and balances, and as such the Greens will be supporting the referral.

I would also like to mention what honourable members have said—that the RAC tested all sides of politics before the election to ensure that no dividend would be taken from ICWA. Everybody had said that to the RAC, which, as has been mentioned, represents some 700 000 motorists. Members must consider that although it represents only 700 000 motorists, it has an overarching role to represent the views of all motorists; and it takes that seriously. Its membership may be only 700 000, but it advocates for all motorists.

Hon Ken Travers: I mean, 700 000 is a large proportion.

Hon ROBIN CHAPPLE: I am not discounting that.

Hon Ken Travers: There are not too many vehicles in WA.

Hon ROBIN CHAPPLE: Yes, but I am suggesting that while it does represent its own membership, it also represents a vast number of people who benefit from its input into the motoring issues in this state.

This unfortunately will give governments—not this government, but governments from time to time in the future—the ability to establish their own dividends. Although the dividend in this case may be minimal, the legislation provides a mechanism for future governments to generate dividends that could be retrograde. For that reason, those aspects of this legislation need to be tested by the Standing Committee on Legislation, and that is why the Greens support the motion.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [5.49 pm]: I confirm that in responding to the referral motion, I still have the opportunity to respond to the full motion. The government’s position is to not support the referral motion. The main arguments are from a letter from the RAC. That is what we have heard. I have not seen that letter from the RAC. However, I am informed that there were three main

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components to that letter. One of them related to the National Disability Insurance Scheme and seeking confirmation that it would not impact on the increases to premiums. Another was around the interim dividend, to which Hon Ken Travers has been referring, and the response the Premier gave on that issue was that nothing in the legislation would enable that interim dividend to be provided. There is no broken promise in that. There is a clear indication that that is exactly how it is. If it is not in the legislation, it is not in the legislation. That was the information that was provided. Let me say one thing about the argument that Hon Ken Travers provided. He said that he would be happy for it to go past the second reading speech stage and into the committee stage. I am aware that once it goes beyond the second reading speech, there is no room for the policy to be debated. I thought that that is what Hon Ken Travers was asking for, although now he tells me that he supports the policy. Why did he say he is happy for it to go beyond the second reading speech if that was not the case?

Hon Ken Travers: My preference is to go now. If you say you will not support it now, but you will support it after the second reading, I will agree with you to do that.

Hon HELEN MORTON: Hon Ken Travers' arguments are watered down by him saying that he is happy for it to go beyond the second reading speech stage and, therefore, he agrees with the policy, but he wants to somehow get it into the committee for other reasons. We will be able to address the issues that he has raised both during the second reading speech stage and the committee stage. There is no need for the bill to be referred to a committee.

Division

Question put and a division taken, the Deputy President (Hon Alanna Clohesy) casting her vote with the ayes, with the following result —

Ayes (11)

Hon Robin Chapple	Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Alanna Clohesy	Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Samantha Rowe (<i>Teller</i>)
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Sally Talbot	

Noes (20)

Hon Martin Aldridge	Hon Jim Chown	Hon Nigel Hallett	Hon Rick Mazza
Hon Ken Baston	Hon Peter Collier	Hon Alyssa Hayden	Hon Robyn McSweeney
Hon Liz Behjat	Hon Brian Ellis	Hon Col Holt	Hon Michael Mischin
Hon Jacqui Boydell	Hon Nick Goiran	Hon Peter Katsambanis	Hon Helen Morton
Hon Paul Brown	Hon Dave Grills	Hon Mark Lewis	Hon Phil Edman (<i>Teller</i>)

Pairs

Hon Adele Farina	Hon Simon O'Brien
Hon Darren West	Hon Donna Faragher

Question thus negatived.

Second Reading Resumed

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [5.57 pm]: I want to make a few comments on the Insurance Commission of Western Australia Amendment Bill 2013. One of the things I want to raise—the minister touched on it a bit in her response to the question of referral—is the possibility of an organisation such as ICWA being the body that funds and manages a no-fault insurance scheme à la that proposed when the Productivity Commission did its report into the care and welfare of people with disabilities and their needs for support into the future. Western Australia does not have a no-fault insurance scheme while other jurisdictions do. That has a dramatic effect on Western Australians.

People know my circumstances. My mother's brain injury occurred as a result of a car accident and we were unable to determine whether she was at fault; she went through a red light, but did she go through a red light because she had some form of aneurysm or did she just go through a red light because she went through a red light? The second scenario is slightly less believable because it was 9.30 on a Sunday morning, my mum was nearly 60 years of age and she did not generally drive through red lights, never mind on a Sunday morning. When she was in a public hospital for 10 months, we did not pay anything. She got the very best of care and I have no qualms with that. As a consequence of there not being any no-fault insurance, for the 19 years she lived after that we paid for everything. For the first 10 or 11 years of that 19 years, we sought no assistance, no subsidies, no support—nothing. We paid for everything, which included full-time care at home. Ten years of that took a strain. Without going through my father's finances, it took a strain on his finances and a lot of aspects of his life. After that 10 years, we could not directly employ full-time carers for her at home, so through the home and community care system we got a package through great providers such as Perth Home Care Services,

MercyCare and others. We paid a subsidised rate for that care, but everything else that she needed, such as regular physio and regular speech therapy, we paid for ourselves. Dad had maximum private health insurance, so when we could, we used that. But all those things have limits on them.

Without a shadow of a doubt, if there had been a no-fault insurance scheme for those 19 years, I can tell members that my father would be a much healthier person than he is today. I do not particularly want to go into the details of that.

Sitting suspended from 6.00 to 7.30 pm

Hon SUE ELLERY: Immediately prior to the dinner break I was talking about my family's circumstances when my mother suffered a catastrophic car accident and about the absence in Western Australia of a no-fault insurance scheme. I think I had made the point that 19 years of personally paying the financial costs of that care took a very significant toll on my father's health; it took a very significant toll on his and mum's finances; and it took a bit of a toll on my finances and on the finances of one of my brothers as well. It was a very significant cost for 19 years. That was for someone who had a car accident when she was 59 years old. The parent of a child who is injured in that way in a car accident would be looking at a lifetime of those kinds of costs if it could not be demonstrated who was at fault. In considering, therefore, how something might be done about that when the Productivity Commission did its work on support and care for people with disabilities, one thing it suggested was fixing up the fact that only some states have a no-fault insurance scheme in place for catastrophic injury. It recommended a second smaller scheme called the National Injury Insurance Scheme—NIIS—that would provide support for people who had suffered a catastrophic injury and would be based on widening and strengthening the existing state-based schemes. Why am I talking about this in the context of the Insurance Commission of Western Australia Amendment Bill? It is because if the government is going to take a dividend from ICWA, this is something on which it would be useful to spend ICWA's money. Indeed, for at least six years, if not longer, the Insurance Commission of WA has been engaged in modelling what a Western Australian no-fault insurance scheme might look like. When we first went into opposition I asked for a briefing from ICWA, and the officers at ICWA told me about the work they had done and that a study had been commissioned with the University of Western Australia to do some work on it. I asked a series of questions, the most recent in June 2012 when I asked the Minister for Disability Services —

I refer to calls for a state-based no-fault insurance scheme for those suffering catastrophic injuries as a result of motor vehicle accidents, including the speech last week by Dr Barby Singer at the disability reform function held here at Parliament House. What steps, if any, has the government taken to investigate the implementation and costs of such a scheme in Western Australia?

The minister answered —

Many, many steps have been taken. A lot of work has been undertaken by the Department of Treasury, the WA insurance ... and the Disability Services Commission. I have been getting regular updates on the work that has been happening. We are very much involved. It is progressing. A substantial amount of costing and modelling work has been done. I do not know how close we are to having any kind of announcements, considerations or decision making around it, but that is the process it is going through at the moment.

I referred in that question to Dr Barby Singer who had spoken just before at an event that was held by Parliamentary Friends of Disability Reform. She is a neurological physiotherapist with more than 20 years' experience working with people with brain injuries. She told that meeting that the absence of a no-fault scheme results in dramatically different support funding for people who may have identically debilitating injuries for the rest of their lives. If the cause of the catastrophic injury is not immediately attributable to someone else's negligence, they can face a lengthy court battle to prove someone else was to blame. In the event that no-one else was to blame, people are liable for all treatment and care costs. They can apply for funding to the Disability Services Commission but they join the queue. For example, my mum was 59 at the time of the accident and the Disability Services Commission told my family that funding was not available to someone about to turn 60. That is what we were told. People therefore join the queue and only 20 per cent of applicants are successful in any funding round. If, however, the cause of the injury was someone else's fault or it is covered under the existing third party motor vehicle insurance fund, they will receive funds to cover their lifetime treatment, care, support and equipment needs.

I therefore think there was a very strong case that the Insurance Commission of WA, with the significant assets it has, could have been asked by government to provide that kind of insurance. That was not considered possible, and there was an argument between the Premier and the federal government about what would be the actual costs. Agreement would have been reached on that eventually and I think a lot of the modelling work had been

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done. If we are to make a decision that we will take this dividend out of ICWA, let us make sure it is spent on something that is worthwhile and that is long overdue.

Somebody said to me previously that perhaps I had a conflict of interest. Apart from the fact that my mother is no longer with us, the fact that her accident happened long before any such legislation was in place means that unless the legislation was retrospective there is no way it would have applied to us in any event. I therefore did not see that I had any issue at all.

Hon Ken Travers: They must have been joking!

