

**MOTOR VEHICLE (CATASTROPHIC INJURIES) BILL 2016**

*Second Reading*

Resumed from an earlier stage of the sitting.

**MR B.S. WYATT (Victoria Park)** [2.42 pm]: Just before question time I was speaking on the Motor Vehicle (Catastrophic Injuries) Bill 2016, a bill for which I have outlined in some detail the opposition's very strong support. Indeed, it is a bill that we have been calling for for some time and it has been a Labor Party policy for a long time. I was going through the Insurance Commission of WA's document, "Proposal to Add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme", which is an analysis of the 13 main areas that were raised in the 2 300-plus submissions put in by members of the community and organisations in response to the green paper released by the government. The green paper had three separate options. Of course, that has led us to option 3, which has been embedded in the legislation before us today.

I was up to the eleventh point of the issues raised, titled "Reduce the Involvement of Lawyers". I previously quoted the Brightwater Care Group, which made the point about the cost of litigation and the cost of legal fees. I hope the minister will give us a lot more information around the dispute resolution mechanism. That is something of great concern. Ultimately, these sorts of schemes always rise and fall on how people utilise them and in how disputes are resolved. The issue around whether something is "catastrophic" or not seems to me to be not that heavily litigated. I asked the deputy chief executive officer of the Insurance Commission whether in other states where there are already no-fault insurance schemes an injury that is "catastrophic" as defined under the minimum benchmarks is one that is regularly litigated. For example, I do not want to see a situation in which where there has been a medical finding of a catastrophic injury but the Insurance Commission is feeling particularly aggressive and says, "We're going to litigate that." I am not saying that about the Insurance Commission; I am just trying to give an example. Ultimately, in my view, the decision around catastrophe has to be made quickly so we know.

**Dr M.D. Nahan:** Member, sometimes it takes a while to find out and make sure it is catastrophic. The waiting period —

**Mr B.S. WYATT:** Yes, there may be medical reasons why that is the case, and I understand that, but I do not want there to be legal reasons in which a particularly obstinate insurer—in this case the Insurance Commission—says, "We're not sure this meets the minimum benchmarks around catastrophic injury." It sounds to me from the advice I have been given by the deputy CEO of the Insurance Commission that that issue is actually not terribly contentious. No doubt, if there are any personal injury lawyers out there listening to this, they may tell me otherwise, but that is my impression. I was not a personal injury lawyer, so I do not know. That is my impression.

The second point I want to make is that, ultimately, lawyers will always have a role. The reason for that is that we are dealing with an incredibly complicated area of law that has developed over a long period of time in both common law and statute law. That means that when somebody sustains a severe injury that has not yet or might yet be defined as a catastrophic injury, there is straightaway a huge information disadvantage to that person; that is, the Insurance Commission is a big organisation that has lots of lawyers working for it and access to lots of lawyers, so there is always going to be the need for lawyers to provide advice to people so they know how to negotiate the system to ensure that they have their rights recognised and their care taken care of. That is not me as a lawyer defending the rights of lawyers; it is simply the reality of a complicated area of law where we are dealing with something so dramatically important to someone as how they are going to be cared for and maintained after they have suffered a catastrophic injury. That is why I want to hear about the dispute resolution process in the minister's reply to the second reading debate or perhaps during consideration in detail, and how it is going to hopefully not be adversarial and will be quick, cheap and to the benefit of the person who has sustained the injury.

The twelfth and penultimate point of the issues raised by the various submissions is titled, "Care and Support Entitlements Payable as Lump Sum Compensation". This is not being provided for under option 3 lump sum payments. That is my understanding from the briefing. This was unsurprisingly a point of some discussion for the various law groups, including the Law Society of Western Australia, the Law Council of Australia, the Australian Lawyers Alliance, Slater and Gordon and Ability One. Their submissions were in support of lump sum payments, which does not surprise me. Primarily, I dare say they participate in the common law compensation side of things. The key groups in favour, and provided submissions in favour, of pay-as-you-go compensation included, again unsurprisingly, the RAC, National Disability Services, Brightwater Care Group, Carers WA, People with Disabilities WA, the Australian Physiotherapy Association, Headwest and the Ethnic Disability Advocacy Centre.

**Dr M.D. Nahan** interjected.

**Mr B.S. WYATT:** For fault—that is right. But my understanding is that in respect of —

**Dr M.D. Nahan** interjected.

**Mr B.S. WYATT:** That is right.

**Dr M.D. Nahan:** Under the common law fault claim system, lump sums are the norm. There is a lifetime care option that is not very heavily utilised, I've been told.

**Mr B.S. WYATT:** That is right, and I can see that in respect of the no-fault system, the system we are creating. For treatment, care and support, it is pay over lifetime; it is not lump sum. I support that. I think it is important for the very reasons that are given by Brightwater and Carers WA et cetera. Again, the Insurance Commission outlines the various reasons why there are advantages to both. The advantages of lump sum compensation raised in the submissions include that it maintains common law rights, of course, and provides autonomy and greater control et cetera. In respect of pay-as-you-go, there is the assurance that the funds will be available for the lifetime and that the amount received does not require legal involvement, which is another positive. There is also a lower risk of mismanagement. As the minister knows, there have been scenarios in which a lump sum has been paid and it has been mismanaged and the injured person is left to basically fall back on the state to provide services. Financial and fund management decisions are taken by the government, and that is put there as an advantage, although some people would see it as a disadvantage—but either way it provides the protection that the care, treatment and support will be there over the lifetime of the person with the catastrophic injury. Importantly, one of our consequential amendments seeks to widen the definition of medical practitioner to include allied health practitioners. My understanding from the Insurance Commission of WA briefing is that under the Motor Vehicle (Third Party Insurance) Act, which this legislation will amend, it is effectively defined as a doctor only. We want to amend that for the purpose of including allied health practitioners. I am actually surprised that the definition is still so narrow. Perhaps it is something that we should amend in its entirety.

