

Ms Margaret Quirk; Mr Peter Watson; Ms Janine Freeman; Mr Mick Murray; Mr Shane Love; Mr John Quigley;
Dr Mike Nahan

MOTOR VEHICLE (CATASTROPHIC INJURIES) BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

MS M.M. QUIRK (Girrawheen) [8.02 pm]: I am going to speak for another couple of minutes on the Motor Vehicle (Catastrophic Injuries) Bill 2016, but, before I do, I want to raise another matter first. In recent weeks there has been considerable road trauma. The statistics for fatalities and serious injuries has been less than edifying. One thing that was introduced by the previous road safety minister, Hon Rob Johnson, was the road trauma counselling service. That was a fantastic idea. It was similar to the last bill we were talking about; that is, those people who are left behind need support. The goal of the road trauma counselling service is to counsel victims, first responders, family members and other occupants of the motor vehicle. They receive counselling to ameliorate the trauma acquired through motor vehicle crashes. The original model that I looked at some years ago included not only the counselling model, but also mandated sessions for offenders. Offenders could be ordered by the court to attend a session with a victim of road trauma and be told how similar offending behaviour affects others on the road.

The ACTING SPEAKER: Excuse me, members. If you are having a discussion other than what is before the house, would you please go outside.

Ms M.M. QUIRK: In this context, it seems to me that a person who has an acquired brain injury through a road crash will not be able to speak on their behalf to the offending driver, but certainly the family members could do that. I would certainly be very keen for the road trauma counselling service to also include, similar to the very successful service in Victoria, mandated sessions with victims of road trauma ordered by the court as part of the sentence. I am told the service is very effective. Over 20 such sessions are conducted every month throughout the state of Victoria. It is a way for the offenders to empathise with those impacted by their offending behaviour. As a lot of us know, quite often those involved in serious crashes begin poor driving with lesser offences and it tends to escalate. In the context that much of acquired brain injury is through road trauma, and in the context of this bill, I ask the Minister for Road Safety—also the Minister for Health, because I think it may come under his portfolio—to consider extending the road trauma counselling service to include the capacity to recruit volunteers who are in some way victims of road trauma so they can tell their stories to offenders, and that such sessions be compulsory as part of any sentence.

MR P.B. WATSON (Albany) [8.05 pm]: It gives me great pleasure to speak to the Motor Vehicle (Catastrophic Injuries) Bill 2016. I have previously brought a grievance to the minister about the circumstances of Warrick Proudlove, a young boy from Albany, and in the upper house Hon Sue Ellery has given a very emotional speech on this issue.

First of all, I would just like to talk about Warrick Proudlove. It is the worst nightmare of every person in a regional town to hear on the radio that there has been a car accident just outside Mt Barker and that someone has been seriously injured. Being in Albany, our young people go up the highway every weekend. They go up to school and come home, and every time there is something on the news about an accident, fear goes through every parent whose child is in Perth and comes home at the weekend.

This particular night a friend of mine, Bob Dixon, was the police sergeant on duty, and I contacted him to find out who it was or whether he knew any details. He did not know many details. He just said that it was a young local boy and that he was very seriously ill in hospital. Unfortunately, some very good family friends of mine, Kevin and Trish Proudlove, got that horrible message: “Your son’s in Albany Hospital; we don’t think he’s going to survive the night.” What must have gone through their minds then about what had happened to their son? They did not realise the repercussions that would go on. It is now five years later, and they are still suffering.

I think I came up to Parliament the following week and I dropped in to the hospital. Everyone had gone from the room. I went in and there was Wazza, laying there on the bed, not a mark on him, and I thought, “Oh, he’s okay.” Then Kevin and Trish came in and said, “Oh, look, they think he’s got brain damage”, but just to see him there was just like the Wazza I knew. He was lying there on the bed with not a mark on him—maybe a little scar on the shoulder. What had happened was that they were coming home from Perth and a horse came out onto the road. The young guy who was driving swerved, went off the road and hit a tree.

When they tried to get compensation, the insurance company said, “Oh, no, the horse didn’t cause it. It was when it hit the tree.” It was just something minor like that. The fact that the horse was on the road meant that it came under some bill that was brought in by some British lord in 1900 that said that if a horse goes on the road, as long as the fences are up, it is not the fault of the owner. Therefore, there was no compensation. The family

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had to actually take to court a young man they had known for a long period of time to try to get the money. Obviously, they did not succeed, so a group of parents in Albany set up the Proudies Foundation. I would just like to mention some of the people who set that up, because these are people who, like me, had children who drove up and back along Albany Highway all the time, either for uni or, in the case of young Wazza, to play footy for Claremont colts. He had a chance at being drafted. He was a lovely young boy; you could not ask to meet a nicer kid. All the chicks loved him; he was just one of those lovable young guys, and he was in this horrible accident. The people involved include Andrew and Michelle McGovern. Young Jeremy McGovern was absolutely distraught when I got up there the next day; he was great mates with Wazza. I also mention Jennifer and Steve Shann and Craig Dew—D-E-W. I always spell his name the wrong way and get into trouble! Craig Dew is an accountant. There is also Danielle Ryle, also an accountant, Greg and Jenny Lloyd, and Jamie Hodgkinson. We set up this charity or foundation. It has been amazing to see how people have chipped in. Claremont footy club has been great, and the West Coast Eagles. A young bloke called Harry Garland organised people to swim to Rottnest to raise money. They raised \$24 500 this year, and I think they raised \$25 000 last year. That is total of \$50 000 that was raised. The West Coast Eagles also had a fundraiser.

The ACTING SPEAKER (Mr M.J. Cowper): Just one moment, member. Members behind the Chair, would you care to leave the room, please.

Mr P.B. WATSON: I cannot say enough about these people. Because this bill was coming on today, I rang Trish Proudlove up tonight and asked her how things were going, and she said, “I’m just very tired”. Sometimes when I go to see Wazza, I will say, “Do you barrack for Collingwood?”, and his mum will tell him to blink with his right eye if he does not barrack for Collingwood, and we can see it going through his mind, and two or three minutes later, we will see him blink. However, these things come and go. We have been trying to keep the family’s spirits up. However, they have to rely on people to raise money. We have raised a lot of money. We have changed the house that they have. We have changed the car and put in a hoist. However, these things should not be left to the community to do. I applaud the government for introducing this bill, because it will help people in the future who suffer a catastrophic injury. If Kevin and Trish and their family did not have the support of the Proudies Foundation and all the people who have given up their time, and continue to do so, they would be in a very difficult situation. When I rang Trish up tonight, she said, “I thought you were ringing up to say you couldn’t help anymore.” That is because after five years, people have dropped off. I said to Trish that I will be there for the long haul. It could have been any one of our kids. It could have been any one of my children, or anyone from anywhere else in town, who just happened to be in the wrong place at the wrong time.

I congratulate everyone involved with the Proudies Foundation. I hope I have mentioned Harry Garland. He is a young boy who used to play footy with Wazza, and he has raised \$50 000 in two years through the Rottnest swim to help look after his mate. For the family, their life has gone. Their life now surrounds Wazza. I am worried, because Wazza now has a seat at the Eagles games. The Eagles have given him a wheelchair seat. I still have not stopped hoping that he will become a Collingwood supporter.

Dr M.D. Nahan: The Eagles will do!