Hon SUE ELLERY: Let us be generous and say that is the case. Anyway, it is water off a duck's back; it is no drama to me; and in any event it would not have applied retrospectively. I know from our 19 years of personal experience that we are condemning people to a double burden. The burden is not only the trauma of what has happened to their family, but also their financial circumstances, not to mention their mental health, are then turned upside down for the rest of the time they have to provide the care. It seems to me, when we are talking about the Insurance Commission of WA, that it is an opportune time to be talking about what this government could be doing. We might be told by the minister, wearing both her hats, that the insurance scheme may be part of what was agreed to over the weekend.

Hon Helen Morton: No, it isn't.

Hon SUE ELLERY: That is disappointing.

Hon Ken Travers: But you have given a commitment you're going to do it, haven't you?

Hon Helen Morton: I will talk about that in a minute.

Hon SUE ELLERY: I got the answer that the minister gave me on 28 June last year; work is well underway is what she said.

I think if we are going to talk about taking money out of ICWA, rather than just using it to top up the big hole we have created by making promises we cannot possibly keep in the election campaign, we should be using it for something that will benefit the community, and I think that would be a no-fault scheme for catastrophic motor vehicle accidents.

HON SALLY TALBOT (South West) [7.38 pm]: I want to add a couple of comments to support those made by my colleagues on this side of the house about a couple of aspects of this Insurance Commission of Western Australia Amendment Bill 2013. On Sunday morning we woke to the very, very gratifying news that the Barnett government had finally decided, as the last state in Australia, to sign up to the National Disability Insurance Scheme. It was a great day. The minister knows that she was one of the people heading—probably as she heard the news that morning—for the wheelchair basketball curtain-raiser competition between “us” and “them”.

Hon Ken Travers: We even let them win as we were so excited about signing up.

Hon SALLY TALBOT: We did. We were rejoicing so much about the news that we were signing up to the scheme that we allowed the government to have a win at basketball as well! The fact that my guys did not twig to the fact that they had to get the ball through the little hoop may have had something to do with it as well! But we had a great time.

Hon Helen Morton: And that you had to sit in the chair, Hon Ken Travers!

Hon SALLY TALBOT: And that everybody had to stay in the chair, that is right. Members of my team discovered some muscles they did not know they had. I am quite sure the minister will agree with me that this should become an annual event because it was a great way of raising the profile of one of the most spectacular sporting events I have ever seen, especially once we saw the real guys playing wheelchair basketball. It was a moment of great celebration. It was appropriate that we were all at the Herb Graham Recreation Centre playing that game with them.

The signing of the NDIS reminds us all that, in tandem with the NDIS, we are looking at the NIIS, the National Injury Insurance Scheme. As my colleague Hon Sue Ellery said, the state government has given a commitment to get on with it in that regard as well, which is good news for everyone. That is why this particular cash grab—we have seen many of them over the past four or five months since the government was re-elected; this is only one of several—rings some very loud alarm bells for me. It is essentially taking money out of a place that should be spent on something else, not just to prop up the government's bottom line. I base my comments on an answer that was given by the Treasurer in the other place on 12 June. He was asked what the expected impact on third party insurance charges for Western Australian families would be as a result of the ICWA bill. As part of his answer, the Treasurer referred to the most significant cost pressure on insurance premiums in this state, being the

expense and complexity of the medical costs associated with dealing with victims of motor vehicle accidents. Then he went on to state —

The other major cost impact on motorists in this state will be, potentially, from the introduction of the National Injury Insurance Scheme in Western Australia. It will have a significant impact on motorists.

That will come as no surprise to the Western Australian community, which has been seeing articles in *The West Australian* for well over 12 months about the move by the federal government to get all the states to sign up to no-fault insurance. Some of the states already have this system. When we do the comparison of identical circumstances—the old test that everything else being equal, what is the difference in outcome in these two cases—we see how very badly many Western Australians come off compared with people in other states who may have been in identical circumstances. We can go right back to the original story that appeared in *The West Australian* on 20 February 2012 headed “WA third-party insurance seen as faulty”, which is a play on the fact that we do not have no-fault insurance. We then saw an excellent analysis by Andrew Probyn on 13 April 2012 headed “Truth is WA does not always do things better”. I am sure that the minister has read this article. I draw her attention particularly to the second page of the article. Mr Christian Porter was the Treasurer at the time. The article states —

Mr Porter knows too that West Australians enjoy much cheaper compulsory insurance at \$440 (plus GST), compared with Victoria (\$600) and NSW (\$700). Even in Queensland and South Australia, which also have fault systems like WA, compulsory third-party costs are higher at \$636 and \$661 respectively.

The journalist’s conclusion in this article of April 2012 is that we are not likely to see the government talking about this before the election because of the cost impost. I must point out to honourable members and to people reading the record of this debate that the minister with carriage of this bill in this house also happens to be the Minister for Disability Services. She has a very comprehensive understanding of exactly what is at stake here. I am raising this because I am asking the minister perhaps in her second reading summary to address this point directly. Other states that are further down the track than we are in Western Australia, such as South Australia, for instance, which is the state I would cite specifically, went through a very comprehensive process of discussion papers and green papers before they got to the stage of looking at legislation to introduce a no-fault insurance scheme. We have not seen anything like this in Western Australia. We have seen comments from the RAC, which is generally supportive of the no-fault insurance scheme. I understand from a briefing I received last week that some nervousness is being expressed about extending that to the four categories of injury.

Hon Helen Morton: The other categories beyond motor vehicle.

Hon SALLY TALBOT: Yes, there is some nervousness about that. I should perhaps explain for honourable members who are not familiar with this that we have a system in Western Australia such that one has to be able to prove negligence in a lot of types of accidents in order to claim any sort of compensation.

I refer honourable members who want to get into a bit more detail here, particularly if we are going to get to a stage where we are debating a no-fault insurance scheme in Western Australia, to an article published about the NDIS itself, although it makes passing reference to the NIIS, in *The Monthly* of August 2011. It was called “Two Nations”, which is a reference to the British Prime Minister Benjamin Disraeli, who referred to two nations in Britain in the nineteenth century, the two nations being rich and poor. He was pointing out that each group really had no idea what it was like to live as a member of the other group. That title is used for this article about the NDIS to point out what different worlds people live in once they become either disabled themselves or carers for somebody with a disability. By using case studies, the article points out very clearly what it is like to have an accident.

We just heard Hon Sue Ellery give her empirical accounts of living with this situation for a couple of decades; that is, what it is like to live in a situation in which someone has had a life-changing accident. The example used in *The Monthly* article is of a woman who was in a pool at a friend’s place. She had an accident. A big strapping chap landed on top of her somewhere around the pool. The injuries she sustained were absolutely devastating. She could not sue for compensation because the accident did not occur in a public place. For example, if the identical accident had happened just down the road at the public swimming pool, she would have been picked up by the compensation system and provided for for the rest of her life. She could not claim anything from WorkCover because the accident did not happen at work. It goes down to the level of detail. Even if she had a different kind of spinal injury—if her spinal cord had been severed—she would have been picked up by a compensation scheme. This woman falls between all the cracks. I am told that when she presented evidence to, I think, the Queensland hearing of the Productivity Commission, the commissioner who was taking the evidence said that she had never heard of such a devastating situation. I am sure it is cases such as that that informed the original Productivity Commission report that Australia should be moving in every state and territory to both an

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NDIS and an NIIS. As I said, as things currently stand in Western Australia, one has to prove negligence in order to be compensated. The four categories of accident that need to be taken into consideration are motor vehicle accidents, medical accidents, workplace accidents and what is referred to in the documents as general accidents which happen in the home or the community, which captures the situation I have just described with the woman in the swimming pool.

Plenty of material is available on various websites connected with the National Disability Insurance Scheme and the National Injury Insurance Scheme, particularly on the commonwealth government websites. That suggests that, nationally, we are making very significant strides towards putting in place a scheme. It will be a federated scheme, so each state will be in charge of its own processes for a no-fault insurance scheme. We are well advanced as a nation towards this new system, but in WA we are really only beginning to venture along the formal path. As Hon Sue Ellery said, this has been in discussion for many years and people in the Insurance Commission of WA and, I am sure, people in the Disability Services Commission and in Treasury have done a lot of modelling on what it would look like.

I refer to the answer to the question in the other place when the Treasurer conceded that one of the major cost impacts on motorists will be the introduction of this scheme. Given that is the case and that at this stage we are in the electoral cycle when there is time for the government to weigh exactly how we will move on this, I would have thought—referring to a few hours ago in this debate—that it would have been very logical and sensible for the government to have supported Hon Ken Travers' motion to refer this to the Standing Committee on Legislation so that it could have brought back to the house a comprehensive report that went into the kinds of details on the things I am raising and other people on this side of the chamber have raised about where this money should be going. If there were some way of hypothecating the money back to a no-fault insurance scheme, perhaps that would make us slightly easier about supporting this bill. But as things stand, we simply cannot do it because it looks to us—the government's reaction to our motion to refer the bill to the legislation committee appears to confirm this—as if this is just one more cash grab to fill up the black hole the government has created at the heart of its budget, when, by the government's own admission, we have some serious thinking to do about how we will pay for a no-fault insurance scheme.

I want to share with the house something said in the other place by the member for Mirrabooka, who has built up some considerable expertise in the area of compensation and insurance matters. I cannot put it more eloquently than, as she said —

This is not a debate about compulsory third party insurance in Western Australia or about the Insurance Commission of WA; it is about getting more money from the community but not delivering any benefit in return.

I think that captures very succinctly my point about the impending decision we have to make about how we will pay for a no-fault insurance scheme in WA and that we should not be taking money away from ICWA at the moment when it could be put towards this very worthy end. I will conclude by quoting the relevant federal minister at the time, Hon Bill Shorten, who said something that surely nobody in this house on either side of the chamber could disagree with —

“The only factor which should determine the level of care someone receives is the level of support they require, not the cause of their injury.”