As the Treasurer indicated by way of interjection, the Insurance Commission proposal states —

Option 3 preserves the common law right to access a lump sum payment for care and support for people who can assert fault against a motorist, whereas under Option 2, people would lose this right.

Ultimately, submissions backed different options, but I think that option 3 is the right option.

**Dr M.D. Nahan:** The other states went for option 2, though, except Queensland. We don't know what they're doing.

**Mr B.S. WYATT:** Obviously, a system of no-fault insurance will come into Queensland at some point. I dare say that is why Queensland is having the parliamentary inquiry.

The thirteenth point, which was raised in various submissions, is about the benefits of Western Australia following the national approach. It states —

Seventy percent of submissions commented that WA should follow the approach of other States and Territories to introduce no-fault catastrophic CTP insurance. These responses mostly came from the pro-forma emails created by National Disability Services WA.

I will read one of those responses because there were many of them. The Insurance Commission of WA document states —

*'In response to the Green Paper I wish to express my support for the introduction of no fault insurance in WA. This needs to be done so that West Australians get the same level of compensation, care and support as in other states, and lessen the financial, physical and emotional suffering of those who are catastrophically injured on our roads, as well as their families.'*

Colleagues, those are the 13 key points that came out of the submissions to the government's green paper. That is effectively the response from the Insurance Commission that I went through, and there are many different submissions from various organisations. I have not had the chance and do not need to go through all the submissions provided to me. Clearly, all the legal organisations, the Insurance Council of Australia, People With disabilities WA, Carers WA, care groups and the RAC, which was very vocal about no-fault insurance for catastrophic injuries, provided submissions. There is no doubt that there was and is some push back about the cost of \$100 a year, particularly for people who have multiple cars, but I think—I have made this point before—reasonable Western Australians are happy to absorb that cost. We are not talking about a lot of people; about 44 people a year are catastrophically injured when there is a no-fault component to their accident so they cannot claim under the existing CTP scheme. I like what we are doing with this legislation and that the cost is linked to car registration. I think that is an important link to make. It is fair that it applies to all registered vehicles, simply

because if it applied only to licences, for example, as the Insurance Commission pointed out, the cost would go up about 30 per cent. It would be \$130 a year instead of \$100.

**Dr M.D. Nahan:** Member, a large number of people who have licences do not drive a car.

**Mr B.S. WYATT:** That is right. That is another issue; people still maintain their licences.

**Dr A.D. Buti:** It's like ministers of the Crown; they don't need it.

**Mr B.S. WYATT:** I like that interjection.

Before I conclude, I want to, with some indulgence, because I have quoted her organisation a bit today, acknowledge the retirement of Penny Flett as chief executive officer of Brightwater Care Group. I went to Penny's retirement function last night at Matilda Bay. When I was first elected as member for Victoria Park, Brightwater had a very big facility in my electorate. It was very old and run-down. Penny Flett invited me to see it and she showed me around. It must have been decades old. It was terrible, actually. Penny showed me around and told me about the plan they were just about to embark on for fundraising and building. It seemed so dramatic in my mind that I did not think anything like it could happen in fewer than 20 years, but that project is done and dusted and the facility in Oats Street in my electorate is quite extraordinary. The facility provides an extraordinary service to people who have been catastrophically injured. More broadly, Brightwater cares for people with dementia. Brightwater is an extraordinary organisation that has flourished under Dr Penny Flett's leadership. I want to thank her most sincerely for the effort she has put into serving an incredibly vulnerable section of our community. Penny has always been a great source of advice on this sort of legislation, and I note that the Brightwater submission has been heavily quoted by the Insurance Commission, which I think highlights the regard in which Brightwater is held by people who deal with it directly in providing care for people. Brightwater will be around for a long time. Thinking back to Dr Flett's speech last night, I think she said that Brightwater has been around since 1901. I dare say that it will be around for a lot longer yet, providing services to people who have had terrible injuries inflicted upon them or who have been very unfortunate to have an acquired brain injury. I thank Penny for the work she has done over a long period and wish her all the best. As people like Penny do, they do not retire to the golf course; they retire to do other things. I wish her all the best and thank her for the work she has done at Brightwater in my community.

The opposition supports this legislation. It is very good legislation that any reasonable Western Australian would support regardless of what is really a small cost to provide surety of care, treatment and support for the 44 people a year who are catastrophically injured. Some members would have seen in the media what has happened to Mr Proudlove over the years. Unfortunately, this is not retrospective legislation and will not apply to him. Anyone who has not been directly impacted or does not know someone who has been in the situation in which they fall between that brutal little crack in the law—there are not many of them—and have a severe injury, but there is no-one or no organisation to seek recompense from do not know how terrible it is. I think this is a great thing that we are doing here in Western Australia, and I am satisfied to know that we as a Parliament are doing something important to ensure that people have protection. I cannot imagine being a member of a family in which your son, daughter, husband, wife or lover is in that situation. How do you care for somebody who has sustained a catastrophic injury? I do not know. I am delighted to support this legislation that provides surety and a sense of confidence to families that have been devastated by a catastrophic injury.

