

ASBESTOS DISEASES COMPENSATION BILL 2013

Second Reading

Resumed from 8 May 2014.

HON PETER COLLIER (North Metropolitan — Leader of the House) [10.04 am]: As Hon Nick Goiran is on urgent parliamentary business, I seek leave for him to continue his remarks at a later stage of this day's sitting.

[Leave granted for the member's speech to be continued at a later stage of the sitting.]

HON MARTIN ALDRIDGE (Agricultural) [10.05 am]: There was not a mad rush for people to get to their feet this morning! I thank the house for the opportunity to talk on the Asbestos Diseases Compensation Bill 2013 introduced by Hon Kate Doust. I understand the bill was introduced in October 2013 and two debates on it occurred last year, in February and in May. I sincerely appreciate the opportunity to discuss this matter today and I thank Hon Kate Doust for bringing it before the house. Before she did that I think we were all invited as members of Parliament to a function in Parliament attended, if not jointly hosted, by the Asbestos Diseases Society of Australia. From my perspective, it certainly assisted me in raising awareness and understanding of asbestos-related illnesses and, I guess, the legal framework that applies or does not apply to compensating victims of asbestos-related disease.

Madam Deputy President, how much time do I have to speak today?

The DEPUTY PRESIDENT: We are just clarifying that. I understand that Hon Col Holt has spoken, so I take it that he was the lead speaker for the National Party on this bill and therefore you have 45 minutes on the clock.

Hon MARTIN ALDRIDGE: Firstly, I want to start by talking about my experience. Someone in one of the earlier debates, I think it might have been Hon Rick Mazza, spoke about how asbestos-related disease impacts, has impacted or touched just about every person in the house in some way or another, or their families or friends. In the time this matter has been before the house, one of my parliamentary colleagues has lost one of their immediate family members as a result of asbestos-related disease, which just goes to show how true that statement is. I want to briefly talk about my experience with asbestos, which informs some of my thinking. Having worked for almost a decade in the career fire service in Western Australia, asbestos is something that I encountered very regularly. I was stationed for the majority of my career at Belmont Fire Station. Members would be aware that a lot of the traditional housing in the Belmont–Rivervale area is of asbestos construction. I guess that is changing as houses are demolished and infill occurs, but there were numerous occurrences of us responding to and attending houses on fire that were of asbestos construction. Each time we attended some incident involving asbestos, we would fill in a hazardous substance exposure form. I have lost count how many times I had to fill in one of these forms. I guess our thinking at the time of the importance of filling in these forms was to substantiate over time our exposure to asbestos in the workplace, as far as that relates to protections under the Workers' Compensation and Injury Management Act. Asbestos also resulted in probably the only serious conflict with a senior officer I can recall having while serving as a firefighter. It was on an occasion when we attended a fire in the outbuilding of a house in the early hours of the morning. It was in the Belmont fire district, but right on the border with the Welshpool fire district. Conditions that morning were such that the Welshpool crew were probably a bit quicker out of bed than we were and they got to the fire first—only seconds before us!—and therefore the officer in charge of their pump became incident controller of that fire. I remember that it did not take long to bring this fire under control; it was essentially in a separate garage that was fully asbestos lined. I then received an instruction from the officer in charge of the Welshpool pump to conduct some recovery operations. He wanted me to use a ceiling hook, which is a pretty simple but specialist tool used in the fire service to pull down a ceiling when there has been a fire in a roof space of a house to make sure that the fire has been extinguished and it is safe to leave. This was a gutted steel-framed shed with asbestos lining. I think most of the walls had collapsed but the ceiling was intact. This officer wanted me to go in with a ceiling hook and pull down this asbestos roof. I challenged him because he wanted me to go in simply wearing my thermal personal protective equipment, which includes an overcoat and breathing apparatus. That would not have given me adequate protection from the asbestos fibres that would have naturally been there as a result of the fire and would have been aggravated if I had pulled down the ceiling with a ceiling hook. The appropriate level of protection would have been to dress in appropriate PPE, including a plastic overcoat, which is essentially plastic-lined overalls that allows the person to be decontaminated after a fire to reduce the risk of exposure. That led to a pretty heated exchange between the officer and me, and, in the end, I did not satisfy his instructions. He was an older officer, so he probably thought differently from me about the high risk of exposure to asbestos, particularly when it is aggravated in that form, to those people who work in the vicinity of it. That is something that weighs on my mind, so I raised it during the annual health assessment that Parliament sends us on to tell us to lose weight, eat less, run more and make better choices in the dining room. I raised it with my general practitioner as it is something that weighs on my mind from time to time and I asked what things I could do, given the latency

periods of asbestos-related diseases, to have earlier detection and perhaps prepare myself for some sort of asbestos-related disease because of the work I had undertaken in some form or another, and the answer was not an easy one. There is not really a lot that people can do. His advice to me was that if I felt that concerned about it, I could have regular X-rays and other scans, but I would have to weigh up the cost of doing those things versus the benefit, and this might not turn up for many decades.