I put it to the minister, and perhaps she will respond to this in her reply to the second reading debate, that we in Western Australia should be looking at some discussion papers on this, such as a green bill. The minister has been happy to embrace that mechanism on the rewrite of the Mental Health Act. I would have thought that in this area, given all the various stakeholders, which include every motorist in Western Australia, we should be looking at exactly what we can do in this house to implement better practice in providing a no-fault insurance scheme. In part of the article I referred to earlier that Andrew Probyn wrote, he described a scenario in which two Western Australians go to hire a car on the same day and one car is registered in Victoria and one is registered in Western Australia. He points out that a person would be crazy not to take the one with Victorian plates. In an identical accident, through the fault of the drivers, both cars could be driven into a tree and both drivers could become severely disabled, but the driver of the car with Victorian plates would have disability care paid for the rest of his or her life, whereas the driver with the Western Australian plates would be in the situation we have heard described by Hon Sue Ellery. That is an absolutely ludicrous situation that we should be working very hard to bring to an end. It seems clear to me and other members on this side of the house that if a dividend is to be reaped from ICWA, this is exactly the sort of thing it should be spent on.

HON NICK GOIRAN (South Metropolitan) [7.55 pm]: I rise to make a contribution to the second reading debate on this bill. In doing so, I want to suggest to members that the issue that might be best considered by this chamber is whether there should be a surplus in the first place that might then be used as a dividend. The context

of my comments requires members to be familiar with the system that is in place in Western Australia. As has been outlined by a couple of members, including the last speaker, in this state a person injured in the course of a motor vehicle accident needs to demonstrate negligence on the part of another driver before they are able to claim any compensation for injuries they may have suffered. We have a fault system in Western Australia. I acknowledge the comments made by the previous two speakers about the consideration of the no-fault scheme. While I am at it, I acknowledge particularly the personal stories shared by the Leader of the Opposition because, for what it is worth, I think it helps from time to time to personalise these matters and to understand that they have a very real impact on individuals as well as families in the wider community.

If someone is injured in the course of a motor vehicle accident and someone else is at fault, they can consider putting in a claim with the Insurance Commission of Western Australia and persuade ICWA that the other person is at fault, and that will open the door for some form of negotiation on how much they might be able to claim. A number of different categories may be available to people. Briefly, they are either general damages or special damages. I will return in a moment to the issue of general damages because it is my proposition this evening that if our system properly compensated people for general damages, I doubt very much there would even be a dividend available to be distributed. But I will return to that in a minute.

Hon Ken Travers: Would it not be about how you set your premiums?

Hon NICK GOIRAN: No, not at all, but bear with me.

One of the categories under special damages is economic loss. In other words, if as a result of a motor vehicle accident an injured person is unable to work for a period, they are entitled to make a claim for past wages. If they are able to demonstrate to and persuade the Insurance Commission they are unable to work into the future for some period, in a part-time sense or they are completely incapacitated for work, they can claim for future economic loss. In addition, they can claim for medical expenses that they have incurred to date and those they may have to incur in the future. I have to say that the Insurance Commission is pretty good in this respect. If it acknowledges there has been liability, it generally pays people's medical expenses during the course of the claim. ICWA is under no obligation to do so but I think it is a good and appropriate gesture of goodwill by the state insurer to do so. In addition, a person might be able to claim their travel expenses for travelling to and from medical appointments; there is also a category commonly referred to as a claim for gratuitous services. Members need to be cognisant of the contrast between that category and general damages, because in my view there is a deficiency in the current system of compensation in this state that ought to be addressed; and, if it was, I doubt very much there would be a surplus to divide.

The distinction between general damages and a claim for gratuitous services is simply this: general damages is a claim by a person for pain and suffering, loss of enjoyment of life and loss of amenities. It is a figure the courts place on that perhaps incalculable thing that is the suffering that somebody has undergone as a result of their injuries; their, as I say, lack of enjoyment of life or lack of ability to do certain things they might otherwise be able to. It is a very difficult thing to quantify. It is not like lost wages, which is done by simply looking at the pay slip and working out how many hours have not been able to be worked as a result of the injuries. In Western Australia, general damages is worked out by way of a table of percentages, and an injured person is required to demonstrate what percentage they would be on a scale from zero to 100 in comparison to the most extreme case. In other words, if someone is considered to be the most extreme case of an injured person in Western Australia as a result of a motor vehicle accident, they would be 100 per cent; naturally, the scale covers everything between zero and 100.

The point that causes the problem is that since 1994 in this state there has been a legislative impediment to people getting the compensation they are rightfully entitled to. In 1994, that threshold was \$10 000. For those following, when someone claims general damages, which is pain and suffering and loss of enjoyment of life, since 1994 they have been unable to claim the first \$10 000. So, if someone's pain and suffering and loss of enjoyment of life was considered by the court to be worthy of \$9 000 compensation, they would get nothing. Guess who gets to keep the \$9 000? The Insurance Commission of Western Australia. Interestingly, since 1994 that figure has increased on 1 July every year, and members might be interested to know that the current threshold—the current deductible—is \$19 000. So, as we leave Parliament and go home this evening—I certainly hope it does not happen—if any of us are involved in a motor vehicle accident and it is somebody else's fault, guess what? We are unable to claim the first \$19 000 of our pain and suffering, loss of enjoyment of life and loss of amenities compensation; the Insurance Commission gets to keep it. It is what is referred to as a deductible. What is really interesting is that interchangeable, tricky terms are used—"threshold" and "deductible". They are two very different things, but in these types of cases these terms morph together and are used interchangeably. But there is a big difference between a threshold and a deductible. A threshold is like a high jumper; they have to jump over the bar. That is what the threshold is, and once someone has jumped over

the bar, then they get the whole lot. A deductible is an amount that is taken out of the amount that someone would otherwise get. The reason the terms are used interchangeably is that on this scale of between zero and 100 that I referred to earlier, between the percentages of 15 per cent and 20 per cent there is a sliding scale. Members will recall that I said if someone was injured today in the course of a motor vehicle accident, they would not be able to claim the first \$19 000. However, if their claim is assessed to be more than 15 per cent, then that starts to reduce incrementally until such time as they hit 20 per cent of the most extreme case, in which case the \$19 000 is completely phased out. The issue is that if a person puts in a claim and says, "I am 20 per cent of the most extreme case", then they are entitled to \$77 695 in general damages for their pain and suffering, loss of enjoyment of life and loss of amenity. They would get that whole amount—\$77 695. But if someone is at, for example, five per cent of the most extreme case, then their general damages would normally be \$19 000 but they would get zero.

Some members might ask why we have this complicated system in Western Australia for these injured people; these people who, through no fault of their own, have been injured in the course of a motor vehicle accident, and yet we, the state, ensure that they cannot have the first nearly \$20 000 of compensation. Why would we have such a system? The philosophy or rationale, if you like, goes something like this: in my opinion, it is an overreaction, once upon a time in this state, to people observing what happened in the United States of America. Speaking to people in this state, there is some kind of fear that we will become such a litigious society as the United States that we have to hold that type of culture back. I understand why people say that, but with the greatest of respect to the people who hold that view, they do not understand the distinction between the Australian legal system and the American legal system. The two systems are completely different in the award of damages in a court. The Australian courts and Australian common law system do not provide a large sum of compensation for injured people. Why is that? It is just case history—case after case after case. Even if someone was involved in a catastrophic situation, they would not get a large amount of compensation under the Australian common law system. That is with us to stay, unless, somehow, someone is able to come up with some creative statute to direct the courts otherwise. But if we leave the common law system as it has been for decades in this nation, people will not receive a large amount of compensation. So, I think that fear people had was misplaced, nevertheless that is why we had it.

So a very blunt instrument was brought in by the legislature that meant that these small claims did not clog up our system, and people did not get money they should not really be getting. So, in other words, if someone is only five per cent of the most extreme case and the courts would normally give them \$19 000 for their pain and suffering, they are going to get zero because the system thinks they have a minor case. I am not going to argue that point this evening; that is a philosophical discussion that we perhaps need to have on a different date. But what I do want to bring to the attention of members is that every time someone gets injured in a motor vehicle accident and their claim is assessed to be between zero to five per cent of the most extreme case, the Insurance Commission keeps \$19 000 of that person's claim. That is, \$19 000 every time goes into its bottom line and creates the very surplus we are now having discussions on what should be done with it—should there be a dividend. My argument is that if people were given the \$19 000 they should be getting in the first place, then maybe there would be no surplus to divide. But worse than that, there will be people who will strongly disagree with me and say: No, no, no; we need to make sure these minor claims are not awarded any general damages. We will give them medical expenses, we will pay for their doctors' bills, we will pay for them to take a taxi to the physiotherapist and we will even pay for lost wages. We can live with that, but we will not give them anything for their pain and suffering and loss of enjoyment of life. If people hold that view, I ask them to explain why it is that above five per cent the Insurance Commission still keeps \$19 000. If the definition of a "minor claim" is anything less than five per cent—that is, those people have not suffered enough and we are not going to give them any money—if it is the collective view of all the legislators in Western Australia that it will be kept at its current level, why is it that above five per cent a person still does not get the \$19 000? Why is it that a person has to wait until they get to 15 per cent before there starts to be an incremental reduction in this deductible? Until such time as 20 per cent of the most extreme cases is reached, we say: You know what, you have been sufficiently injured; we will give you the whole lot. That is a question that requires some consideration in the years ahead with respect to law reform in this area. If we were to do that, we might find that the Insurance Commission of Western Australia might not be as flush with funds as it appears to be courtesy of its various investments around the state, which provides the context of the current debate.