Mr P.B. WATSON: Yes. The Eagles have been fantastic to him. They have had him at their games. They have held fundraisers for him. Claremont footy club has also been fantastic. It is great that everyone is doing this. However, every year, about 44 people suffer a catastrophic injury. When we look at how the road toll is going, that number will increase in the future. Has that increase in numbers been taken into account?

Dr M.D. Nahan: The actuaries do it. It does not fluctuate a lot. There is not a great trend line in it so far.

Mr P.B. WATSON: It is interesting to learn that some catastrophic injuries cost the Insurance Commission of Western Australia as much as \$15 million a year. I am sure the family of Ryan Marron would be interested in that, because they were offered only \$5 million. Ryan Marron is another Albany boy. I wrote a letter of reference for Ryan Marron to Michelle Roberts, the then Minister for Police, when he first wanted to get into the police force. The family of Ryan Marron has also had to shift to Perth. The Marron family look after their son every day, along with his girlfriend. I know these two families. These peoples have had their whole lives changed. But for the sake of God, that could have been us.

A bill such as this is tremendous. I was just looking through it today. I know we will ask a lot of questions at the consideration in detail stage, but I note that the explanatory memorandum states —

The Insurance Commission may also approve other kinds of treatment, care, support or services not listed either generally ...

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I know the Proudie and young Wazza have had to find alternative treatments. So it would be interesting to see what is on the list. They have used things such as acupuncture, shock treatment and all this. It would be interesting to see the actual list. I do not know whether there will be a list or how that is going to work.

Dr M.D. Nahan: Member, I can provide you with a list. It is probably not altogether comprehensive, but I can provide you with an indicative list of the types of services, allied health and others, that are provided for catastrophically injured people. Of course, it varies from person to person.

Mr P.B. WATSON: Yes, for male, female, child or adult.

Dr M.D. Nahan: Brain damage versus spine.

Mr P.B. WATSON: The explanatory memorandum states —

Application to participate

Under this clause, a person injured in a motor vehicle accident may apply to the Insurance Commission to participate ...

Probably about 50 per cent of the complaints I receive about insurance companies are about them not coming good on their promises. I do not know how we will do something such as this. Is there an actual board? The people on the commission —

Dr M.D. Nahan: No. I will go to that in my response to the second reading debate.

Mr P.B. WATSON: No worries. I refer to overseas treatment. The bill provides that participants are to be suspended from participation while they are absent from Australia. I know young Ryan Marron was not in this scheme, but he had to go overseas for three months. Would he not have got that support while he was away?

Dr M.D. Nahan: I tried to answer that one. It is for a period of time.

Mr P.B. WATSON: The explanatory memorandum states —

This clause provides that the Insurance Commission is not liable for legal costs in respect of legal services provided in relation to a participant's assessment of treatment, care and support needs.

Does that mean that the family would have to go through all that and pay for all the costs to have them assessed before the commission would look at them?

Dr M.D. Nahan: No. If they are catastrophically injured and qualify for this, the Insurance Commission will pay for all the assessment and all the advocates and the medical advice that goes to the panel that makes the decision.

Mr P.B. WATSON: There are other questions here I will probably ask at the consideration in detail stage, but I congratulate the Treasurer on bringing forward this bill. My stepdaughter was in an accident when she was probably 10 years old. She had a back injury and she still gets physiotherapy treatment occasionally and it gets charged back to the Victorian Department of Health and Human Services because the accident happened over there. It is just great that this has happened. Will this legislation be in place from 1 July?

Dr M.D. Nahan: If we get it done.

Mr P.B. WATSON: And there will be no backdating? The Treasurer just cannot give one back for the Albany people. Congratulations to the government and the Treasurer. It is a great bill and I fully support it.

MS J.M. FREEMAN (Mirrabooka) [8.20 pm]: I too rise to speak on the very important Motor Vehicle (Catastrophic Injuries) Bill 2016, better known as the no-fault insurance scheme. I thank the other contributors to this debate. This issue has been debated in this house for some time and although we on this side congratulate the government for introducing the bill, with every bouquet there can be bricks. My brick to this is that when I debated workers' compensation legislation before the 2013 election with the then Treasurer, Hon Troy Buswell, the former member for Vasse, he rose in this place prior to the election —

The ACTING SPEAKER (Mr M.J. Cowper): Excuse me, member. One moment, please. Members, the member for Mirrabooka is on her feet and about five different conversations are occurring in this place. Hansard is having difficulty hearing the dulcet tones of the member. Could people please show some respect and go outside if they wish to have a conversation and allow the member on her feet to proceed.

Ms J.M. FREEMAN: I would just like to remind this house that that there have been a number of occasions on which the then Treasurer, Hon Troy Buswell, spoke on this. I remember at least two occasions on which he addressed a debate on workers' compensation or other aspects of insurance schemes. I think there was a bill related to the Insurance Commission of WA at one stage as well. At that time he said that the government was thinking about and disposed to introducing a no-fault insurance scheme, and it was certainly part of the discussions with the federal government about the National Disability Insurance Scheme. Although this side of the house, the Labor opposition, congratulates the government, these changes could not really come at a worse

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time. The government is about to put a \$99 fee at the end of a boom and a downturn in the economic cycle and when there is an increase in unemployment and an increase in fees and charges.

When the Treasurer stood up all those years ago prior to the last election, if, instead of just big noting that the government was thinking about a no-fault scheme, he had actually brought it in, people would have had a much better capacity than they do now to absorb the increase. What is really fascinating about this whole thing is that not only were there opportunities then, there were opportunities when the member for Albany raised the issue in this house in respect of the case he just spoke about, which was the tragic circumstance of the young man who suffered considerable injuries in an unfortunate accident with a horse; and there were other times. We all say it is great that the government is doing this, but it has been a long time coming, and unfortunately it now comes at a difficult time.

Given that both sides of the house support this legislation, there needs to be a community campaign to make people realise the benefits of it. I point out that the Queensland Labor government launched an awareness campaign on 26 February, just recently, for the introduction of its injury insurance scheme, which is the equivalent to our no-fault scheme. That public awareness campaign is being conducted with the celebrated Paralympian Marayke Jonkers. It seems to me that with all the other glitz, glamour and hype the government is generating with its advertising of so many other things in the community, this is one thing that needs to be promoted as a necessary change, because \$99 a year is quite a significant change.

Mr P. Abetz: Very significant.

Ms J.M. FREEMAN: Yes, it is very significant—an additional \$99 a year.

The scheme will start from 1 July 2016. One of the nuts-and-bolts questions I have for the Treasurer is: I have just paid my car licence for 12 months, does that mean I do not have to pay the \$99 until the following 12 months? My son, who is on a minimal income and survives on bugger-all wages as a music teacher and university student, has paid his licence for three months. I can afford to pay my car registration for 12 months.

Mr P. Abetz: You might want to lend him some money.

Ms J.M. FREEMAN: It is too late now! He has paid it; he has to pay his own bills.

Mr J.H.D. Day: Maybe you could help him!

Ms J.M. FREEMAN: I could, minister, but I have to say that many people in the community I represent, and perhaps in the community the minister represents, do not have rich mothers, or mothers who are paid a good income and could help. I am also trying to encourage my 20-year-old son to realise that the world is full of people managing their finances. Those people who have less advantage in our community and who pay their licence on a three-monthly basis will be hit with this levy a lot sooner than those of us who have the privilege of paying the \$600-odd for a whole year. I am not sure whether the minister is aware that the only way to pay a licence fee every three months is by credit card. People who pay six-monthly and 12-monthly can go into a post office, transfer the money from an account, or pay by BPay, or any number of methods, but someone who pays three-monthly has to pay by credit card.