That outlines some of my experience with asbestos. I have not been involved in other environments in which asbestos has been such an issue, although I note that asbestos has been used in a large part, if not a majority, of the construction that occurred in my electorate in the last many decades. There is an enormous amount of it out there. I have no doubt that, in time, the way that we deal with asbestos and its removal and replacement in different circumstances will give rise to an increase in the types of diseases that we are now seeing.

There have been some excellent contributions to the debate so far. I am not a lawyer and I do not pretend to be a lawyer. I do not pretend to fully understand the extent of common law damages and how they apply to asbestos, but I certainly have been assisted by some of the contributions made by members on both sides of the house. They have been extensive and thorough in going into the issues and the technical aspects of these types of reforms. I do not intend to rehash all those issues. I do not think that I could do that justice, but I do want to make a contribution to this important debate.

From the outset, when this bill was flagged, the Nationals took an active interest in this issue and my colleagues met with and were briefed by both Hon Kate Doust and the honourable Attorney General, who is away on urgent parliamentary business today. It is an extremely serious matter and we need to ensure that we get the reforms that we want. In our discussions with the Attorney General, we were able to secure a Law Reform Commission review, which the Attorney General confirmed in his very detailed contribution to the second reading debate. I want to read a section of that debate so far as it relates to the referral because I think it is relevant to the matter before us today. On 8 May 2014 in the second reading debate on this bill, the Attorney General, Hon Michael Mischin, said —

I have already indicated the various issues, and I have taken steps to address those. I foreshadowed this with the honourable member before the debate on the bill began and have taken steps to further advance what I have foreshadowed. I am instructing the Law Reform Commission of Western Australia to inquire into the compensation regime not only for persons suffering from asbestos-related diseases but also to see whether the matters ought to be extended to litigants generally. I have settled the reference to the Law Reform Commission and, as I understand it, that inquiry will begin in the new financial year with a view to a report dealing with all the issues being ready by 30 June 2015.

The inquiry will deal with whether, as a matter of principle, the proposal of provisional damages awards should be supported; whether they should be confined as proposed by the bill to victims of asbestos-related diseases or whether the availability should be extended to all plaintiffs or at least a broader class of plaintiffs than asbestos victims and, if so, according to what criteria. If provisional awards are to be permitted, the reference will deal with how the assessment of the ultimate award is to be approached by the court: should, for example, damages be completely reassessed upon a further asbestos-related disease developing, with allowance being made for the earlier damages; over what periods and whether time limits should be prescribed; whether an application should be permitted for further damages whenever a further asbestos disease develops or only when a very serious disease, such as mesothelioma or lung cancer, occurs; whether an application for further damages should be made within a certain time limit following the plaintiff becoming aware that he or she has contracted a further asbestos disease; and the implications of the modification of the once-and-for-all rule generally. Similarly, the Law Reform Commission will look at the question of *Sullivan v Gordon*-type damages; whether they should be allowed, what their criteria ought to be; whether they ought to apply to only asbestos-related victims or more generally; and so forth. It will also deal with the question of whether the present value of any future *Sullivan v Gordon* services damages should be subject to the six per cent discount rate provided for by the Law Reform (Miscellaneous Provisions) Act.

Hon Adele Farina: Have you got an update on that? Is that on track?

Hon MARTIN ALDRIDGE: Hon Adele Farina read my mind. This report was obviously, as suggested by the Attorney General on 8 May 2014, due to be tabled by 30 June this year. My understanding is that that report will not be tabled in that time frame as suggested.

Hon Kate Doust: There's been no discussion paper either. All it's been is that the terms of reference have been established and that's it.

Hon MARTIN ALDRIDGE: Yes. The terms of reference are obviously available on the Law Reform Commission website. It is unfortunate, and probably disappointing from my perspective, that we have now learnt

that the Law Reform Commission requires an extension of time and additional unfunded resources so close to the reporting date. When we talked about this matter with the Attorney General we were talking about a reporting date of a year after the commitment was made. That seemed like a long time, but to be fair to the process and the complexity of the issues that we were dealing with, we were happy for that to occur. I understand that the Attorney General is seeking a revised reporting time frame from the Law Reform Commission, which ought to be reported to the house at the earliest opportunity, and I think with that will come an explanation of how the Attorney General plans to deal with the complex resourcing requirements that the Law Reform Commission is requesting in this matter.