I said earlier that I wanted to contrast that with this other head of damage known as gratuitous services. Some members might ask: what on earth is a claim for gratuitous services? A gratuitous service is a service provided to the injured worker for something that they would have otherwise done themselves. I will provide examples. I hope that as I give these examples members will not accuse me of some form of sexism or anything like that; it is just an example, so everyone take a deep breath. Imagine if the injured person is a male. Imagine if the male is sufficiently skilled, perhaps somebody other than myself—they might be a good handyman at home! In the

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context of the court considering the situation for this injured person, they provide some handyman services around the home but as a result of their injuries they are not able to do that anymore. Maybe their brother comes to provide services to the home. That is what is referred to as a gratuitous service. If I can take the story a little further, and not incurring what is wrath, imagine if the injured person is a female and that the female is providing some kind of household chores around the home, but as a result of her injuries is unable to do that any longer and maybe the sister of that person comes to provide those services.

Hon Ken Travers: Or her brother.

Hon NICK GOIRAN: Or the brother; very well put, Hon Ken Travers.

Hon Ken Travers: I am trying to save you.

Hon NICK GOIRAN: Thank you. I appreciate the assistance on this occasion!

Imagine if that happens and that is a form of gratuitous service that there could be a claim for. The reason I say “could be a claim” is again the legislators in their great wisdom once upon a time decided they would create this thing called a threshold for gratuitous services. The current amount, which interestingly went up recently, is \$6 500. In other words, we would not want people to make small claims. Imagine if someone had to provide their services and it was only \$5 000 worth—why would we want them to be able to claim that? We certainly would not, so what we do is create these thresholds and say, “Unless you can jump over this high jump bar, which is \$6 500, you get nothing.” However, lest anyone be confused that in some way I am being disparaging of the system in respect of gratuitous services in this state, at least it is a lot better than the outrageous system that we have in regard to general damages. Here it is a genuine threshold—as soon as a person jumps over the \$6 500, they get the whole lot. In other words, if the services provided in a person’s household total \$10 000, they get every cent of that \$10 000. And why not? This person has been injured through no fault of their own. Perhaps some bozo or someone drinking too much has collided into this poor person in their motor vehicle and they are suffering as a result. Our system ensures that they suffer a little bit more because we will not give them the full compensation they are entitled to, but at least with gratuitous services, as long as they jump over that \$6 500 threshold, we will give them the whole lot. Why on earth create a system like that that says we will make it a genuine threshold for gratuitous services but when it comes to general damages—pain and suffering, loss of enjoyment of life, loss of amenities—no, there will not be a threshold, it will be deductible unless somehow it can be proven that the person is in 20 per cent of the most extreme cases?

It is a little disturbing that the system almost somehow rewards the more catastrophic case. We sort of say to people, “You haven’t been injured enough. You’ve been injured a little bit. You’ve been injured 19 per cent of the most extreme cases but, sorry, not 20 per cent, so we’re going to keep some of the money away from you.” I wanted to share that with members so they have a proper appreciation about what happens each and every time somebody puts in a claim in this state as a result of a motor vehicle accident when they are not at fault. That is the system. It has been the system for a long time. As I said, this threshold and deductible for general damages was put in place in 1994. I appreciate that for the learned observer it was my team that was in government at that time, but I was not here then so I am not going to stand here and defend what happened in 1994. That is just the way it is. That is the system. It has been here for nearly 20 years. Since 1994, \$10 000 for every one of those claims was kept by the Insurance Commission; today \$19 000 is kept.

I have not given a great deal of thought to this evening’s contribution so I have not had the time to do the mathematics and get the stats on this to consider how many claims have been put in, how many of these claims have been settled for five per cent and less and how many are being settled between that sliding scale of 15 and 20 per cent, but it would make an interesting exercise. If I had nothing else to do, perhaps I would do it. If people are really concerned about it, it actually requires some kind of formal mechanism or some form of review to consider how we might improve that because it is something that is never talked about, probably because most people do not know about it. Unfortunately the injured person only finds out about it when they have had a terrible accident. They leave the lawyers’ office scratching their head, thinking: How can it be; I did not even do anything wrong. The Insurance Commission itself admits that the other driver was at fault. We have all got our little—I was going to say rego stickers but we do not have them anymore. We have all paid —

Hon Ken Travers: We should, shouldn’t we?

Hon NICK GOIRAN: I do not want to open that can of worms for Hon Ken Travers because I know he has strong views about that matter! I want to stay relevant to the matter at hand. We pay our premiums courtesy of our registration. The injured person says, “I’ve paid that.” Presumably the other driver also paid it. Even if the other driver did not pay it, the person still gets the claim—that is the good thing about the Western Australian system, and rightly so. Why on earth would we have a situation in which an injured person would not be able to claim because the other imbecile does not pay their premium? Thankfully the legislation in Western Australia caters for that situation and, as I say, quite rightly so.

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Hon Ken Travers: In some states the registration stickers used to be formally recognised for third party insurance as part of the rego sticker.

Hon NICK GOIRAN: I defer to Hon Ken Travers' greater knowledge of all matters to do with stickers.

I should indicate, just to wrap up, because time is ticking, that of course there is also a capacity in the Western Australian context for an injured person who puts in their claim with the Insurance Commission of Western Australia to get some contribution towards their legal costs, assuming they want to be represented, which I imagine a significant number of people would like to be, because this system, as I hope some of this contribution tonight has indicated, is not straightforward. Some technicalities are involved. Consequently, if people want an opportunity to claim some compensation to deal with the very types of issues that Hon Sue Ellery mentioned about management post-accident, they have only one chance to get it right. So most people choose to get some legal representation, and naturally they are entitled to some contribution towards their legal costs. I have to say that, similar to all my remarks this evening, this is not a criticism of the Insurance Commission of Western Australia; I think it does quite a reasonable job. It is, quite rightly, keeping that \$19 000 every time, because it will say, "Well, that's what the legislation is here to do." Those people are public servants administering these claims and, quite rightly, they are doing the right thing by the taxpayer and making sure, if members like, that those funds are assessed appropriately, as a court would. Of course, if there is a dispute, it can ultimately go to court. That is not a criticism of those officers; they are just doing their job, but they are administering a broken scheme, in my view. It is a scheme that is unfair for the injured motorist. As I said, it is the injured innocent motorist who is being let down by the current system.

In conclusion, notwithstanding my comments this evening, I support the bill. The reason I support the bill is that if, after the administration of a fair and equitable scheme, some money is left over—there is a surplus in the coffers of the Insurance Commission—I do not have an issue with the dividend. My issue is: why is there a surplus in the first place? Why are there these excess funds? Members opposite, in fairness to them, have argued this evening that those surplus funds could be used for a new scheme. I am not here to comment about that; I am talking about the current scheme—the one being administered at the moment for the innocent motorist in Western Australia. If that was done fairly, I do not think there would be a surplus and I do not think there would be much of a dividend to distribute, but if there were, so be it. I do not propose to lose any sleep over the fact that the Insurance Commission is going to send a dividend back to the government.

With those comments, I hope that at some point—maybe even in this term of government—there might be a review of the scheme in Western Australia to see whether we might not be able to improve it where there are some deficiencies. Presumably, no-one will ever argue that we have the perfect system. There can always be room for improvement. I hope that there would be some cause for review and that that might happen some time during this term of government. Nevertheless, as I said, I support the second reading of the bill.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [8.24 pm] — in reply: I would like to begin by thanking members for their contributions to the debate on the Insurance Commission of Western Australia Amendment Bill 2013. I go along with Hon Nick Goiran in particularly acknowledging the contribution by Hon Sue Ellery in talking about her personal case and the implications of that. I really appreciate it and I hope that I will be able to expand a little on that later. I am also conscious that people are aware that they want to get to the committee stage so that they can ask some questions of my advisers through me, but I have some things that I wish to say before we get there.

In Western Australia, minimum requirements for government trading enterprises to achieve competitive neutrality include being subject to both full commonwealth and state tax-equivalent payments and the payment of dividends to the consolidated account. The majority of Western Australian GTEs, from large utilities such as the Water Corporation and Western Power through to smaller entities such as the Western Australian Treasury Corporation and the Gold Corporation, are subject to these requirements. Under current arrangements, the Insurance Commission of Western Australia is subject to full commonwealth and state tax-equivalent payments. However, unlike most Western Australian GTEs, the Insurance Commission is not required to return any portion of its profits to the state in the form of dividends.

This bill will align the Insurance Commission of Western Australia to other state-owned GTEs by making it subject to dividend provisions. I think Hon Ken Travers was particularly keen on getting some information about this competitive neutrality and why it is involved in ICWA. The intention of competitive neutrality is for government trading entities to operate as in a commercial world, including providing a return to shareholders. Across Australia where compulsory third party insurance is run by government-owned monopoly providers, such as in Victoria, South Australia, the Northern Territory and Tasmania, they all pay dividends as well as national tax-equivalent payments.

The bill will provide for the Insurance Commission to recommend both an interim and a final dividend payable each financial year. The interim dividend recommendation will be based on 65 per cent of the year-end forecast profit position after tax, and the final dividend recommendation will be based on 65 per cent of the actual profit after tax less any interim dividend paid. When making a dividend recommendation, if the Insurance Commission believes there are any factors or circumstances that the minister needs to take into account when determining the value of the dividend payment, it has the opportunity to inform him or her. If the Insurance Commission does not believe it is in a position to pay an interim or final dividend for a financial year, it can make that recommendation to the minister as well. The government expects the commission to use its considerable experience in the insurance industry when making a recommendation to the minister about the interim dividend. We would expect the commission to be conservative to cater for any circumstances that might lead to the full-year profit forecast changing. The interim dividend, while advised by the commission to the minister by the end of February, is payable by 30 June that year. Should any changes occur to materially alter this full-year profit estimate, the commission will raise this with its minister.