Mr P. Abetz: That has just changed. I have just got a letter from the minister. I had a constituent who had that problem and they've just changed the policy so they can now pay it in cash.

Ms J.M. FREEMAN: That was not the case for the most recent round of licence charges, because my 20-year-old son, who works as a music teacher, could not pay by cash.

Mr P. Abetz: It has just come through.

Ms J.M. FREEMAN: The member says it came through this week. It is a real inequity for someone on a low income. Someone can front up to Uniting Aid, an organisation that does great community work in Westminster, Mirrabooka and the Stirling area through financial donations it receives to assist people with a financial payment. Uniting Aid often pays car licences for people who are unable to pay them, because it means they can access employment, get their kids to school and go to the shop and a whole range of things. If someone is really struggling to make ends meet, a car licence is one of the critical bills that this organisation is happy to meet. They will pay this bill only once a year, and only the three-monthly payment because they do not want people to become dependent on handouts. Some people live from Centrelink payment to Centrelink payment and the knock-on effects from driving an unlicensed car are such a disadvantage to people. I am pleased to hear from the member for Southern River that that has changed. I wrote the same letter to the minister, only to be told something different, although it was some time ago. I am surprised to hear that a three-month licence can now be paid at a post office and by other means.

Dr M.D. Nahan: If it isn't, I will make sure it is—the point is taken.

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Ms J.M. FREEMAN: Yes, because it is such an inequity. The other question I have to ask, which will not come as any surprise to members in this place, is because I worked for WorkCover on workers' compensation cases for a long time. Insurance premiums are the bane of WorkCover, because it has to set the premium rate in workers' compensation. It is not an exact science. We all know that premiums for workers' compensation have come down over the last eight years since the Liberal–National government changed the system. That is good for employers, but I really question the \$99 levy, given we already have a body of payment through third party insurance. I am sceptical of insurance companies, the Insurance Commission of Western Australia and premium increases, given my experience. I know that it is all done by actuaries, and there are only about two or three actuaries of that sort in Western Australia so we have to rely on those.

Dr M.D. Nahan: We went to both of them for that reason.

Ms J.M. FREEMAN: The Treasurer went to both the actuaries that exist in Western Australia! He cannot do much more than that. The RAC also questioned the \$99 cost, which it considered to be inflated, although I think it saw the previous green paper with a hundred-and-something-dollar cost, which was more inflated.

Dr M.D. Nahan: They also went to the Productivity Commission's report that used older data. I'll go through that explanation.

Ms J.M. FREEMAN: Yes. I notice from the RAC's response that the cost in New South Wales was \$71, it was \$34 in the Australian Capital Territory and it was \$106 in South Australia. I am sceptical about these things, having a history of both being an advocate and sitting on the board and seeing how the actuaries work.

My understanding is that the stakeholders have requested an advisory committee structure to guide and support the Insurance Commission in implementing the scheme. It will actively support the commission in implementing its new role. An advisory committee would be particularly important for dispute resolution, as the member for Albany so aptly pointed out. I can imagine that it is never an easy job for insurance assessors. They see many difficult, trying and tragic stories, so, in some ways, they become desensitised to them. Although they want to have regard and respect for the individuals, the assessors have to respect that each person who comes to them does not know that the workers in the Insurance Commission have seen 10 or 20 people in that situation or worse. Each case needs to be treated with respect. I have no doubt that dealing with tragic situations, and having to put a dollar figure on them is never easy.

I refer to the 2011 report "Evaluating the Costs, Accessibility and Availability of Services for those with Catastrophic Injury in WA" from the Australian Centre for Economic Research on Health and the Centre for Health Services Research in the School of Population Health at the University of Western Australia, by Dr Caroline Bulsara, Beatriz Cuesta-Briand, Associate Professor Rachael Moorin and Anne McKenzie. I know this to be true because I have seen it, but this paper mentions the following issue —

Trust was a major issue with some carers believing that the lawyers were working in the favour of the Insurance Commission rather than themselves.

The paper states that one carer said that when they got to the office, the lawyer and the SGIC were "going off to talk". It continues —

So, they left us sitting alone in an office and they went and had their little round table about what they thought they could throw at us to keep us happy.

They experienced that feeling of being completely rejected. The following is another example, from the paper, of a carer who states —

"What happened was, James was just a number to the Insurance Commission. They paid wages to staff because what happened, after he got out of the nursing home, he cost \$14,000 a week. And the Insurance Commission didn't pay that. It was just massive."

People are dealing with these sorts of tragic situations of catastrophic injury, which is why these insurance payments are being given to people.

As I understand it, the definition of "catastrophic injury" includes spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns and permanent traumatic blindness. These injuries are extreme and these people are at the quite harsh and debilitating end of the injury spectrum.

Timeliness is absolutely essential. It is hard to have timely dispute resolution procedures when lawyers are involved. That is just the reality of processes and procedures. When we add doctors and medical opinions into that equation, we can lose the importance of timeliness for rehabilitation purposes, whether that is just rehabilitation to the best life possible. That is quite an important issue for me.

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I think the no-fault aspect of the scheme has to be honoured. The no-fault aspect of workers' compensation matters is often corrupted by insurers trying not to accept claims. For me, a no-fault scheme is really about putting all the documents on the table, honesty, transparency and a capacity for people to feel included and is part of a process that leads them to a resolution and enables them to move to the next stage of that traumatic experience.

In closing, I commend the workers and the families who work with people who have had catastrophic injuries. They are the heroes of our community. They give above and beyond. Most workers in the disability sector would barely earn a minimum wage over the years because of part-time work but they will always give of their time, above and beyond. Then we add the families to that. It is a fantastic development that communities come around to help people with disabilities. Let us always remind ourselves that many people who have had catastrophic injuries have gone on to do amazing and great things. We should be using this insurance scheme to make sure that they have the opportunity to do great things, such as the Paralympian whom I spoke about before, Marayke Jonkers, who was catastrophically injured in an accident in Queensland. She has obviously met adversity through her disability but her other abilities have come through and she has achieved great things. We in this house always need to remind ourselves that when we speak of people who have had those injuries, it is with the greatest respect for their capacity to confront those injuries and make the best possible life for themselves. This bill can go towards doing that.

MR M.P. MURRAY (Collie-Preston) [8.39 pm]: I rise to support the Motor Vehicle (Catastrophic Injuries) Bill 2016. Although it has been a long time in the making, I just hope that all the ends have been tidied up. I have certainly seen people impacted by catastrophic injuries, as have most of us in this chamber. I believe those injuries are more prevalent in country areas, which do not have support services. People have to travel. The care generally falls back onto the parents, who incur a huge impost and never grizzle about helping out but would like some help themselves. We have seen the strain—I am sure I am talking for all members in this place who have had to deal with these issues—on those people's faces but they battle through. They put themselves last and look after the person who is injured first. It is great to see this legislation. I had some concerns that were addressed just recently. I was concerned that a lump sum may be paid to people. I have seen actions in the civil court that have resulted in people getting a lump sum. Some may have slight brain damage while others are more severely damaged, which affects their mobility.