**DR A.D. BUTI (Armadale)** [2.59 pm]: I also rise to speak on the Motor Vehicle (Catastrophic Injuries) Bill 2016. I echo the member for Victoria Park's words and sentiment that we are very glad that this bill has come before the house, and I congratulate the Treasurer for bringing this bill before the house. The bill has strong bipartisan support, and I do not think that any member of this house or the other place would not support this legislation. The Leader of the Opposition in the other place, Hon Sue Ellery, was a driving force to get public discussion going on this issue, and it is great to see that the government has responded positively. Of course, when there is bipartisan support, it is easier to deal with these matters. The member for Victoria Park mentioned that surely no-one in Western Australia would oppose this legislation; however, whenever there is an additional cost, there are always some political ramifications. If there is bipartisan support for legislation, it makes the passage of very important legislation a little easier.

As we know, everyone has to travel on the roads of Western Australia. We may have very good roads in some areas, but accidents will happen and our attention is always drawn to the deaths on roads, and over the last long weekend there were of course too many deaths. One is too many, but there were quite a number of deaths. That is what the public and the media's attention is drawn to. The people who are maimed and who have serious injuries as a result of a motor vehicle accident are often forgotten. The press does not generally report on those people; it just reports on those who die. Of course, it is the families of those who are catastrophically maimed who then have to carry the consequences of looking after them, probably for the rest of their lives. If it was an accident where there was someone at fault, with blame to be apportioned, the current legal system does allow for compensation, even though in those situations it is not easy. The tort system that they have to go through in the

courthouse can be a long and expensive process and it can be very, very stressful. When there is no-one who blame can be apportioned to, or if someone is injured and they were at fault, some people might say, “Well, you are at fault; so be it. You bear the responsibility.” A person could have an accident be at fault as a result of falling asleep, which of course is terrible, but it can happen. As we all know, if a person has a very stressful and demanding work environment, that is possible. That one instant when they fall asleep and go through a red light may cause them to be maimed for life. For those people who say that they should bear responsibility, the victims’ families were not at fault and it will be the families who have to pick up the pieces and look after them.

The member for Albany has intimate knowledge of the case of Warrick Proudlove, and I am sure he will talk about it. The car that Mr Proudlove was a passenger in was hit by a horse and no fault could be apportioned to the driver of the car. That matter went to the District Court. Mr Proudlove sued the driver of the car in order to obtain some sort of compensation to help in the expensive treatment that he will have to endure for the rest of his life. However, the judge said that no evidence of untoward driving was found before the collision. Those who now bear the cost are his family. As I said, the member for Albany, I am sure, will elaborate on this, but the family has had to move to Perth and deal with the very harsh reality that their son was unable to use the current legal system to obtain some form of compensation. It is unfortunate that we do not have retrospectivity in this legislation to help someone like Mr Proudlove and his family. At least from now on, if there is another Warrick Proudlove who is in a car that is involved in an accident for which no blame can be apportioned, their family will not receive, in many respects, a financial death sentence. That is what it is; it is a financial death sentence. It is something that I am sure the community is prepared to pay that extra \$99 a year for.

Basically, that works out to less than half the cost of a cappuccino a week. That is all we are looking at; half a cappuccino a week. There has been debate that people should only have to pay one levy per driver’s licence, not per car. If that is the case, as the member for Victoria Park mentioned, the levy would be higher, or we would have a reduced pool of money. Personally, I have no problem in it being per car. If a person can afford a car, they can afford to pay an extra half a cappuccino per week. If they want six cars, they can pay that. I think that the government struck the right note there. We will look at this in detail, but clause 5 of the Motor Vehicle (Catastrophic Injuries) Bill 2016 states —

... Act does not apply to a motor vehicle injury resulting from a motor vehicle accident that occurs on private land unless at least one motor vehicle involved in the motor vehicle accident is —

- (a) a motor vehicle in respect of which a contract of insurance is in force under the Motor Vehicle (Third Party Insurance) Act 1943; or
- (b) a motor vehicle —
  - (i) licensed or registered under the law of another State or a Territory; and
  - (ii) to which a policy of compulsory third-party person injury insurance, or a compulsory motor vehicle accident compensation scheme, under the law of that State or Territory applies.

I understand the issue there that money is being paid into an insurance scheme, but the poor person who has been hit by that unlicensed vehicle may have a claim in negligence, for instance, or occupied liability, but they may not.

**Dr M.D. Nahan:** It is a big issue with farms.

**Dr A.D. BUTI:** Exactly.

I know that we probably will not amend this bill as it goes through this house, but I think it is really something that needs to be addressed, because there might be a Warrick Proudlove who may be in a car or may be walking on a private property and is involved in an accident where no fault can be apportioned and the car is unlicensed and, as the Treasurer says, is on a farm or in the regional areas of Western Australia.

**Dr M.D. Nahan:** Farming accidents are very high. The share of all catastrophic injuries—most of them are not registered and it is a big issue. It is also an issue that one of the biggest issues you have pointed out; we are just restricting this to motor vehicles. You can start going in all sorts of other directions, where the debate will lead us, eventually.