Throughout these speech notes that I am pretty much reading from, the minister is referred to —

Hon Ken Travers: I was about to take a point of order —

Hon HELEN MORTON: Was Hon Ken Travers?

Hon Ken Travers: — and then I thought, “Surely not.”

Hon HELEN MORTON: I will also go on to refer to the Treasurer and the minister needing to have concurrence, and that is, of course, in a case in which the minister is not the Treasurer.

Hon Ken Travers: He would still need to write to himself.

Hon HELEN MORTON: I will still need to use these words as though the minister and the Treasurer may be two different people.

Hon Ken Travers: No; even if it is the same person, he will still need to formally get concurrence from himself. He will write to himself.

Hon HELEN MORTON: Okay. The minister, with the Treasurer’s concurrence, will either support the Insurance Commission’s recommendation or recommend that a different amount be paid. If the Treasurer seeks to vary the value of the dividend payment from the recommendation, he must consult with the Insurance Commission first. If the minister, with the Treasurer’s concurrence, varies the amount payable from that recommended by the Insurance Commission, notice of that variance must be included in the Insurance Commission’s annual report for that year. As the annual report is tabled in Parliament, the process will be accountable and transparent. It would clearly not be in the minister’s or the Treasurer’s interest to fix a high-value dividend as this may result in a significant increase in compulsory third party insurance premiums and could compromise the financial viability of the Insurance Commission. As the government is ultimately responsible for the Insurance Commission and its liabilities, it has a vested interest in ensuring that it remains a financially viable organisation. While the implementation of dividend payments will not increase CTP premiums directly, it will impact on the value of funds available for investment. Funds available for investment are one component of the compulsory third party premium calculation. If the Insurance Commission considers that the payment of a dividend will create a need to significantly increase the compulsory third party insurance premiums, it can inform the minister of this when making the dividend recommendation, and the minister, with the concurrence of the Treasurer, can then recommend that either a different amount or no dividend be paid to mitigate this happening.

The recommendation of the compulsory third party insurance premium is a complex calculation that is undertaken by an actuary. Many factors already contribute to the compulsory third party insurance premium calculation, such as the volatility in investment returns, increasing health care and litigation costs and the growth in average incomes. Taken alone, these costs will influence compulsory third party insurance premium increases in the future. Given that these factors already contribute to the compulsory third party insurance premium calculation, incorporating a reduction in funds available for investment due to the payment of a dividend will not significantly impact on the final premium calculation. Compulsory third party insurance premiums have risen four times since 2003 and actually reduced in 2006. Western Australia has the lowest compulsory third party insurance premiums in the country. Premiums increased by 4.1 per cent in 2013–14, or by approximately \$9 per vehicle. I will compare the premiums payable across the states and territories. As I have said, the premiums in WA remain the lowest in the country. Members have also indicated that some other states have a no-fault insurance scheme in operation. For 2012–13, the premiums in New South Wales were \$528; in Victoria they were \$409.20; in Queensland they were \$322.30; in South Australia they were \$460.90; in the ACT they were

\$578.60; in Tasmania they were \$344.30; in the Northern Territory they were \$501.60; and in Western Australia they were \$245.30.

The introduction of dividend payments will have no impact on the Insurance Commission's investment policy. The Treasurer already determines the Insurance Commission's prudential guidelines for investment using Australian Prudential Regulation Authority rules as a guideline, recommends asset allocation for the investment portfolio and approves the appointment of new investment managers. The Insurance Commission's investment strategy is currently based on the primary need to match its investment assets to claims liabilities, with a focus on achieving long-term returns. Neither the prudential guidelines nor the investment strategy will change as a result of the dividend provisions.

Dividend payments from the Insurance Commission will be paid to the consolidated account. This means that money will be received by government in a transparent manner to be used for the benefit of all taxpayers. It will be used to assist in the funding of schools, hospitals and roads et cetera and for the provision of government services rather than being locked within the investment accounts of the Insurance Commission.

I will address some of the issues that have been raised. The levy relating to WA Inc was introduced in 1993 and removed in 1996. Sometime during that time I was a senior public servant—I was the regional director of health in the midwest area and had an office in Geraldton. I identified that we were paying a very high price for a building and that we could save a whole lot of money if we could move to another building, if another building became available. However, at that time I was clearly told that the building we were in was owned by SGIO and that the very high price was part of the cost to government of recouping the funds that had been wasted during those times; consequently, we had no choice and were not allowed to move into a cheaper rental that might also have been a better rental.

I will talk about the National Injury Insurance Scheme in a minute. Irrespective of the dividend policy, the impact on compulsory third party insurance premiums was estimated in the other place at between \$70 and \$100 per vehicle. Some of the modelling that I have seen on the NIIS indicates that that is the likely range of increase per vehicle. As I said before, that work is continuing. I appreciate the personal and first-hand experience that Hon Sue Ellery has had of the impact of not having an NIIS in operation in Western Australia. I became interested in the whole idea of no-fault insurance in around 2005. I think Hon Sally Talbot was with us when, as a committee, we went to look at a no-fault insurance scheme in New Zealand. I subsequently got a parliamentary intern to undertake some work on no-fault insurance schemes that operate in other jurisdictions such as New Zealand and their applicability to Western Australia. That work continued to enthuse me with the notion of having a no-fault insurance scheme operating in Western Australia. I agree totally with the comments that were made about the value of an NIIS. I am particularly keen to continue to push for it to the degree that I have a level of influence when dealing with Treasury et cetera. I will not let up on that. Part of the agreement that has been undertaken to implement the National Disability Insurance Scheme in Western Australia is that we will continue to progress the NIIS, and in the interim we will be liable for the full cost of implementing an IIS in Western Australia. As has been commented on, it is a federated model. That is something we are committed to making happen.

Hon Sally Talbot talked about the weekend basketball game, which I thought was good fun. I agree with what everybody has said about that. It reminded me again that at one point in my career as an occupational therapist I specialised in spinal injuries. I worked at Shenton Park for a lengthy period and then transferred to the Royal North Shore Hospital spinal injuries unit in Sydney and worked with people with all degrees of quadriplegia and paraplegia. Hon Sally Talbot commented on there being two nations. The difference between those people who were able to claim funds through a negligence scheme and those people who were not funded was very, very clear. There would be two people with identical injuries and identical levels of paraplegia or quadriplegia and one would be getting significant funding to enable them to have a quality of life while the other would not be getting anything. Once they left the hospital and the rehabilitation centre I was working in, some people went on to have round-the-clock assistance at home et cetera, while others had nothing and relied on family and friends to help them get through the day and the week. It was therefore very clear to me, even when I worked in that area, that this assistance was not there and that we needed to sort that out. I guess, therefore, it has come full circle for me, having the opportunity to work on that particular policy while I am in this job.

Out of interest, and in response to Hon Nick Goiran, one thing I did in my working career was pioneer private occupational therapy in Western Australia. I had a business in Bicton and an associate whose full-time job as an occupational therapist was to assist in assessing personal injury claims and to look at all aspects of the quality of life and daily living skills that people would need assistance with and how that would be quantified in preparation for those sorts of claims. I therefore had some opportunity to see that system in play as well.

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Thresholds and deductibles keep the WA compulsory third party scheme affordable. I am told that the scheme is not structured on the fear of a United States-type legal system; it is structured to avoid the South Australian system. The South Australian government is introducing caps and thresholds in the same way that WA has, but South Australian premiums are almost double WA premiums. If we were to introduce the South Australian-style system, compulsory third party premiums would double from around \$230 to over \$460 each year per vehicle.

The other comment I make, which I think I made in the body of my second reading speech, is that the premiums paid for this scheme at the moment do not cover the costs involved in providing assistance. The scheme actually runs at a loss. ICWA is able to balance its books each year because of the profits from the investments that are made throughout the year. That is another reason that Western Australia has significantly lower premiums than the premiums in other states.

As I said before, I am absolutely certain that people do not want to hear me talk any longer on this and that they want to get to the committee stage. I am therefore very happy at this stage to commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Liz Behjat) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 1: Short title —

Hon KEN TRAVERS: I was interested to note some comments made during the dinner adjournment after the minister made the claim that this bill seeking dividends from the Insurance Commission was not a broken promise. I was fortunate enough to sit at dinner in the dining room with some year 12 politics and law students. They are from my old school in fact, Mount Lawley Senior High School; so they are very well educated, excellent students, as Mount Lawley school does produce those. I explained to the students what had happened as best I could. I explained that the RAC had written to the government and asked whether it intended to take dividends out of the Insurance Commission of WA, and that the government had responded to the effect that the Insurance Commission of Western Australia Act did not allow that to happen. I said to them, “Now the government has legislation in this place to allow that to happen and the government is saying that’s not a broken promise.” I can assure the minister that their response was derisive laughter. Without any prompting and without anything else said, they just burst out laughing. That is what they think of the government’s explanation that this is not a broken promise. This is a broken promise. Those who live in the parallel universe that is Barney’s world can try to kid themselves that it is not a broken promise, but the population out there in the community and the people who will pay the increased premiums as a result of this legislation will understand that it is a broken promise. The minister can kid herself but she should be under no illusion that she will find that when year 12 students—admittedly very interested students in this area as they are studying politics and law—can get it and work it out straightaway, the rest of the community will also understand that this is a broken promise.