We worked very hard with the family of a young person—he did not have parents, but he had a family group—to try to stop him spending too much of his lump sum. When someone buys seven Commodores in seven weeks, the only person who is happy is the owner of the caryard they were bought from. That is what happened. He wrote off the cars and looked like almost killing himself again because the money was available for him to grab. I am glad that this Motor Vehicle (Catastrophic Injuries) Bill will not allow that because it is very difficult to get people to say that they have to pull someone into gear, but then they say that the injured person is still capable of making decisions, but when we stand back and look at it, we find that is not quite the case. That is a major positive.

On the negative side, I believe collectors of vehicles such as motorcycles will incur a fee of \$30 a vehicle but someone might own 30 motorcycles. They are not costly to collect but people might want to ride them at rallies and that sort of thing. One collector around the Jurien Bay area has something like 50 motorbikes.

Dr M.D. Nahan: Are they all registered?

Mr M.P. MURRAY: Yes. When a rally is held, the owner gets people in to ride the bikes. I think we should look at that because it is probably an impost —

Dr M.D. Nahan: Does he charge people to ride the bikes or let them ride them for free? Is it a business?

Mr M.P. MURRAY: No; it is not a business. People can put their name down to ride a 1980 Rudge or something like that. It has been raised with me several times. It is mainly about motorcycles because they can be bought at a reasonable price. It is not that someone is a multimillionaire because they have that many. As collectors' items, they can be bought for between \$3 000 and \$5 000, unless it is an extremely rare one, of course. There are those sorts of smaller issues. Certainly, the good aspects of this bill far outweigh the negative aspects, but that impost on multiple vehicles is something that I would like to be considered further down the track.

The other aspect mentioned briefly, as seen in other areas, is when the Public Trustee gets hold of the payments. It is very hard to get the trustee to release money for items over and above those required for day-to-day living. For example, a person might want to buy a large plasma TV, but the trustee says that it is a luxury item so they will not release the money or reluctantly pays it even though the money belongs to the injured person. Those

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sorts of restrictions must be freed up so that the person has some dignity in being able to choose what they want to put in their room or to make their life a bit more comfortable. They should not have to squabble with the people who hold the purse strings. It is a matter of dignity for the person. It is soul destroying if they have to go to court to get the money or threaten to go to court and write letter after letter to get what they want.

All those issues aside, I certainly strongly support this bill. The only other criticism is that, although many people have said that they support the bill, they would rather have the fee attached to their driver's licence. I understand it is attached to vehicle registration fees because of the sum required. If the fee is attached to our driver's licence, it is a direct cost to the individual rather than indirectly due to the type of car or the number of cars we own. I will argue not for owners of two or three cars paying the fee, but for collectors who own multiple vehicles. Maybe there should be a cut-off point for how many vehicles are classed as vintage or veteran.

Dr M.D. Nahan: Vintage cars are \$30.

Mr M.P. MURRAY: I am not too concerned about those people. I do not think \$30 will be out of the ordinary for them. There is someone sitting on the government back bench who has an old HJ, I think!

Mr J.M. Francis: It's a '68 Camero, WB.

Mr M.P. MURRAY: He is the only one in Parliament who is getting here for \$30. A very pointed comment was made by the member who spoke before me about the work that has been done by parents, relations and siblings to make sure this bill is up and running. I take my hat off to them.

MR R.S. LOVE (Moore — Parliamentary Secretary) [8.46 pm]: I rise to make a short contribution on the Motor Vehicle (Catastrophic Injuries) Bill 2016. I would like to reiterate thanks to the government for bringing about the circumstances whereby people who are catastrophically injured in an accident that has been their fault will now be covered at least for the cost of their treatment and their long-term care. I believe that an average of about 44 people in Western Australia fall into this category every year. There is another group of people under the compulsory third party insurance scheme who lose a portion of their support through contributory negligence and who will also benefit from some of the new charges to be levied on vehicles.

At the moment, as we know, people who have caused and are at fault in an accident have no access to compulsory third party insurance benefits and must rely on the normal disability access and services that are provided, which puts a great impost on their families and communities. This bill will seek to address the need to meet those costs and provide the necessary support for those 44 people a year. I understand that no return from any of the money received will go to the government in a dividend or in any other way.

I wanted to speak tonight because I represent a farming area. One of the concerns that farming groups have expressed as recently as only a week or two ago—the new president of the Western Australian Farmers Federation also made the point—was about the extra impost that this bill will impose on farmers. I understand this concern, because many farms have multiple vehicles, many of which are not used very often or not used very often on the road but which require, if they go on the road, to be registered; so, there will be an increased impost on the farmers due to that. I wanted to make a few points about that.

First of all, farm vehicles that are classified as business vehicles will benefit along with all other business vehicles registered in Western Australia. I think there are about 500 000 such business vehicles that will have a reduction in the compulsory third party element of their insurance due to the fact that their risk profile is considered to be quite good compared with that of private vehicles. That extra impost that people now pay for a business vehicle is being removed. Farmers as well as other businesspeople will benefit from this.

Secondly, thanks to arguments by regional members in this place such as me, farmers will be granted significant further concessions on standard contributory charges for the many classes of vehicles that they hold, such as a farm registered utes, fire trucks, tractors, spraying equipment et cetera, and that will cut those costs that would otherwise have been applied by about 50 per cent. I thank the Western Australian government and the Treasurer for making that concession available for the farming community. I still acknowledge that there is a real cost to many farmers. Speaking as a wheatbelt resident and farmer myself, I say to farmers who are concerned about this extra cost that, realistically, it is our family members, our sons and daughters, our workers and community members, who more than anyone else, disproportionately to the rest of Western Australia, will benefit from this scheme. Sadly, for a long time in the wheatbelt area, as we heard the Minister for Road Safety say in announcing the results of the wheatbelt safety review the other day, there has been a problem with “killed and serious injury” accidents—as they say, KSI incidents. The national average for these types of accidents is around 4.9 per 100 000 people per annum. In the wheatbelt, the rate is 49.8—that is, 10 times the national average. It is very clear that some of the biggest beneficiaries of this legislation will be the residents of the wheatbelt, the midwest and other farming areas. Once again, while I acknowledge that these extra costs are there, the farming

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community needs to look closely at the accident statistics in their areas and understand that they and their families will benefit. I hope they never have to use the provisions of this legislation, but if they do, unfortunately, find themselves involved in a catastrophic accident and it is their fault, they will have access to this level of care that they would not otherwise receive. In country areas it is probably more important and more costly than anywhere else to get that type of cover. A further note to make is that this cover will actually apply to registered vehicles, whether or not they are on a road. If a farmer has an accident on the farm, and not on the road, and it is with a registered vehicle, and he or she is at fault, they will still be covered by this insurance provision. That should be noted by the farming community.

I am glad of the concessions that the Western Australian government has applied to these costs, but I make no apology for the cost being imposed, because I consider that the overall actions are part of a compassionate response to a very serious problem.