**Dr A.D. BUTI:** The Treasurer is right, although New Zealand has had a no-fault insurance scheme for a long period and I, too, refer to that, because there is this whole philosophical debate about a no-fault system versus a fault system in which fault has to be proven. There was a very comprehensive study published by the New South Wales Parliamentary Library Service titled, “No Fault Compensation”. It is a few years old now but it looked at the whole issue of no-fault compensation and looked at the situation in Australia and overseas. It is an interesting report that outlines that some Australian states have no-fault compensation schemes and refers to

New Zealand's scheme. It outlined how that has worked very, very well and that one does not really want to go through the litigation avenue. One of the arguments used in New Zealand is that once it has this no-fault scheme there is a floodgate or it becomes incredibly expensive. This is reported in the New South Wales report at page 47. Professor Luntz, who is an expert—I am sure the Treasurer's wife might know Professor Luntz—mentioned in this report that he strongly supported a no-fault compensation scheme. He argued —

The real solution is to abandon the fault system for compensating personal injuries, —

This was not just for motor vehicle accidents —

as recommended by the National Committee of Inquiry into Compensation and Rehabilitation in Australia, 1974 (the Woodhouse Committee). Such a system has been operating successfully, and sustainably, in New Zealand for over 28 years. Scare tactics put out by some representatives of lawyers in Australia, claiming that the New Zealand scheme has huge 'unfunded liabilities', are mostly false. It remains much less costly than the incomplete, partial compensation schemes functioning in Australia, and it represents the embodiment of community responsibility for the inevitable accidents of modern society.

It is true that this argument about unfunded liabilities and the cost of this scheme and the court system in this area is phenomenal. Having worked in my younger days in personal injury law, the time and amount of resources wasted on both sides—the defence or the insurance company and the plaintiff—is ridiculous. It becomes a bit of a joke, really, because there is a list of doctors who work for the plaintiff's lawyers and there is a list of doctors who work for the insurance, and one basically knows what they are going to write. They basically have a precedent. They just change the names and change the dates and a few other variables. I am sure that is not a system we should be advocating. If we have a no-fault system—here it is only restricted to motor vehicle accidents—hopefully we can overcome that system that really is incredibly expensive and uncertain, and can increase stress and reduce the possibility of commencing rehabilitation until a settlement is made.

**Dr M.D. Nahan:** Remember that New Zealand system. It is a very complicated system, and I have been told that it led to a whole range of special services being provided. Bungee jumping was invented in New Zealand because of the insurance system. It led to a large number of high-risk ventures. I am not saying whether that is negative or not.

**Dr A.D. BUTI:** There is interesting.

[Member's time extended.]

**Dr A.D. BUTI:** That is always an issue, is it not? When legislation is introduced there are going to be consequences for good and bad that one does not know about or has not thought of. But we do know that this legislation is for good. I do not know of any negativity in respect of this piece of legislation because we are restricted to motor vehicle situations. One of the advantages of this system is that it picks up people like Mr Proudlove, whose family is now trapped in this spiral of, basically, poverty. But for the grace of God go I, as any member of our families could tomorrow be a victim of our accident and no blame can be apportioned under our legal system. I know the member for Hillarys has a personal understanding of this. I am thankful that this piece of legislation is before the house.

As I was mentioning in regard to litigation, it is a very uncertain and expensive proposition, and it can result in incredible stress on the plaintiff and their family. There is also an issue of fairness, and the New South Wales briefing paper mentions this on page 49. It states —

The fault principle has been criticised for being erratic and capricious in operation, 'If fault is not proved, then no matter how innocent the plaintiff, the common law will leave him to bear the whole burden of his losses, —

It should say their family —

even though they might have been catastrophic'. In contrast to the common law negligence action, no fault compensation may provide for more than a small proportion of the injured. Those who are injured in an accident but unable to establish fault are not excluded, and those who contributed to the incident that caused their injury do not have their compensation reduced as a result.

The negligence action arguably measures liability by the results of the defendant's conduct as opposed to its worth. A defendant who lost concentration for a moment and seriously injured another, will be liable for more damages than a defendant who acted recklessly and wantonly for a much longer period of time but caused little damage. This situation is avoided in a no fault compensation scheme.

Some people suffering poor health may have similar needs to those injured in an accident. However, as their disability is caused by illness, they are not eligible for anything in a system that relies on the

establishment of fault. It is possible that such inequities may be overcome in a no fault compensation scheme, depending on the breadth of the system.

I think when the green paper was released, there was debate on the radio and someone telephoned who was the father of someone in their early 20s. When they were 17 or 18, they were coming home from work late one night, fell asleep, went through a red light, caused an accident and they became quadriplegic. They had no access to anything under our court system. Under this system they would be able to receive appropriate compensation. The New South Wales briefing paper quotes a prominent professor of tort law, P. Atiyah. It states —

Atiyah argues that, as a means of compensation for personal injuries, the legal system is about as fair as a lottery:

In fact it is not too much to say that it is a lottery, a lottery by law. It is almost a matter of chance whether you can obtain damages for disabilities and injuries; it is almost a matter of chance who will pay for them; it is almost a matter of chance how much you will get.

In regards to efficiency, the briefing paper states —

No fault compensation schemes may be more efficient in terms of time and money. An injured person may receive compensation at a faster rate than if the claim had been pursued under the common law, as time is not consumed by the issue of fault. Unlike tort law claims, the injured do not have to wait until their claim has been finalised before receiving assistance. However, other issues may remain such as the cause of the injury, which can result in the process being as expensive and difficult as the tort system.