The other point that I thought was interesting in the minister’s response was her comment on competitive neutrality as if it were some law or rule cast in stone and given to us on tablets that we must comply with. The reality is that competitive neutrality is just a term that the government uses. There are some elements of competitive neutrality that were a requirement, if I recall correctly, of the original GST agreement, or the intergovernmental agreement that was signed back in 1999 as part of the GST agreement. I might be wrong but I have a feeling that was when competitive neutrality came into being. But requiring ICWA to pay a dividend was not a requirement of that competitive neutrality. I ask the minister: if it had been a requirement of competitive neutrality for ICWA to pay a dividend—if the minister’s submission to the house tonight is that it is an absolute requirement to comply with competitive neutrality as some law or some great virtue that we have to agree to—then why, when the Liberal Party wrote to the RAC before the election, did the minister not tell the RAC that the act does not provide for this but competitive neutrality will require us to change the act to allow for it? Why did the minister not tell the RAC that before the election?

Hon HELEN MORTON: I am absolutely certain that the peals of laughter from the year 12 students were probably related to the way Hon Ken Travers coined the question or phrase or talked to them about it because what was provided was a statement of fact. The statement of fact is that the current legislation does not allow this to happen. That is a statement of fact. It is not a lie or a broken promise; it is nothing more than a statement of fact. That is what is in the act and that is what the Premier told the RAC. We cannot dress that up as anything else. It is a statement of fact. If Hon Ken Travers is suggesting that the Premier is lying by making that statement, I say that it is a statement of fact. That is what is there.

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Hon Ken Travers: The question was: are you going to take the dividends? Your answer was, “The act doesn’t allow us to take dividends.” That is clearly saying to the RAC that you don’t have any intention of taking dividends.

Hon HELEN MORTON: The statement of fact was made. If that is all the member has to go on—that is, suggesting that it is a broken promise—that is not a very strong position.

The member also mentioned competitive neutrality as if it is a promise. Competitive neutrality is a policy that we have adopted and we will continue to operate. That is the policy that I read out about the government trading enterprises operating in a commercial world, including providing a return to shareholders. They are doing that across Australia in these compulsory third party schemes that are run by government-owned monopoly providers. Western Australia is being very consistent with other states in that respect. The idea of ICWA paying a dividend has been publicly known for some time. Nobody has been trying to hide that or pretend otherwise. The previous Treasurer wrote to the commission several years ago noting the proposal. This was noted in the commission’s annual report and statement of corporate intent. The commission indicated that it would work with the government. It is not anything new.

Hon KEN TRAVERS: That is why groups such as the RAC were asking whether the government would be taking dividends from ICWA. That is why the government gave it an answer, which suggests to me from what the minister is saying today that it was a deliberately tricky answer. The question is: is the government going to take a dividend? The minister answered by saying that the act does not allow it. The bit in lemon juice, or the fully funded fully costed plan, was, “What we won’t tell them is that we’re going to change the act after the election.” That is effectively what the minister said today. If she is saying that it was well known before the election that this was going to happen, whenever any group in Western Australia such as the RAC gets a commitment from the Liberal Party, it will have to go through it with a fine toothcomb to work out whether something in the answer is missing. The first impression we got from that answer was, “They’re not going to be taking it because the act doesn’t allow it”. Now we need to go back and ask whether the government is going to change the act. “Fair dinkum”, as Tony Abbott would say, or “fair suck of the sauce bottle”. We get used to these nonsensical answers from the government in this place. It is tricky all the time. We ask a question and by reading through the response, we work out that it is trying to be tricky with the answer so we have to come back the next day with another question to pin the government down. Unfortunately, that is what we do on a daily basis. Groups such as the RAC should not have to go through that process of dissecting and working out whether there is an angle on this answer. Even though the question was, “Are you going to implement a dividend”, the answer we have does not give a clear absolute no; it just gives the impression that we now need to go back and ask subsequent questions to get to that point.

The other thing that is really interesting in this whole debate is this argument that ICWA operates the third party insurance scheme as a corporation and the government is the shareholder. I look at third party insurance in the context that technically the government might be right but, in reality, it is a mutual scheme in which we all come together, we pay a premium and we get insurance as a result of that. We see the profits going back into that mutual scheme. That is exactly what has been happening over the past couple of years. ICWA operates on a solvency ratio of about 125 per cent. That is the minimum solvency ratio that it wants to have. It wants assets worth 125 per cent of what its potential claims might be. A couple of years ago, because of its solid investment portfolio, it was up to about 150 per cent. This allowed it to not increase our premiums for the next two years. As the mutual holders of that insurance scheme, we were able to get the benefit of those profits that were achieved two years ago. They have been passed back to us through lower premiums. That is how a mutual scheme operates. Tonight the government is now saying, “No, you can’t do that; we’re going to change that. We’re going to take 65 per cent.” I am not sure that it is 65 per cent. The government has not even given us an assurance that it will be 65 per cent.

Hon Helen Morton: Because it can vary; you’ve been told that.

Hon KEN TRAVERS: The government is introducing a scheme and the minister will not even tell us how much it will take. The reason I have to ask this is because I cannot rely on her word. I have to get her word and then dissect it, which the minister is saying the RAC should have done before the election. The reality is that those profits have been returned to the policyholders, who are part of that mutual scheme, by way of lower premiums for the past two years. This year premiums will go up by 4.1 per cent, or about \$10 per vehicle. I asked during the second reading debate what dividend the government was expecting to get out of ICWA each year but I did not get an answer. If I did, I missed it, and I apologise if I did. We have now gone past the end of the financial year so the government must have some idea of what the profits were and what it expects to get out of ICWA in dollar terms. My estimation, based on media reports, is that it is about \$25 million to \$30 million. As I said to the chamber earlier, it is somewhere around \$15 million. Arguably, if this bill was not going through, the premiums may not have increased by 4.1 per cent this year. I think it is completely disingenuous of

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the government to suggest that it is entitled to get a return on investment out of this scheme. Effectively, the assets of the Insurance Commission are the assets held by it to administer the motor vehicle third party legislation. When I respond to some of the comments of Hon Nick Goiran, I will refer to the fact that the ICWA act changed the issues that he raised earlier in the debate tonight. The assets are produced through the Motor Vehicle (Third Party Insurance) Act. In that sense, they are not profits of ICWA; they are profits from compulsory third party motor vehicle insurance. There is no way the government can dress it up other than, for want of a better word, as a tax on those insurance premiums and to take a percentage of the profit.

I asked the minister before and I will ask her again to be clear: what is the government's intention with respect to the percentage of profit it wishes to take, because trading enterprises have different amounts, and for the last financial year, what premium would the government have received?

HON HELEN MORTON: Hon Ken Travers is right on target; the dividend is estimated to be between \$25 million and \$30 million. The amount is subject to consideration by the Insurance Commission, taking into account the many factors I mentioned. Hon Ken Travers asked whether it was based on 65 per cent. The 65 per cent is the base on which that consideration commences. If other extenuating circumstances make that consideration lower or higher, they will be taken into account starting from that base level. Subject to the passing of this bill, the commission will make a recommendation to the minister with reference to the 2012–13 year.

Hon KEN TRAVERS: If it is 65 per cent and last year's dividend would have been \$25 million to \$35 million, can the minister confirm my back-of-the-envelope calculation that with just over two million vehicles in Western Australia and \$30 million from premiums, that works out at \$15 a vehicle? That \$15 a vehicle will need to be paid to ensure ICWA can maintain its solvency ratio and collect enough to pay the dividend the government is expecting.

Hon HELEN MORTON: It has already been agreed that compulsory third party insurance will increase by 4.1 per cent. The passing of this legislation will not alter that. Whether this legislation is passed or not, that increase will stand. Third party insurance premiums will not increase for this financial year over the 4.1 per cent.

Hon KEN TRAVERS: In calculating that 4.1 per cent, was the need to pay a dividend taken into account?

Hon HELEN MORTON: No.

Hon KEN TRAVERS: I find that extraordinary, to be honest. The minister is telling the chamber that she calculated what would be paid in a dividend, but she did not take into consideration what would have to be paid out. In reality, if that money is not taken out in a dividend, it will remain with the Insurance Commission. I do not know what \$25 million to \$30 million will do to the solvency ratio of ICWA, but I know that a couple of years ago the solvency ratio reached 150 per cent because of the cash surpluses that had been held in what I would call the mutual fund of the motor vehicle insurance fund. Because it was so high, the Insurance Commission did not need to increase premiums for at least two years. It is impossible to say that taking out \$25 million to \$30 million will not have an impact on premiums. We know from the history of the last two years that those surplus funds have enabled the government to keep third party at zero increases. What will be the impact of this dividend on the solvency ratio?

Hon HELEN MORTON: I am told that it would be about one per cent.

Hon KEN TRAVERS: It is interesting. When we divide that \$25 million by the number of vehicles in the state, it works out at about —

Hon Helen Morton: Why are you doing that?

Hon KEN TRAVERS: Every one of those vehicles will pay a premium. If the government is saying it does not need that money to meet claims, the money is profit, and ICWA can give it to the government. The alternative is that the money could be divided among all the vehicles in the state, of which there are just over two million. It would work out at \$15 a vehicle. The 4.1 per cent increase the government has brought in this year, as I understand it—correct me if I am wrong—works out at around \$10 a vehicle and the dividend works out at \$15 a vehicle. That says to me that if the government is not required to pay out that money and it is allowed to remain in the motor vehicle insurance trust fund, the government could use that money to keep down premiums. Can the minister explain to me where I am wrong if that is not the case?