Hon Adele Farina: I am not clear on that. Are you saying that they need funding to undertake the inquiry?

Hon MARTIN ALDRIDGE: My understanding is that it requires resourcing to undertake further specific research in this matter.

Hon Kate Doust: Isn't that interesting. We asked questions of the Attorney General last year about funding and he said no; they would do it within the budget they had.

Hon MARTIN ALDRIDGE: Unfortunately the Attorney General is not here today; he can answer those questions specifically about the Law Reform Commission. We had a similar conversation with the Attorney General on the referral of the regulations in the Firearms Act about making sure that the Law Reform Commission was resourced appropriately to be able to deal with that report, which I think is due in September this year.

Hon Adele Farina: I am sorry for interrupting again, but does that mean because there is nothing in the budget in terms of additional resources, it is not going to happen in the 2015–16 financial year either?

Hon MARTIN ALDRIDGE: I simply do not know, Hon Adele Farina. I had not been able to have a conversation with the Attorney General about the operation of the Law Reform Commission until I learnt that the report would be delayed, so I think that when the Attorney General has an opportunity he needs to report to the house what that delay will be and how the Law Reform Commission is going to be resourced to deal with the requests that it has. If that means resources are given to it in the midyear review and then it is delayed another six months or 12 months for it to conduct its work, that is not an acceptable time frame. At that point in time I will welcome a conversation with the opposition about whether it will be more practical and timely to refer the matter to the Standing Committee on Legislation rather than wait for the Law Reform Commission to report in six, 12 or 18 months' time.

I want to touch on a couple of other areas of the debate. It has been some time since we spoke on these matters in February or May of last year, but I remember sitting in the chamber for both debates and listening to the contributions to the debate. Knowing that this debate was coming on today, I had an opportunity last evening to look at some of the contributions to the debate, not only to make sure that I could contribute to the debate but also to better understand the contributions that have been made to this point. I was quite alarmed to have read the contribution made in this debate by Hon Darren West. I am glad he is in the chamber this morning while I talk about this matter. Up until that point in the debate, whilst people had different views about the best way to approach the reforms, the reforms were largely welcomed by everyone who spoke in the debate. Even the Attorney General made reference to there being merit in looking at the way these matters are dealt with. Then we came to Hon Darren West's 11-minute contribution on 8 May 2014. He said this to the house, following the contribution by Hon Colin Holt —

I commend Hon Kate Doust for bringing in a wonderful piece of legislation that will positively affect the lives of thousands of people—some of our most vulnerable in society. However, what do we get from the dreary old conservatives? “Oh, it's all a bit too hard; perhaps, we better wait for a few years until a few more of the victims have passed away, because we couldn't possibly have cottoned on to a progressive idea that might possibly have an impact”.

Several members interjected.

The ACTING PRESIDENT (Hon Liz Behjat): Order! Hon Martin Aldridge has the call and he is the only one who will be speaking this morning.

Hon MARTIN ALDRIDGE: He continued —

It is disgraceful; it is cold; it is heartless; it is awful. I think the contributions from those opposite will make interesting reading in *Hansard*. I know the members from the Nationals have hopped on the fence there a bit and will make some comments that will certainly look good in a press release—as will, similarly, the Attorney General—but ultimately they do not support the bill put forward by Hon Kate Doust.

He went on to state later in his contribution—

The National members also told us that it is a very, very important issue but that “We’re going to let a few more victims pass away and get increasingly sicker before we are prepared to show them any meaningful support.”

That is a truly appalling contribution to the debate. I cannot believe that Hon Darren West’s colleagues support those views. No other opposition member got up and shared similar views; they made meaningful contributions to the debate. I think we heard from Hon Kate Doust and Hon Stephen Dawson. Both of their contributions were very useful and added value to the debate that we have had so far. Contrast that to the contribution of Hon Darren West. He made a completely political contribution that did not address the substance of the issue and launched an attack on members of the government, in particular members of the National Party, without any substance. He said that we do not support or want it and ridiculously said that we want to let people die in preference to seeing reforms of this nature. The Nationals have actually met with both the opposition and the responsible minister. We have also written formally to the Australian Insurance Law Association and the Law Society of Western Australia on these specific issues. I note that neither of those organisations wanted to comment on the bill before the house, which is interesting. The Nationals were also involved in negotiating the Law Reform Commission review, which admittedly has become delayed. If that is not genuine engagement on an important issue, I am not sure what is. I am not sure to what extent Hon Darren West has engaged on this issue—whether he has done any investigation, had any conversations or met with the Attorney General to discuss his concerns. The only contribution I have seen is the 11 minutes he spoke in this debate on 8 May, which was hardly worth reading. In fact, I am never going to get back those 11 minutes of my life! The suggestion that we are not serious about this and that we would sooner let people die from asbestos-related diseases rather than see reforms to the way we provide protections to them in the courts, is absolute stupidity. I cannot believe that members of the parliamentary Labor Party are rallying behind the contribution he made to this house.