The advantages are much greater than all possible disadvantage, and I think it is very hard to argue there is any disadvantage. In regard to payments, the briefing paper states —

It is difficult to ensure the accuracy of lump sum payments under the common law, as the assessment of damages involves the prediction of such future events as how long the injured person will live. As a result, the payment of damages will generally either under compensate or over compensate the injured person. Damages may also be reduced by the contributory negligence of the injured or because the claim was settled prior to trial. In some situations, the injured person may find themselves with insufficient funds because finances were badly managed. A no fault system may avoid the problem of inaccurate lump sum payments as it can allow for periodic and adjustable payments.

On the issue of rehabilitation, the briefing paper states —

Rehabilitation may progress at a faster rate in a no fault system as the claimant does not have to deal with the uncertainty and delay of litigation. Injured persons may postpone their rehabilitation if pursuing a claim under the common law so as not to risk the size of their damages.

That is the silly thing about this, and it also happens in worker's compensation personal injury claims. There can be a disincentive to rehabilitate, because if a person is rehabilitating themselves and therefore the severity of the injury is assessed is reduced, the amount they can be awarded is reduced. That is why by having a no-fault scheme there is not a disincentive. Surely, society is a winner here, not only the person injured and their family. Society is a winner if we do not provide a disincentive to rehabilitate. The briefing paper continues —

According to the New Zealand Royal Commission of Inquiry:

Injured people ought not to be left in the belief that if they attempt to assist themselves the final award of damages is likely to be whittled away. Moreover, it is very much in the public interest to provide incentives to every man —

Excuse the gender-specific language here —

to get well and back to productive work. The common law form of action undoubtedly prevents it; and for so long as the element of contest remains we do not think the problem can be overcome. In our view the fact presents a strong argument against retention of the common law process.

The advantages are phenomenal.

The Treasurer mentioned that in New Zealand one of the consequences of this now is extreme sports and extreme activities, and that is what no-one ever really notices. Back in the 1990s under the Richard Court government, Graham Kierath changed the personal injury criteria in the sense that to be able to sue under common law personal injury, a person had to show 30 per cent incapacity or disability of the body, and the way people were able to get around that was by referring to mental illnesses. There was a significant increase in stress-related work injuries.

**Dr M.D. Nahan:** There was also that typing disease—RSI.

**Dr A.D. BUTI:** That occurred with repetitive strain injuries; that is right. It is better when people do not have to beat the system. Under common law, people have to beat the system, which creates uncertainty, inequality, unfairness and inefficiencies in the economic process of the state. That is why we need a system like this. Tort law is based on what one might call corrective justice; that is, there is a fault and the person at fault makes a correction to the person who is injured by awarding compensation—or their insurer does. With a no-fault compensation scheme, it is distributive justice, and in the case of a person with an incapacity to earn income, the community assists in some way. We have done that by saying that for each motor vehicle there will be a \$99 levy or tax or whatever we want to call it. That will now be used to distribute finances to a person whose income has been severely reduced as a result of an accident for which they were either at fault in some manner or not at fault. Although some people may not be able to get their head around people who cause an accident being awarded some form of compensation, I say to them that this is compensation for their families—and for the people who were not at fault, how can they argue against that in any case?

We need this system for numerous reasons, such as the inefficiencies of the tort legal system that we operate under, the duration or the complexity of the court process and the resources that are burnt up in that court process. As members know, District Court judges have a phenomenal workload. As the Treasurer said, we have roughly 44 such cases a year, so it is not a phenomenal number because we are restricting the scheme to motor vehicles and not taking in all forms of personal injury, but it is still a significant number of people who would have gone through the court system, eating into the resources of the court system. Under this bill, those judges can deal with other matters and reduce the backlog that every court at every level in Western Australia and Australia is trying to fight. There are resource and fairness implications, and the issue of not being a disincentive to rehabilitation. Also, as a compassionate and fair society, we should take the economics out of this issue. Surely as a civil society, we would want to do something that equates with civility and, surely, it is commendable to introduce legislation that will demand that if a person licences a car, they pay the equivalent of an extra half a cup of cappuccino a week so that someone who is in Mr Proudlove and his family's position will be able to be awarded compensation. Like all members on both sides of the chamber, I strongly support the bill before the house.

**MR R.F. JOHNSON (Hillarys)** [3.23 pm]: I will not speak too long on the Motor Vehicle (Catastrophic Injuries) Bill 2016 as I would like it go through this place as quickly as possible. Like the previous speaker, the member for Armadale, and, indeed, the member for Victoria Park, who spoke about the Oats Street Brightwater Care Group development, I know that development very well. I have been studying road safety for the last 15 years, and also people with catastrophic injuries. We are long overdue in bringing in this bill. I commend the Treasurer for bringing it in. I have met many, many people in that time who have been in the position in which their families have not been able to cope because there was nobody to blame—nobody was at fault in their reckless driving, drunken driving, speeding or whatever—and it is a tragic situation for them. For the people where fault is established, I am pleased that will continue to be a factor in making a claim for not only pain and suffering and loss of earnings but also care, because care is the greatest cost for people with catastrophic injuries. It is an enormous amount. Recently, it has been estimated at \$300 000 a year for somebody like Ryan Marron. It is not unlike that for people with catastrophic injuries from a motor vehicle accident. As I say, I have experience of that in relation to a catastrophic injury. You can never say anything is good that happens out of a catastrophic injury, but if you can draw a conclusion that if somebody is to blame and they are able to claim care, loss of earnings, pain and suffering and all those things, that is a good thing because it helps people to help their loved ones. If there is nobody to blame, if there is nobody at fault or if a person has done something stupid, which is unfortunately what happened in the electorate of the member for Albany, that is a tragic event. I have met many families in the last 15 years who have been in a similar situation in which a loved one has been involved in a terrible car accident, but, if you like, it was their own fault. They did something: they dropped off to sleep, they might have drunk too much or they might have been speeding or whatever. Under this scheme, even if a person breaks the law, they will still get compensation for their care and any medical costs involved. I have seen families who have had to struggle enormously and have had to modify their homes to accommodate a daughter, in the particular instance I am thinking of, to cope with a wheelchair and many other things that people with catastrophic injuries need.