Hon HELEN MORTON: I think Hon Ken Travers is trying to draw a correlation between something that is not appropriate. The dividends come out of the profits or proceeds from investments, and any impact over a longish period will be on the investment portfolio. The premiums are set at a price to try to meet cost recovery in that process, so the issues around the dividend and the premiums per vehicle do not come into play. The problem with Hon Ken Travers' argument is that he is trying to find a correlation between them, but the actual dividends come from the investment portfolio.

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Hon KEN TRAVERS: I understand that, but the minister is saying the government can take that \$25 million to \$30 million out of the Insurance Commission and give it to the government to spend on whatever.

Hon Helen Morton: High schools and hospitals.

Hon KEN TRAVERS: It will be spent on all the election commitments the government made that it could not afford to fund. We know that. Surely if that money is no longer required to remain in the investment pool because it can be paid over to the government as a dividend, it could be equally used to provide a \$15 rebate on every motor vehicle insured this year, which means the government could have effectively given people a \$5 saving rather than a \$10 increase on their third party insurance.

Hon HELEN MORTON: I remind Hon Ken Travers that our premiums are the lowest in the nation by a long shot. This dividend going into consolidated revenue will benefit the whole of Western Australia, whether it be for schools, hospitals or whatever.

Hon KEN TRAVERS: The minister is absolutely right; Western Australia does have the lowest third party premiums. I accept that.

Hon Helen Morton: By a long shot.

Hon KEN TRAVERS: By a long shot. The question that then needs to be asked is: why do we have the lowest third party premiums in Australia? Hon Nick Goiran gave us an explanation for part of that. I thought his contribution to the debate was interesting, and I got a copy of the second reading debate from 1994, which was when the Motor Vehicle Insurance Trust was amended to make the changes he talked about. So, part of the reason for low premiums in Western Australia were the changes suggested by Hon Nick Goiran, and the way in which we do not pay out in certain circumstances to people who are injured. The second reason we have the lowest premiums in the nation is the no-fault issue, and the fact that we have a fault third party insurance scheme. The reason other states have higher premiums is that they have a no-fault system. As the minister rightfully pointed out, it is the government's goal to ensure that we get to a similar situation in Western Australia.

Hon Helen Morton: I have three years to make that happen, yes.

Hon KEN TRAVERS: The minister says she has three years before she finishes her term as a minister to get through the National Injury Insurance Scheme. I think the minister would understand that many on this side will be doing everything we can to assist the minister.

One of the problems she will face, of course, is that when she tries to bring it in the Treasury boffins will tell her that it will increase premiums too much, so she cannot. In fact, one of the ironic twists of fate as the minister representing the Treasurer in this place—she should have flicked it off to the parliamentary secretary—is that she will be making her own job harder by successfully steering this bill through the chamber tonight.

Anyway, back to the three points. The first is the way in which we pay claims, which Hon Nick Goiran very adequately outlined to the house tonight. The second is that we have a fault-based scheme. The third reason we have low premiums in Western Australia compared with other states is the asset base ICWA has built up for a range of reasons. It has been built up because governments before this minister have not taken dividends out of that mutual fund. They have allowed all the profits to go back in. If we think about that, it is \$25 million a year. The easiest way to put this into a context I think everyone would understand is superannuation. It is a shame some of my colleagues from the lower house are not in this place because they could probably give me the exact amount of what \$1 would be worth when we retire because it accumulates as it sits in there. What the minister is saying today is that the government can keep, every year, taking out \$25 million to \$30 million from now on, and that that will see us catch up to those other states. That is the problem with this piece of legislation. As I have pointed out, when we take back that \$25 million to \$30 million a year and translate it into what that means on a per vehicle basis, it is \$15 a year. And if we compound that \$15 a year this year and next year and next year and next year, or we go in reverse back to 1994 compounding it, we will get a big figure.

It is my view that one of the other reasons we achieved that strength of asset investments is because a number of assets were bought in the 1990s. Members will recall that at that time a \$50 premium levy was introduced. In fact, Hon Nick Goiran spoke about one of the reforms that occurred in 1994, but in 1993 another reform was incurred, when an additional premium was asked of everybody to cover what was then seen as a shortfall of \$300 million in the fund. The interesting issue is that I would suspect—I know some of those assets would have changed; others will not have—that some of those assets are these same assets that were devalued to create that \$300 million shortfall, and those assets have now grown in value and are no longer providing a shortfall; they are providing significant benefits to ICWA.

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For all those reasons Western Australia has the lowest premiums, and as a change is made to each and every one of those, the capacity is reduced, which will eventually lead to a position of us achieving the same sort of premiums as other states. It is a shame Hon Nick Goiran is away on urgent parliamentary business, because one of the points I wanted to make to him was that if he actually wants to see changes to the Motor Vehicle (Third Party Insurance) Act 1943 to reinstate the ability to make the claims he was referring to earlier in this debate, one of the ways that could happen would be to not have this bill. One of the other things that is going to happen later this year—it is hard to believe—is that there will be a settlement on the Bell matters.

Hon Helen Morton: Hope so.

Hon KEN TRAVERS: Let us keep our fingers crossed. I suspect I will not get an answer from the minister on what the estimated return will be, but I will use some of the figures that have been out there in the public domain; somewhere between \$600 million and \$1 billion—of that magnitude. That will be returned to the system, and so all those \$50 that were paid all those years ago will actually no longer be needed, and the reason all those amendments to the Motor Vehicle (Third Party Insurance) Act 1943 were introduced into this place on 6 April 1994 will be reversed, and that money will come back into the Insurance Commission. There will be two options when that occurs: we can, effectively, reimburse that money to the mutual holders by keeping their premiums down for the next X number of years or we could reinstate the changes Hon Nick Goiran spoke about earlier tonight. But if we pass this bill, only one thing will happen in my view, which is that that money will be taken by this government and used for other purposes. The government will take it out as a dividend. It will take it off and apply it to fixing up the debt and problems it has created through its budget mismanagement over the last four and a half years.

My question to the minister is: how does the government intend, if it is successful in achieving a settlement of the Bell matters and a payment is made to ICWA, to treat that money coming into the ICWA fund? Will it be subject to a dividend being paid to the government as a result of that money going into the fund, or will it be allowed to remain in the fund and be used to keep down premiums, or potentially even rescind the 1994 changes?

Hon HELEN MORTON: I know that the end part of the question is what Hon Ken Travers wants me to answer, but I will go back over a couple of things he said before. I reiterate that the bill refers to 65 per cent of profit after tax and that that is the starting point. Once again, if the profits decrease, if there was less profit or something occurred during the year that caused a further consideration around that 65 per cent, it could go up or it could go down. That is the way the bill is written.

Hon Ken Travers: Up or down at the discretion of the Treasurer, and the Treasurer alone.

Hon HELEN MORTON: I said this in my speech: it will not be in the Treasurer's interest to fix a high value dividend as it may result in a significant increase in compulsory third party insurance premiums. That could compromise the financial viability of the Insurance Commission. The government is ultimately responsible for the Insurance Commission and its liabilities. It has a vested interest in ensuring that it remains a financially viable organisation.

To give an example of how that has played out over a number of years: after WA Inc, ICWA's assets were negative \$400 million. They are now over \$800 million. The commission has built its asset base to a sustainable level with reference to prudential guidelines and is now in a position to return a dividend. The issue around being sustainable is the fact that, for whatever reason, Hon Ken Travers is not taking into account in his arguments the vulnerability of it as a result of this dividend. When he looks at the prudential guidelines he will understand that the asset base is at a sustainable level at \$800 million.

In terms of the Bell Group matters, they are very interesting. I hope it comes to fruition, as Hon Ken Travers indicated, but they are still subject to litigation. It is far too early to speculate on any eventual treatment of any money to flow from this case. I am not in a position to comment on it. I am quite certain that no other member of government would be either. This is a case that is still subject to litigation. It is still being played out.

Hon Ken Travers: I am not asking the minister to talk about the litigation; I am asking her to talk about how ICWA will treat a one-off injection of funds into it.

Hon HELEN MORTON: I am not prepared to comment on that particular issue.

Hon KEN TRAVERS: Forget Bell. If ICWA, for some miraculous reason unbeknownst to any of us here tonight, secured a windfall profit or a windfall provision of cash to it—for example, somebody who made a motor vehicle accident claim years ago went on to invest wisely and made \$1 billion and they are going to give \$600 million back to ICWA as a thank you and ICWA suddenly gets an additional \$600 million cash into its

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fund—how would the government treat that for the purposes of this legislation? Would it seek to take 65 per cent of that as a dividend?

Hon Helen Morton: We are talking about a hypothetical \$1 billion.

Hon KEN TRAVERS: We often do when dealing with legislation. We talk about the hypothetical punching of police officers from time to time.

Hon HELEN MORTON: I am going to rise but I am getting some information. It is very hypothetical, I understand that. If I am able to provide some information to the member, I will, but I have to get some solid advice from my advisers on this before I make any further comment.

It is all very hypothetical. Hypothetical windfall revenue would depend on the interaction of this legislation and the board policy, and other factors impacting on the commission, but yes, the legislation allows for the payment of a dividend on profit after tax. That is about as clear as I can get it at this stage.

Hon KEN TRAVERS: Thank you, minister. We cannot talk about the Bell matter —

Hon Helen Morton: You can, but I can't.

Hon KEN TRAVERS: The minister will not talk about the Bell matter, but I appreciate that she has confirmed for the house that should a payment arrive into ICWA from the Bell matter, it is possible for the government to take that money out of ICWA as a dividend under this legislation.