MR J.R. QUIGLEY (Butler) [8.53 pm]: I am the last speaker of the evening on the Motor Vehicle (Catastrophic Injuries) Bill 2016, and I will therefore try to keep my comments reasonably brief. Much has been traversed already, and we have consideration in detail to come. Obviously, I rise as a member of the opposition, which supports this bill. I want to raise a couple of points with the minister, but they might have to wait until consideration in detail. Although the opposition supports the bill, I query a few little hooks in it. The first relates to the issue raised by the member for Moore of vehicles used on private land that are nonetheless registered vehicles. In those circumstances, they will come within the scheme. As I said, I will try to keep this brief, because I will raise these issues in consideration in detail. I am not seeking to simply nitpick but, having been in legal practice for some time before becoming a member of this place, I know how things here can be assumed to be fairly clear but can become matters of contention in another place, or other places. One of the things that I raise, arising from the contribution by the member for Moore, is the definition of “private land” in clause 5 of the bill, “Motor vehicle injury to which Act applies”, if the vehicle is registered and part of the insurance scheme, either here or elsewhere, and is on private land. The definition reads —

private land means land that is —

- (a) alienated from the Crown for any estate of freehold; or
- (b) the subject of a conditional purchase agreement, or of a lease or concession with or without a right of acquiring the fee simple in that land.

I am thinking now of remote areas. I am not quite sure whether land vested with traditional owners under native title becomes alienated from crown land. I am thinking of a lot of Indigenous people here, because a lot of them—I do not want to put them down as a class—often drive either without a driver’s licence or in an unregistered vehicle. It might become a point of contention that land upon which they were driving had become alienated from crown land by reason of it being vested under native title. That is one query I raise. The minister will have his advisers at the table during consideration in detail, and I flag that now so that they can contemplate that beforehand. These matters are all on the fringes. The actual scheme of the Motor Vehicle (Catastrophic Injuries) Bill 2016 was published in a green paper that was reviewed by the Law Council of Australia and reported on in December 2014. The general scheme of this bill would fit with best practice as identified by the Law Council of Australia, and better than that of other jurisdictions. I am not addressing the main, to put it colloquially, guts of the bill, but looking at the edges of the bill as to its reach. That is why I raised unlicensed vehicles driven on land that has been alienated from crown land under the native title scheme as one.

Another area, Treasurer, is that the Crown has issued leases; I am now thinking of pastoral leases, although there are some mining leases. I have certainly not travelled as far as the member for Kimberley on pastoral leases; my experience of that is a little limited, although I worked on a pastoral station for a while as a jackaroo in the early days. I will use Gnaraloo station as an example because it is now quite famous. It is situated just north of Carnarvon and attracts a lot of tourists. The tourist attraction is really the beach on a pastoral lease that has been alienated from the Crown, nonetheless it gets a lot of tourist traffic —

Dr M.D. Nahan: Yes, it does. Literally thousands of grey nomads go there every year.

Mr J.R. QUIGLEY: Thousands. I remember that when Billabong did secret surf spots of the world, Gnaraloo was featured. No-one could talk about Gnaraloo; no-one mentioned the name because no-one wanted any crowds there. Now, lots of people go there.

Dr M.D. Nahan: They even have a barber shop and a bowling green.

Mr J.R. QUIGLEY: Gnaraloo is one. Another favourite of mine is a station called Warroora; I do not know whether the Treasurer has been to Warroora.

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Dr M.D. Nahan: One of the committees did a review of caravan parks, and we went to all those. I went with the member for Collie–Preston.

Mr J.R. QUIGLEY: The Treasurer is a very lucky man; I wish I had been on that committee. I have spent some wonderful days at Warroora station, and there, of course —

The ACTING SPEAKER (Mr M.J. Cowper): Peter Evans was managing it.

Mr J.R. QUIGLEY: Peter Evans?

The ACTING SPEAKER: Yes.

Mr J.R. QUIGLEY: I do not know whether it was, Mr Acting Speaker.

The ACTING SPEAKER: It was.

Mr J.R. QUIGLEY: I am just trying to think of the guy's name or the lady who owned Warroora; it will come to me after. There are station tracks because there are different beaches at Warroora. There is a lovely pool on Warroora; there are a number of different places on Warroora station.

The ACTING SPEAKER: Maggie's.

Mr J.R. QUIGLEY: Yes, that is another one.

As I understand it, they are all on land that has been alienated from the Crown by way of leasehold. The access roads are on private land. People on this private land use all sorts of vehicle equipment—beach buggies and the like—some of which are not licensed. There are vehicles on private land that are not licensed, not because they have not been registered but some of these beach buggies are never intended to be licensed. There are also station vehicles on there. What happens on these pastoral leases when there is an accident resulting in a catastrophic injury, but it was on private land in an unregistered vehicle? It seems that the legislation does not cover that and I want to raise that.

Another thing I raise with the minister now, at this time of night, is that although the opposition agrees with the spine of this legislation, I want to make a general criticism of the bill. The general criticism of the bill is not what the bill is trying to achieve, but how it is presented to this Parliament. Between clauses 3 and 33—that is 30 clauses—I have counted that 10 are subject to regulations. The determinations of at least 10 of those clauses between clauses 3 and 33 will be the subject of regulations, which we do not have before the chamber. It is a not uncommon feature in government at the moment that bills are brought in without the accompanying regulations. As people say, especially in insurance schemes and policies, the devil is in the fine print. For example, it is stated at clause 11(1) —

If the Commission accepts a person as an interim participant then, subject to subsection (2), the person remains a participant in the CISS —

That is, the catastrophic injury support scheme —

for a period determined in accordance with the regulations.

We do not know what those regulations are. Clause 14, “Suspension of participation”, states at subclause (2) that the regulations may confer power on the commission to suspend a person in prescribed circumstances. We do not know what is contemplated there. It is the same at clauses 16 and 17. It is stated at clause 18(3) —

The Commission is not liable for any expenses in respect of the following —

...

(b) treatment, care and support needs that are not assessed treatment, care and support needs;

(c) treatment, care and support needs excluded from the operation of this section by the regulations.

When we go to the interim support scheme, we do not know what is in and what is out because we do not get to see the regulations. It is the same at clause 18(4)(b), which states —

any monetary or other limits on the provision of particular treatment, care and support needs to a participant in the CISS set out in the regulations;

That could be capped by the regulations. Although we agree with the philosophy and with what the government seeks to achieve, in so far as scrutiny by this chamber to make sure people are properly protected, so much of the real operative clauses of this bill are subject to regulations to be determined by the executive. We know from experience in this chamber that regulations are not subsequently debated in detail, though they will be required

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to be laid before Parliament for 21 days. That can happen at any time, and then they become law. People ask, “How did this happen?” and the reply is, “It’s in the regulations.”

Another example of this is the anti-association laws introduced to this Parliament by the then Attorney General Hon Christian Porter. When the government introduced the anti-association laws—the anti-bikie laws, the anti-gang laws—so much of it was subject to regulations that the act actually did not come into effect for years after the passage of the legislation through this chamber because it was all waiting upon regulations. There has never been an application brought under that legislation because it all seemed to die on the vine whilst everyone was waiting for regulations. As you would know only too well, Mr Acting Speaker (Mr M.J. Cowper), being a former police officer and having an interest in these matters, no application has ever been brought. We await the regulations but we do not know how long it will take for these regulations to come.

To take the matter raised by the member for Victoria Park about disputes over adequate care and support in any particular case, that is covered by clause 26 of the Motor Vehicle (Catastrophic Injuries) Bill 2016, “Review of treatment, care and support assessment”, which states —

If a participant in the CISS —

The catastrophic injuries support scheme —

disputes a treatment, care and support assessment, —

This is what the member for Victoria Park was referring to —

the participant may apply to the Commission, in accordance with the regulations, for a review of the treatment, care and support assessment.