The worse catastrophic injury, if I can say, is brain damage. If a person is in a wheelchair and as long as they can speak, read, watch television, understand what people say and can take part in a conversation with their family and friends, they are better off than if they have brain damage or severe damage. People with brain damage are at a massive disadvantage. I was listening to Gary Adshead's program this morning on my way into Parliament House. It was about a man who lost his wife, I think about a year or two ago. He lost his life partner, his best friend, and that was tragic. He said that he was severely brain damaged, but listening to him on the radio I have to say that he was luckier than some people I know very, very well. He is able to talk on the radio and to understand and converse with his family. He suffered the tragic loss of his wife, his best friend, his partner, but at least he could still carry on living, to some extent, a normal life. He could talk, converse and read books; he

could understand everything. That is not always the case, and some people cannot really talk or swallow; they cannot do many things and they need 24-hour-a-day care and will do for the rest of their lives. I support this bill 100 per cent.

**MR D.J. KELLY (Bassendean)** [3.28 pm]: I rise to make a contribution to the Motor Vehicle (Catastrophic Injuries) Bill 2016. Members on this side of the house support the bill because it provides a solution to a very troubling situation that is inflicted on many people in our community. This bill deals with providing assistance to a portion of the community who sustain a catastrophic injury in a motor vehicle accident, basically, through no fault of anyone. Before I talk specifically about the bill and how it addresses that issue, I want to pay tribute to people who provide care for people with catastrophic injuries.

Obviously, it is a terrible thing for someone to have a catastrophic injury. To care for those people is work that many of us would find extremely challenging, but people in our community dedicate their whole working lives to caring for people who have had catastrophic injuries. It is incredibly demanding work and it is emotionally and physically taxing. In my previous position as secretary of United Voice, I had the privilege of representing workers in many organisations who provided that care. They were incredible people. They worked for organisations such as Brightwater, Activ and the Quadriplegic Centre. I can name a range of organisations that do incredible work, but the real guts of the work that those organisations provide is done by carers. They often do not get the acknowledgement that they deserve. Those organisations get quite a bit of kudos in the community. Everyone knows Activ and Brightwater. They win numerous awards for the work that they do, but often—I do not intend to be critical of the management of those organisations—the people who deserve, in my view, the most kudos and the most acknowledgement are the people who provide day-to-day hands-on personal care. Quite frankly, apart from anything else, they do not get paid very much. It is rather disappointing that features of our industrial relations system are such that the people who provide personal care to people with catastrophic injuries are paid some of the lowest wages in our community. A personal carer working in an organisation such as Activ struggles to make \$50 000 a year. We all know that in our community, making ends meet on that sort of wage is extremely difficult. Most of those people do not have the benefit of full-time hours; they work part time because that is all the organisations they work for offer. The vast majority of those people work part time.

It is ironic that in some ways as a Parliament we are congratulating ourselves on introducing this legislation, which will provide real assistance to people with catastrophic injuries, but the people we expect to provide that care are some of the lowest paid in Western Australia. I would like to think that we could get to a point at some stage that someone could make a career out of providing care for people with catastrophic injuries and they could earn a wage that would allow them to live in dignity and comfort. Tragically, a lot of people get into this industry because they want to provide this care, but ultimately they have to leave because they cannot purchase a house and they cannot feed their family. I always used to think it odd at times that people would say, “If people are not happy with the wages, why don’t they go off and get a job in a better paying industry?” That is a bizarre comment to make. Do we not want people to make a career out of this sort of service to people? Do we not want the best and brightest to dedicate their life to caring for people with catastrophic injuries rather than people who want to do that work saying, “Maybe I will get a trade and become a diesel mechanic or an electrician or, heaven forbid, do a law degree or something so I can get more money?” If that happens, we lose really good people to the disability industry. If we talk to people at Activ and Brightwater, we find that they really struggle to keep staff. One of their biggest problems is keeping staff, especially when the economy is booming and employment opportunities are plentiful elsewhere.

I support this legislation. We are doing a really good thing by the community coming together to support an additional group of people who suffer catastrophic injuries from a motor vehicle accident through basically no fault of their own. I want to make the point that the people we expect to provide the care that will be funded under this legislation are some of the lowest paid workers in Western Australia, and they remain that way.

One of the government’s claimed great achievements in the social services sector—I have heard the Premier talk about this on a number of occasions, and I am sure he will correct me if I am wrong—is that \$600 million was made available to the community sector to make it more sustainable. Some of that went to the providers of disability services. The government said—the Premier still claims that was one of his greatest achievements —

**Mr C.J. Barnett:** The government.

**Mr D.J. KELLY:** It was one of the government’s greatest achievements. When that money was allocated I was working at the union, and we said to the government, “If one of the reasons you are doing this is to improve the wages and conditions in that sector, you should mandate in some way to make sure that that money goes to the workers, or a proportion of it or whatever, rather than just giving it to the organisations and allowing them to spend it as they see fit.” The government saw fit not to do that. The Premier gave that money to those organisations without any requirement that any percentage of it flow through to better wages for the workers.