Tonight, we are creating a tool to allow that to occur. I say again it is a shame that Hon Nick Goiran is away on urgent parliamentary business because I believe that if he wanted to get some changes through to change the Motor Vehicle (Third Party Insurance) Amendment Act, the opportune time would have been at the time that the Bell money came back into the Insurance Commission as a result of that settlement.

The 1994 second reading speech refers to the changes made then. It states in part —

The \$50 premium levy was approved to fund the \$300m shortfall currently existing in the fund. However, a disproportionate number of small claims continues to impact on the third party insurance fund and has created a serious imbalance in the system. This must be corrected to abate any further escalation in premium costs. Without the amendments sought to be introduced by this Bill, a further premium increase in compulsory third party insurance is forecast from July 1994, when the premium for a private motor vehicle is projected to increase by approximately 10 per cent, and this is projected to increase further by 1 July 1998 to such an extent that premiums may exceed \$300 per annum. The objective is to maintain and reduce the costs of compulsory third party insurance premiums to Western Australian motorists and industry.

That was on page 11 487 of *Hansard* of 6 April 1994. It goes on to say —

These premiums have risen in the past due to an escalation in the average costs of claims, which has occurred for the reasons outlined above.

Back in 1994 the focus of the Liberal Party, and the reason it introduced the changes that Hon Nick Goiran spoke about tonight and suggested were unfair, was all about trying to keep premiums down; tonight it is all about pushing premiums up. The passage of this bill will allow it to do that.

We have had the second reading debate so the policy of the bill has been set, but it is my view that there are a range of things we can do in the legislation tonight to try to limit and to get the Liberal Party today focused on the same issues that it used to focus on—keeping costs down for ordinary Western Australians. That was back in the good old days when the Liberal Party not only spoke about these sorts of fiscal conservative matters but actually tried to implement them. That is a long, distant past when it comes to what the Liberal Party said. It still has the rhetoric, but these days it does not have the process. The Liberal Party does not actually live that out because it has a big-spending corporate estate Premier leading it. The only way that we will get the changes that Hon Nick Goiran spoke about tonight would be to ensure that in some way we cap the amount of money the government is able to take out of ICWA by way of a dividend, to limit it to a point that it cannot be of significance.

Earlier in the minister's reply to the second reading debate, she made the comment that the board, I think it was, would be able to recommend against paying a premium if it thought it would lead to significant increases in premiums. Am I correct in my recollection of what the minister said?

Hon Helen Morton: Yes.

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Hon KEN TRAVERS: I think the minister also mentioned that the board would be conservative. She said that if the board believed it would lead to a significant increase in premiums, the board could recommend not paying a dividend. Could the minister define for us what “significant increases in premiums” means? What does the minister think a significant increase in premiums would be?

Hon HELEN MORTON: Once again I need to go back over a few things as well as answering that question, because Hon Ken Travers has a habit of making a massively long speech about stuff and slamming the government et cetera. Then, when he has got through all of that, he tends to ask a little question at the end that is not related to it. So I need to go back and make some comment about some of the matters that he raised before.

Hon Ken Travers: That’s okay; as long as you then also answer the question at the end, I don’t mind.

Hon HELEN MORTON: Yes. Obviously, I sit here very quietly and let it all wash over me until I have the chance to speak. I will start by saying that the Bell Group case is much, much more complex than a simple hypothetical windfall of \$1 million or whatever was coming in. All I wanted to say was that whilst talking about a hypothetical windfall, the Bell Group case is much, much more complex than that, and all the considerations around that would have to be taken into account, which is far different from this discussion about the hypothetical windfall. Talking about the hypothetical windfall and the ability to change the caps and thresholds and the revenue from changing the caps and thresholds, the insurance services base would not be expanded on a one-off windfall bonus because, for obvious reasons, the effect of the windfall bonus would eventually run out, so it does not make sense. That would not be a good process to undertake. The caps and the thresholds were introduced to reduce claims for minor injuries and thereby keep the premiums at an affordable level. Of course, the \$50 levy was put in place to restore the losses from WA Inc, so all of that was part and parcel of the previous comments that Hon Ken Travers made.

I will now deal with what “significant” means. The words that I used in my speech, which Hon Ken Travers is obviously picking up on, were that it would not be in the minister’s or the Treasurer’s interest to fix a high-value dividend as this may result in a significant increase in compulsory third party insurance premiums and could compromise the financial viability of the Insurance Commission. The issue around “significant” is that it is completely variable depending on whatever other considerations are taking place at the time.

Hon Ken Travers: So it could be anything.

Hon HELEN MORTON: Compulsory third party premiums are a factor of many costs and demand pressures, and we have gone through those. They are the health costs, the legal costs, the actuarial assessments, the volume of claims, the bond rates and whatever else would have to be taken into account by the board at the time. When all these things are weighed up—amongst that mix, the dividend would be weighed up alongside them or with them—it may be at that stage that the board would take all these things into consideration and recommend a dividend, no dividend or a minor dividend, depending where it wants to land on that recommendation. It is not as though it would be considered as a single factor.

Hon KEN TRAVERS: I asked what “significant” means for a reason. Probably five years ago if someone in this chamber had said “significant”, we would have all said, “Well, we know what that means; we accept that. We can move on.” What we have is a government that constantly uses language and then tries to deny later that the common meaning of that language is the meaning of that language. For instance, “We won’t increase electricity prices by more than the rate of inflation” —

Hon Sue Ellery: Actually means —

Hon KEN TRAVERS: — actually means, “We’ll increase it by double the rate of inflation.”

Hon Sue Ellery: “We won’t have forced amalgamations” actually means, “We will have forced amalgamations.”

The DEPUTY CHAIR (Hon Liz Behjat): Members, let us stay on the theme.

Hon Sue Ellery: This is the theme.

Hon KEN TRAVERS: We are on the theme, because the minister said to us today that it will not be significant, but now she will not give us a definition so that people can have any confidence that they are anything other than weasel words that will allow the government to say that a 15 per cent increase is not significant. That language is a complete waste of time for this house, because unless we get what that means in a more substantial way, what we know from this government is that in Barney’s world, that can mean that by whatever amount the government puts up the premiums, it will not be significant, because “significant” will be redefined at that time. That is the problem that this government has got itself into. Nobody can now trust what the government says, because it will manipulate language and say, “The act says that we can’t do dividends, but we didn’t say we

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wouldn't change the act; therefore, it's not a broken promise to change the act, even though we told everyone, to give them comfort before the election, that the act wouldn't allow us to do what they were asking whether we would do." That is the problem when we get to a point at which not a word that is uttered can be believed unless it is qualified with 57 different questions.

Hon Helen Morton: Have you got another question or not?

Hon KEN TRAVERS: I do, but does the minister want to respond to that? I will let her respond to that, if she likes, before I ask my question.

The DEPUTY CHAIR: Minister, before I give you the call to respond to that, I point out to Hon Ken Travers that, talking about language, a bit of unparliamentary language slipped in there. I have let it go once or twice, but I think I will pull him up on that because of a turn of phrase that he used that is bordering on being unparliamentary.

Hon HELEN MORTON: Thank you, Madam Deputy Chair. I assume you are referring to the way in which he addressed our Premier.

The DEPUTY CHAIR: Yes.

Hon Ken Travers: I was talking about a mythical world, not your Premier.

The DEPUTY CHAIR: We are not dealing in hypotheticals here tonight.

Hon HELEN MORTON: The comment that I want to make in response to that rather rambling dissertation around trust is that there is an unbelievable denial on the part of members opposite. A few months ago, the people of Western Australia put enormous trust in this government. They were quite open about recognising who they could trust and who they wanted to trust. We got the biggest vote that we have had since some time near the Second World War. The member can sit there and say all the things he wants to say and carry on, but he knows that it is not resonating with the population out there. Members opposite are completely cocooned in their own little world about not trusting this or not trusting that, but the reality of life is different. I think they will find that again on 7 September, when people will put their faith in the political party that they believe they can trust. Members opposite should take a reality check on what is happening at the moment. Labor members are a minority in this and the other house because people are not able to trust the Labor Party.

Hon KEN TRAVERS: Um —

Hon Helen Morton: You had a question.

Hon KEN TRAVERS: Yes, I do, but I have to respond to that. I accept that members opposite won the last election. In the 31 days leading up to the last election the government wrote to the RAC and told it that it would not take —

Hon Helen Morton: Told them factual information.

Hon KEN TRAVERS: Yes, about what the act currently provided. The government clearly forgot to tell the RAC in that letter that it intended to change the act. The RAC put out its press release on 13 June this year and expressed its surprise about what the government was doing. A bit of trust might have been eroded for those members down at the RAC.

Hon Helen Morton: Not too much.

Hon KEN TRAVERS: Well, on the second Saturday in March 2017 the people will be able to make a judgement about whether they still trust this government. We can look back over what has happened in the last three months. The government said all these things and gave all these commitments before the election and then changed its position. If the people are happy with that, they will vote accordingly. As a good opposition, it is our job to make sure that we highlight where we believe the government has broken that trust. There is no doubt that in our view the public will agree that on this matter the government has broken their trust, but only time will tell. According to the Premier, promises do not matter. I do not know why the government even bothers making promises. Why does it not just go to the electorate and say, "Trust us. Re-elect us".

The minister said that if there is likely to be a significant increase in premiums, the board can recommend that there not be. Is that contained in the legislation anywhere? If so, which clause in the legislation does the minister believe actually provides for that?

Hon HELEN MORTON: I understand the question but I believe that we need to report progress.

Progress reported and leave granted to sit again, on motion by Hon Helen Morton (Minister for Mental Health).

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