We do not know whether there are time limitations on that or what the process is for that. So often, regulations set out a delimitation of time for applications but we as a Parliament do not get to see that. I said that between clauses 3 and 33 there are 10 clauses subject to regulations. As I said, we can look at the scheme; it is terrific and is what Western Australia has been waiting for, but can we give our final verdict? We will certainly support the passage of the legislation, but can we give our final verdict? No, because we do not know what is contained in the regulations or what is contemplated in the regulations. I stopped at clause 33 because we then come to clause 34, which provides the statutory power for the Governor to make regulations, and that is normally drafted as wide as possible and is so here. Clause 34(1) reads in part that, for giving purpose to this legislation —

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient —

We do not know what is contemplated there. The whole scheme could be drastically diminished or enhanced by what is contained in regulations.

I will not go on for much longer because I am at the end of the operative clauses. Clause 35 provides that the regulations may adopt codes. Clause 35(1) reads, in part —

In this section —

code means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;

The regulations can adopt something from another jurisdiction. It even contemplates—we will get to this during consideration in detail—codes published outside Australia. I do not know what the government’s thinking is there as to what could be adopted that has been published outside Australia without being debated in this chamber—that is, a rule from another jurisdiction that is not debated in this chamber but is imported into the law of Western Australia by the promulgation of a regulation.

Clause 35 goes on to state —

- (2) Regulations may adopt, either wholly or in part or with modifications —

- (a) any code; or
- (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

- (3) The adoption may be by —

- (a) incorporating the code or subsidiary legislation in the regulations; or

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(b) incorporating the code or subsidiary legislation by reference.

That means that a whole structure that we cannot forecast or contemplate might be imported into the scheme. This is not to be taken as a particular criticism of this bill or of the Treasurer. It is a general criticism of the way in which a lot of government legislation is now coming forward—that is, the substantive bill that is to become the act comes before the Parliament, but no draft regulations are laid on the table of the house. That means that members do not have the advantage of perusing the draft regulations and discussing them during consideration in detail. There is also no elucidation in the second reading speech of what is to come by way of regulations.

I have talked about clauses 3 to 33 of the bill. Ten of those 30 clauses are subject to the promulgation of regulations. Clauses 34 and 35 are broad clauses that deal with the making of regulations. As I have said, those clauses are so broad as to empower the executive, by regulation, to incorporate legislation that has been passed in other state jurisdictions, or even in jurisdictions outside of Australia. I will be interested to hear what the Treasurer has to say on this subject during consideration in detail. Given the hour, we will raise those matters further during consideration in detail. Thank you.

DR M.D. NAHAN (Riverton — Treasurer) [9.13 pm] — in reply: I first want to thank members for their very good comments on the Motor Vehicle (Catastrophic Injuries) Bill 2016. This is a very important bill. This is a bill for which people and families in Western Australia have been waiting for a long time, and we finally are getting there. I would like to follow up on the lead speaker's 13 points and try to deal with those.

Mr Acting Speaker, did I hear something?

Several members interjected.

Dr M.D. NAHAN: We have a compulsory third party insurance system in this state that has been in existence for seven years. It is based on the traditional common law fault-based system. Our approach in this bill is to sustain the current system and not change it. All the other states, with the exception of Queensland, have adopted legislation similar to what we are enacting today—that is, a complete no-fault system. They have done away with fault-based common law rights. We will be keeping the common law rights and a fault-based system. However, that will be augmented for people who are catastrophically injured in a motor vehicle accident for which no fault can be found by another party. Those people will now be covered through a no-fault system. That is what we are doing in this bill. As members have said, it is estimated that each year in Western Australia, 44 people on average are catastrophically injured in a motor vehicle accident for which no fault can be found. The purpose of this bill is to set up a catastrophic injuries scheme and fund to provide support for these 44 people on average. The number of people who are catastrophically injured will vary from year to year.

This bill needs to be put in the context of a range of changes that are taking place in disability services. We have the National Disability Insurance Scheme, which is evolving over time. A couple of trials are underway in Western Australia—one federal and one state based. Other systems are operating around the country. In the move to the NDIS, there was a need to look at what systems can be put in place to cover people who are disabled.

The National Injury Insurance Scheme is also under debate. That is evolving. That augments through various insurance mechanisms the National Disability Insurance Scheme. The commonwealth government had the commonwealth Productivity Commission about five or six years ago do a review of the NIIS and it specifically dealt with catastrophic injuries in motor vehicles and it recommended the move to a no-fault basis. By the way, it recommended a move to the no-fault basis across the board and to do away with common law rights. We have chosen not to do that. We have taken a different appropriate and I think the member for Butler in referring to the Law Society of Australia —

Mr J.R. Quigley: Law Council of Australia.

Dr M.D. NAHAN: The Law Council of Australia supports that.

Mr J.R. Quigley: Best practice in Australia.

Dr M.D. NAHAN: The member for Victoria Park and I had some discussions across the chamber. I suspect the issue about covering the issue of insurance more widely outside motor vehicles and, indeed, catastrophic injuries outside those will be a discussion for the future. The issue is how we fund the disability services in addition to the NDIS whereby no insurance mechanism is possible. This scheme restricts it to people in registered motor vehicles in Western Australia who are injured when no fault is found, whether it is on roads or private land. The member for Butler raised a good point and I have to seek advice from my advisers about what “private land” refers to. He made some really interesting points, including that we do not want to narrow the definition of “private land” to exclude the many pastoral leases, native title lands and other things in this state.

Mr B.S. Wyatt: ALT land.

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Dr M.D. NAHAN: Yes. I will get advice on that and we will go to it in consideration in detail. The scheme applies to drivers, passengers, pedestrians, motorcyclists and cyclists, who can claim if they are catastrophically injured in a motor vehicle crash. The member for Victoria Park raised the issue about bicyclists. They do not have compulsory third party insurance or this insurance if they are injured and no fault is found. If they are injured by a car and the car is at fault, they are covered by the CTP system. Under this system, if there is no fault, whatever can be determined, they are covered by it. Catastrophic injuries, as I think others have mentioned, include spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns and permanent traumatic blindness. As everybody has identified, most of us deal with people in the community who are struggling and we have come across people who are taken care of or who have personally suffered severe injuries such as this. It not only is soul-destroying, but also changes the family's life permanently. It is something that simply a society needs to assist them with. That is why we are doing this.

Catastrophic injuries and treatment and care and support are defined by national minimum benchmarks, member for Butler. Those are being set up in the context of the NDIS and we are working on it. It is going to be shared across the country. One of the issues that we, unfortunately, cannot deal with effectively is the retrospectivity. The Warrick Proudlove accident is a classic example that brought to attention the need for this legislation and this fund. He was injured in an accident in which the vehicle avoided hitting a horse, if I remember correctly, and the driver was not at fault. By the way, we are considering legislation to address the issue of stray animals on roads, which is a really big issue in Western Australia, and that will, hopefully, provide some assistance to people in accidents such as Warrick's, which was the result of a stray animal owned, hopefully, by somebody. Nonetheless, we are not going into retrospectivity because the difficulty is when we start and when we do not.