**Mr C.J. Barnett:** There may be some exceptions but they used it to increase salaries to maintain staff.

**Mr D.J. KELLY:** They did not. Significant portions of that money did not go to salaries and it varied from organisation to organisation. At the time, the Disability Services Commission funded over 100 different organisations. There was really no quality control on whether that money was spent on improving the wages of workers or buying better cars for managers, for example. I just make the point that if we pass this bill, it will fund care for people with catastrophic injuries. The money raised by this bill will fund personal care work in the disability services sector. The Parliament and the government have an opportunity to impact upon the wages that are paid to those disability services workers. In the past, the government did not address that issue when it had an opportunity to do so.

One of the best features of this bill is that it is a no-fault arrangement. If someone is in a car accident, they will no longer have to prove that someone was at fault in order to get support. I hate reading those stories in the paper in which someone, for example, has had to sue the local council because the footpath was uneven or because the beach did not have a sign on it saying “Big waves here”, so we had this very painful litigation in which someone sued someone else to prove that their injury was the fault of someone else. We always hear some people say, “Isn’t it ridiculous? We’re living in a nanny state” when someone who has been injured in the surf at Cottesloe Beach, for example, has to sue the Town of Cottesloe because somehow the fact that they hit a sandbar when they dived into the water was the Town of Cottesloe’s fault. They are terrible stories and people have a lot of fun with them. I think the notion of no-fault insurance generally is something that we should look at as a community.

This bill provides for no-fault compensation or payments to be made only to people who suffer motor vehicle injuries, but it is something that we should discuss further. It is done in New Zealand, where there is a more comprehensive no-fault insurance arrangement. I am not sure whether the Treasurer was saying this as a show stopper, but in an earlier debate he said that New Zealand’s no-fault arrangement has led to a growth in extreme sports, like bungee jumping, and that people have set up bungee-jumping operations in New Zealand and people are confident to use them because they know that if something goes wrong, they are not going to have to sue the operator; they will just receive compensation. I do not necessarily consider that a bad thing. We do a whole range of things in our community in which potentially we could suffer an injury. We could say that that no-fault insurance arrangement has provided New Zealand with a growth industry and a boost to its tourism and the like. I hope the Treasurer does not see that as a bit of a show stopper or a negative on the New Zealand arrangement.

Having some sort of broad no-fault insurance scheme is something that we could look at in the future. I hate reading those stories about those poor people who have to litigate often against local governments to prove that their injuries are the result of the negligence of local councils, for example, and focusing on the debate about when personal responsibility kicks in. Those people have to sue, not because they want to blame someone else, but because, if they cannot prove that somebody else was to blame, they are left in the awful situation of suffering a catastrophic injury and not being able to support themselves.

**Mr C.J. Barnett:** They are often cared for by the state, but your argument might also be not on an equal basis with other people traumatically injured.

**Mr D.J. KELLY:** That is right. People can access other levels of care, but we should not have a two-tier arrangement in which some people get a court to decide what is reasonable care and other people have to make do with a level of care that is significantly less than that.

I like that this legislation is based around no cost. There has been some debate about the \$99 per year it will cost. I think in general terms \$99 is a modest amount to pay and it shows that when a problem is socialised, the solution is often very modest. That is what is being done in this bill. There is a problem that affects about 44 people a year who are not covered under the existing motor vehicle arrangements, so how can we assist them? That will be solved by spreading the cost of providing their care across virtually the whole of the community—in this case, anyone who has a motor vehicle. The solution is pretty modest—\$99 per year. I am disappointed that often when we have public debates, people are reluctant to come together to solve a problem by way of a small increase in costs shared across the community, such as we have done in this case, because so many times we find that when the community confronts a problem, the solution on an individual basis is very cheap. When we expect individuals to deal with their lot in life, the cost to the individual is often massive. Ironically, when we leave a problem like this unsolved and we leave it to the individual to resolve, often those individuals can simply not bear those costs and there are all sorts of consequences.

[Member’s time extended.]

**Mr D.J. KELLY:** There are consequences that will result in the community paying more anyway. When a family member has a catastrophic injury, families can be put under enormous stress. When families are left to deal with the problem on their own, there are all sorts of potential knock-on costs to the community, such as

other members of the family having to give up work to care for an injured person and so there is a loss of productivity in the community. Children can also suffer when a family is unable to financially support themselves. That can knock onto the health and education of the next generation. Community often can incur a range of costs because the problems are left to be resolved by individuals. So the principle that applies in this bill—that is, we have seen a problem and as a community we have come together to solve it by the community paying a smaller additional amount every year—is tremendous.

I know this bill has bipartisan support, but it reflects a Labor value. When problems need to be solved, there are two ways of looking at it: leave it to the individual who has been at the rough end of things or bring the community together to share the burden. One of the reasons I am in the Labor Party is that we believe the community should share the burden and assist those who, for whatever reason, are worse off than those in the community who often, not through hard work but through good fortune, are in a better position than others. So I congratulate the government for bringing in this bill, but it is very much based on a Labor principle.