It is estimated that, on average, lifetime coverage per catastrophic injury is \$4 million, but it varies significantly. In fact, it varies between about \$2 million and \$15 million per person, which is a large variation. Importantly, there was a debate on an issue that the member for Victoria Park raised about exclusions. The issue has been raised and I have talked on radio about it. People raised the question of what would happen if someone contributed negligence to their catastrophic injury because they were drunk or fell sleep or whatever. This is a no-fault system and the principle of no fault is simply that there is no fault. Also, we do not want to go into the legal cost of finding fault. There is another important issue. In our system, if no fault is found, people are not left behind; they are taken care of across a range of agencies, including the Disability Services Commission and the Department of Health. I cannot say that this is adequate in many cases, and that is why we are going to the National Disability Insurance Scheme, but those people are taken care of. This system basically relieves the burden on the safety net system we have, if you like, and funds it directly. Also, there are no deductions for contributing negligence in this system, so if a person is not wearing a seatbelt and they are catastrophically injured, they get 100 per cent of the care. It is care that is both necessary and reasonable and includes medical treatment, dental treatment, rehabilitation services, ambulance, transport, respite care, attendant care, domestic assistance, aids, prostheses, education, vocational training, and home and transport modification. That includes not only medical treatment, but also the full range of allied health services.

Another issue that was raised was the quickness of this response. It is very important to respond quickly. Under the fault-based system in which people often have to spend a contentious time proving fault, particularly if the injuries are not catastrophic, there can be a delay. The way this will work is that people will be immediately appointed a care coordinator. It will often take time to assess the extent of both the needs and injuries, and I have been informed that it often takes up to two years. Sometimes for children, because they are growing, it takes longer, but there is a system in place to identify catastrophic injuries quickly and also an interim arrangement can be put in place so they can move to more permanent care in the future. Under our existing compulsory third party insurance, most payments are lump sums, so the catastrophically injured person or their carer is given a lump sum of some sort and the injured person is taken care of by their families, a carer or a public trustee of some sort. Under the Insurance Commission of WA system, there is also the option for ICWA to make periodic payments, so there are two streams—lump sum and periodic payments. Under this no-fault system, the payments will not be lump sum; periodic payments will be determined.

One of the major issues that we have to deal with is disputes. We have had a large number of debates around the community about whether or not the dispute system will be adequate. The member for Victoria Park raised in a very constructive manner the role of lawyers. I am not going to say anything disparaging about lawyers. My father was a lawyer and dealt with this type of issue for most of his adult life. My wife is a lawyer also, although she has not dealt with this issue. Under our fault-based systems, lawyers have a prominent role, particularly in determining fault in the courts and otherwise, and of course the extent of the injuries, catastrophic or otherwise. Their role there will continue. Under the no-fault system, the focus is mainly on medical processes rather than legal ones. There will be scope for lawyers in the non-medical determination.

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New South Wales and Victoria have a similar no-fault system. New South Wales has had this system for 10 years and there has not been a single non-medical dispute requiring lawyers.

Mr J.R. Quigley: You're more reticent and kinder to lawyers than the Bard in *Richard III* in Dick the Butcher's great speech to the proletariat in which he said, "First, kill the lawyers!"

Dr M.D. NAHAN: I am trying to stop myself from making those sweeping statements—I avoid that. The system that we have here is that the Insurance Commission of WA will start out by appointing a care coordinator, who will take on the advocacy for the person. They will be trained in assessing the needs of the patient, the catastrophically injured person, and in identifying and arguing the case. We have an agent for these people, who is a care coordinator appointed and paid for in full by ICWA, and that person will be the catastrophically injured person's agent through the system. They will also have access to medical assessments, medical experts and medical advocates, and they will be paid for in full by ICWA. If it is required that the medical expert be flown from some other place or, indeed, that the patient be flown to some other place in Australia for an assessment, that will be paid for by ICWA. If the assessment of the catastrophic injury and the services goes before a medical panel—I will get to the appointment of the panel in a minute—they will be medical experts. If there is a dispute about whether the injury is catastrophic or the extent of care that is required, it will go before a medical panel. If a disagreement is put forward by the catastrophically injured person or their care coordinator, there is an alternative medical dispute resolution committee. My concern was: who will set up the medical assessors and the members of the dispute resolution committee? My experience with my father—I think the member for Armadale raised this—was that in this business there are people working for the insurance companies and people working for the lawyers; they never meet, and we know what they are going to say. ICWA initially put forward the idea that it would appoint them. I have changed that; the minister will appoint them. Of course, the minister does not know very much—this minister does not know one doctor from the next—so it will go to cabinet, and I am sure that future ministers will also bring it to cabinet to decide.

Mr B.S. Wyatt: That is a very important distinction, because if you had only Insurance Commission-appointed doctors, there would always be doubt about that. I hope that the minister of the day would be mindful about the perception of the decisions.

Dr M.D. NAHAN: Yes. I hope that the minister of the day does not take the advice of just the Insurance Commission, but talks to their ministerial colleagues in health and disability services and, in the future, the National Disability Insurance Scheme to make sure they have a wide panel. I might be putting words in her mouth, but the Minister for Mental Health told me that these assessment panels are in existence now. The minister has very little clarity around them, but they are assessed and appointed separately from the Disability Services Commission. There is a lot of process in there that we will look at, but my decision was that the responsible minister will choose the medical assessors. Taking it to cabinet will bring some transparency into that process, which I think is very important.

A lot of this is fleshed out, if the member is interested, in the review undertaken recently by the Queensland government, because it is exploring introducing a no-fault system. There simply have not been too many disputes in New South Wales and South Australia, even of a medical type. The major medical dispute was not about whether someone was catastrophically injured—that is usually quite obvious; it was about the extent and nature of care. The extent of care is what we have to focus on. As I say, it surprised me, but there are no records of non-medical disputes. This system does not provide for lawyers to participate in the medical process.

Mr J.R. Quigley: Except on appeal.

Dr M.D. NAHAN: Yes, that is right; of course. In the case of determining whether someone is catastrophically injured and if it is appealed to the District Court, of course lawyers are available in the system and if the court awards damages against the Insurance Commission of WA, ICWA will pay for the damages. That is accepted.

The member for Butler raised the issue of regulations. They are explored a bit in the explanatory memorandum and I can go through them if the member wishes. They are long and boring, but if the member wishes, we can go through them in consideration in detail.

Mr J.R. Quigley: Do you have a draft of the regulations?

Dr M.D. NAHAN: I have a list of the regulations that are provided for a whole range of things.

Mr B.S. Wyatt: I don't think there's any point in you reading them out, but it might be of some use if you can provide something.

Dr M.D. NAHAN: Yes, okay. There are regulations for eligibility to participate in the fund, which is limited to persons who cannot be established under the compulsory third party insurance, as defined by national minimum benchmarks.

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Mr B.S. Wyatt: That's what sets up what is a catastrophic injury.

Dr M.D. NAHAN: Yes. The regulations outline the definitions of assessment tools that can be used and the timing of assessments to be eligible. Regulations regarding assessment tools determine eligibility and levels of care. There are regulations for applications to participate, forms, time limits and all that sort of stuff. There are regulations about the commencement of transition from interim—the first few years—to lifetime care. There are regulations related to the suspension or termination of participation; people have to have them. There have been very few cases in which people —

Mr B.S. Wyatt: Sorry, Treasurer; what would require suspension—if later down the track, fault was found or something?

Dr M.D. NAHAN: No. Let us say that a person is getting a certain type of care or they are authorised a certain type of activity and it is not authorised—I do not know what it would be—then they suspend the moneys for that purpose. Termination is on the basis of fraud, largely. In this world, there are all types of people.

Mr B.S. Wyatt: I'm not sure how you could fraudulently do that, but anyway.