I support the principle of paying \$99 per year for every vehicle, because if people can afford to have six cars, for example, they can afford to pay a little bit more. If a person can afford more cars, it probably indicates that a person is generally in a position to pay more. The only part of this payment arrangement that is less than perfect is that there are people in the community who will find it difficult to pay an additional \$99 a year. I meet people all the time in my electorate who cannot pay their electricity bills, who struggle to pay their water bills, and who, because Perth is such a car-oriented city, need a car for their family to be able to function but who struggle immensely to pay the costs of running that car. That is an imperfect part of this bill, because people who are really struggling will still have to pay the \$99. I am a person who believes as a general principle that the better off should pay more, and the people at the bottom of the finances in this state should pay very little or nothing at all. This is a flat \$99 charge across the board. Some people in our community would not even notice \$99; it is just irrelevant to their finances. But I know there are people in Western Australia for whom \$99 is an issue, just like every water bill and electricity bill is an issue and just like buying food each week is an issue. I was talking to the deputy principal of one of the primary schools in my electorate the week before last, and he said that what really troubles him is that when kids, as they suspect, break into the school, they do not steal the computers; they clean out the fridges in the tuckshop or canteen—the food for the breakfast club. That is what they steal. It is clear that those kids are stealing to feed themselves and, potentially, their families. That is how desperate it is currently for some families in our community.

Although \$99 is not a large amount to most of us—no-one on a reasonable income should complain about it—an imperfect part of the Motor Vehicle (Catastrophic Injuries) Bill 2016 is that people who are really struggling will still have to pay. But if this is the best we can do, it is the best we can do.

Again, this bill has bipartisan support, but I could not help but point out that those opposite have not always been as generous in the way they deal with these issues. Not that long ago those opposite, under the Richard Court government, removed journey cover from the workers' compensation insurance system. People used to be covered under workers' compensation from the moment they walked out of their front door to go to work until the moment they came home. Their car journey was covered by the workers' compensation system. The Court government, led by Graham Kierath as Minister for Labour Relations, removed coverage for the journey to and from work from the workers' compensation system. That was in the 1990s. I do not know whether the Premier remembers that; he was certainly in the government at the time. That coverage was removed from a whole bunch of workers who had had coverage—not just for catastrophic injury, but for injury generally—from the moment they walked out of their front door to when they got home. It is still the case today that that is not covered under workers' compensation insurance, and it causes a whole lot of grief for a whole lot of workers in this state. This bill will restore that coverage for about 44 people a year, but will leave a whole bunch of people in this state—up to a million workers—not covered from when they leave their house until they get to work.

That decision was a disaster and people tried to replace that cover. The union I worked for tried to replace that cover and negotiated separate coverage for our members. The insurance companies were more than happy to come forward with schemes to cover union members for their journey to and from work. I am plucking the figures from my memory because it was quite a long time ago, but when we provided that coverage to union members, it cost less than \$5 a member a year. But it seemed that within a couple of years it was \$15 or \$16 a member a year, and it simply became unaffordable for the union to provide that coverage.

The Premier and members opposite have done a fine thing in bringing forward this legislation that will provide coverage to approximately 44 Western Australians who suffer catastrophic injuries, but the Liberal Party's previous actions have created, to this day, a problem in that workers are not covered travelling to and from work, when they absolutely used to be. The only reason the Liberal Party did that was to save a few bucks for the government. I applaud this government for getting this legislation before Parliament, but it disappoints me that the situation of journey cover remains unresolved in this state, because it had previously been covered. As I said

at the beginning of my speech, the cheapest way to solve these sorts of problems is to share the burden across the whole community. That is what the workers' compensation system did: every employer paid a premium, and as a result every worker was covered to and from work. It is much, much cheaper than workers insuring themselves individually, it is much, much cheaper than the unions they are members of trying to cover them, and it is much, much cheaper if it is a community-wide arrangement because everybody shares the costs and gets on with it. That is not to say that the workers' compensation system is not without its faults, but there was a much better arrangement when every worker was covered from the moment they left home to the moment they returned at night. I applaud the government for bringing in this legislation. As I said, it is very much founded on a Labor value that as a community we can solve issues if we share the burden. We can deliver an immeasurable benefit to the community if we all share the costs, and that is why we on this side are supporting this bill.

**MS M.M. QUIRK (Girrawheen)** [3.59 pm]: I told my colleagues I wanted only 30 seconds, and I think that is about what I have!

Firstly, I absolutely concur with the member for Bassendean's assessment that the valuable work that carers do in our community needs to be properly remunerated to such a level that those individuals can have a career and vocation in what is really important and, I have to say, incredibly challenging work. I wanted to speak very briefly on the Motor Vehicle (Catastrophic Injuries) Bill 2016 because when I was briefly Minister for Disability Services more than a decade ago, the issue of young people in nursing homes arose. There were young people with catastrophic brain injuries who could not be cared for anywhere else, and many ended up in aged-care facilities, which was totally inappropriate. It was a problem throughout Australia, but we made some provision in our budget to get some, but not all, of those people alternative care. In my time in government, I travelled with the then Premier to the Council of Australian Governments meeting, where this challenge was recognised as being Australia-wide and some provision was made for funding to make sure that young people could get out of nursing homes.

Unfortunately, that funding lasted only a couple of years, but it is still a major problem. This legislation can certainly make inroads into a terrible problem that is unsatisfactory all round.

Finally, I want to quickly say that we have had many discussions about road trauma and road safety over the last few weeks. A few years ago, the road trauma trust fund funded a road trauma counselling service.

Debate interrupted, pursuant to standing orders.

[Continued on page 1232.]