Dr M.D. NAHAN: Anyway, it has to be done. There are regulations for treatment, care and support. There are provisions for what defines “necessary and reasonable” and “necessary and reasonable factors to provide benefits”. There are definitions for what is necessary and what is reasonable and the criteria and the factors. There are assessment procedures, methods and timings and detailed protocols associated with entitlements and inclusiveness for prostheses, footwear, walking aids, and appliances and equipment. There are regulations relating to modifications of homes, vehicles and equipment and there are considerations for renting or buying equipment. There is a whole range of things.

One thing that ICWA allows is for people to self-manage. If ICWA deems that the person or the carer of a catastrophically injured person is able to manage their own care, with funds from ICWA, it will allow them to self-manage with periodic assessments. I think that is very important indeed. There are also regulations for dispute resolution matters, some of which I will refer to, and regulations that apply to payments from the catastrophic injuries support scheme, including self-managed funds, recovery, how expenses are paid, the type of treatment and care that are excluded from them and the fees payable in reference to the schedule—the amounts paid and whatnot.

As everyone has identified, the fee will be \$99 for the no-fault section. The fee is lower than that in most other states for that section. The fee for no-fault claims is \$99 in Western Australia, \$110 in South Australia and \$77 in New South Wales. If we put the CTP insurance and the no-fault insurance together, it will cost about \$402, whereas it costs \$488 in South Australia, \$494 in Victoria and \$614 in New South Wales.

Mr B.S. Wyatt: Their CTP insurance is obviously very expensive.

Dr M.D. NAHAN: Yes, it is; it is \$530. I emphasise that we retain the common law right in this one.

I turn now to the insurance premiums for vehicles. For family cars and motorcycles above 75cc, the fee will be \$99. We had extensive discussions about motorcycles. The member for Victoria Park indicated that the number of catastrophic injuries caused as a result of motorcycle accidents is highly disproportionate to those caused in a car accident. We even discussed having higher fees but we decided not to. A small scooter is 75cc, so we are pretty rigorous in applying a fee of \$99 to the insurance premium, but it will be heavily subsidised. Like the member for Victoria Park, I love motorcycles. They are dangerous as hell. We capped the premium at \$99. As indicated, caravans and trailers attract no additional insurance, tractors attract a fee of \$25, while mopeds, farm vehicles, fire-fighting vehicles and vintage cars will attract a fee of \$30.

I wish to emphasise a couple of things related to the rural sector. The member for Moore went through that quite appropriately. There are some important things to note. Farmers have tractors and those small four-wheel drive things. I do not know what they are called but they are bloody dangerous. As the member for Moore said, people in the wheatbelt are 10 times more likely to have catastrophic injuries on farms and accidents —

Mr B.S. Wyatt: They always roll them for some reason.

Dr M.D. NAHAN: Yes, they roll over. The farmers will benefit from a couple of things. A farmer will now be covered if he rolls his insured tractor and suffers a catastrophic spinal injury. Farmers often have many other vehicles. They do a lot of travelling on the roads, particularly during the wheat season. Regional drivers are heavily subsidised by non-metropolitan drivers, but concessions of up to 50 per cent already exist in CTP schemes for vehicles used for farming purposes. Vehicles used for farming purposes get a 50 per cent reduction on CTP insurance. That will be retained for the no-fault section. There is a substantial reduction on that now.

No insurance premiums will be required for caravans and whatnot.

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Mr B.S. Wyatt: Trailers?

Dr M.D. NAHAN: And trailers. Vintage cars get a discount.

A couple of things were raised by the RAC. The RAC is a major insurer and has a great deal of expertise in insurance. It thought the \$99 fee was excessive. It is lower than those in the other states but I think the RAC used old data. It went to a Productivity Commission report of some years ago and used 2003 data. Back then, the claims cost for catastrophic injuries was \$13.6 million in Western Australia for six claims. In 2014, the expenditure was \$261 million for 44 claims. I think the RAC used old data.

I think the member for Collie–Preston asked about the growth of catastrophic injuries. I go back to that data. There were six claims in Western Australia in 2003, which was not that long ago. In 2014, there were 44 claims. There has been quite a bit of growth in the number of claims. The average cost of claims has grown significantly, in both lump sum and lifetime care. In other words, this is probably going to grow in cost. Also, the life expectancy of people in catastrophic permanent care in 2003 was 78 years. In 2014, it was 84 years. It has grown significantly.

The member for Armadale asked about pedestrians who are hit by a car. They will be covered. If they are hit by a car even if there is no fault, they will be covered. There is no doubt there will be a degree of cost shifting. As I indicated, in our system if someone is catastrophically injured without fault, they are covered by the Disability Services Commission and a raft of others. We have not attempted to estimate the extent of that cost shifting. It is very hard to do. We suspect it is mainly in the Disability Services Commission and the Department of Health. All I can say is that the move to the National Disability Insurance Scheme will press the fiscal capacity of all governments going forward, and the Disability Services Commission will use the budget money saved through the no-fault system to cover other people catastrophically injured otherwise outside motor vehicles and other purposes, so there is a degree of cost shifting here that we must recognise.

Someone raised the Transport Accident Commission of Victoria as a good model. It is and we will be looking at that into the future. Let me make sure I go through all the issues the member for Victoria Park raised.

Mr B.S. Wyatt: I think you're fairly close; I'm trying to think.

Dr M.D. NAHAN: One of the issues raised a couple of times is whether the fee should be attached to licence fees as opposed to vehicle registrations. We dealt with that. The biggest issue there is that a lot of people, particularly older people, have licences for identification, not for driving cars. I have received a number of complaints from my lawyer friends about lawyers but I think they are adequately taken care of.

On overseas travel, it will be up to the Insurance Commission of WA. If someone goes to Bali, they will be okay. If they go to Europe for an extended period, cover will stop during the period of overseas travel. The member for Mirrabooka raised a very good point about communication and the member for Victoria Park raised the issue of lack of understanding. We put out a green paper and 2 000-plus comments were received and there was some discussion in the media, and that is good. We plan to have an extensive media campaign to explain this new no-fault legislation and the fundamentals of our compulsory third party system. That is where I think there is lack of understanding. There is a growing understanding of this issue due to the wider debate around the NDIS and the very extensive networks that have been developed to communicate disability issues generally. I think people are starting to understand this.

We need this Motor Vehicle (Catastrophic Injuries) Bill to be passed through both houses by 1 May so we can get the billing system done. During the first year, 2016–17, from memory—I can confirm it—ICWA expects to be short \$70 million because many people will renew their vehicles before 1 July, as did the member for Mirrabooka, who registered her vehicle for the whole year recently. She, of course, has not been charged the \$99, but when her son registers his vehicle on 1 July, he will be charged that fee, but this is a transitional arrangement. It will happen only one year at a time. It is based on insurance principles, so we will build up a fund to cover the insurance in the future. Insurance principles require there be enough funds to cover the ups and downs of the year. It will be managed by ICWA's management operations. No dividend will be paid to the state from that fund, but one is paid from CTP insurance. We will deal with private land later.

I again thank everyone for their constructive discussions on this. It is important legislation. Anyone whose loved one or constituent has been impacted in this manner knows it is about time to do this. It simply needs the collective help of society. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

House adjourned at 9.45 pm

Extract from *Hansard*

[ASSEMBLY — Wednesday, 16 March 2016]

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Ms Margaret Quirk; Mr Peter Watson; Ms Janine Freeman; Mr Mick Murray; Mr Shane Love; Mr John Quigley;
Dr Mike Nahan