Hon Darren West interjected.

Hon MARTIN ALDRIDGE: Hon Darren West interjects. He had his 11 minutes and he wasted them. He might want to look at a circular that the Parliament of Western Australia has just released, entitled “Communicating Effectively”. It suggests —

To be a good active listener you simply need to:

- Stop talking!

I will table that document if the member does not have access to POWAnet. I suggest that Hon Darren West download that document and have a look at it, because we hear lots of noise from him but we do not hear much substance. Everyone else in this debate has made substantial contributions on this very important issue. We need to get this right; we need to make sure that we have the right framework, the right set of laws to ensure that we meet the needs of people suffering from asbestos-related diseases in our society. The prevalence of those diseases is going to only increase, as I said before in my contribution. We are very serious about achieving an outcome on this issue and we want to make sure that the outcome we get is the right one. We do not get many opportunities to get these things right and we need to make sure that it is right from the start.

I know there are other members who want to speak in this time-limited debate this morning, but I think it is premature to discuss this matter today. It is disrespectful to Hon Nick Goiran for this matter to come to the second reading debate; it could come to a vote today —

Several members interjected.

The ACTING PRESIDENT (Hon Liz Behjat): Order!

Hon MARTIN ALDRIDGE: Thank you, Madam Acting President.

As I was saying, Hon Nick Goiran was making a very valuable contribution to this debate, and it would be unfortunate for the debate to come to a vote today and deny him the opportunity to conclude his remarks. He has an enormous amount of experience and training in this area. Those members who listened to or have read his contribution will know that Hon Nick Goiran would want to be able to conclude the remarks he has made so far to this house. It is also premature to discuss this matter before we actually receive the advice we sought. I have previously made comments about some of the issues that were raised with the parliamentary National Party being of some concern; that is why we negotiated and supported the Law Reform Commission of Western Australia review. I commented earlier today that if that review is not going to report in a timely manner, there are other options available to the Parliament to effect that. We really need to have some clarity around the issues that have been articulated by several members during the debate so far, before we can move forward with this bill. Today is not the day to be doing this; if the opposition is serious about this issue, as it says it is, its actions certainly do not support that view.

HON JACQUI BOYDELL (Mining and Pastoral) [10.31 am]: I rise today to speak on this exceptionally important issue, and I also welcome the introduction of the Asbestos Diseases Compensation Bill 2013 to the house. I think every member of this house has probably been touched in some way by this terrible and ultimately, in some cases, terminal illness. I, too, recognise the passing of one of my parliamentary colleagues and family members since the beginning of the debate on this bill.

I bring to the attention of the house and put on the record my experience of asbestos and mesothelioma within my family and close family friends. My father was a truck driver for Gascoyne Trading in Carnarvon, and worked right across the north west of the state. One of the jobs that he undertook at that time was carting asbestos out of Wittenoom for Gascoyne Trading. He did that over a long period of time; my father is now 73 and, touch wood, still in very good health. Unfortunately, one of his good friends and a very close family friend contracted mesothelioma some years ago and consequently passed away after a short illness. It was an extremely stressful and difficult time for his family. His name was Barry Bickley and he came from Carnarvon as well and worked for the then Public Works Department. He contracted his illness whilst installing pipes in Shark Bay as an employee of the PWD.

I bring that up because when he was very ill and seeking compensation and some confidence that his family would be looked after once he had passed away, in the course of his legal battle and discussions with his lawyer, he mentioned that my father had worked out of Wittenoom and had had experience of loading asbestos onto trucks. The lawyer mentioned that he had another client suffering from mesothelioma who had also been a truck driver for Gascoyne Trading and had also carted asbestos out of Wittenoom. At that time, Gascoyne Trading was refusing to acknowledge that it had actually carted asbestos out of Wittenoom; the company was refusing to accept responsibility in that compensation claim. Barry Bickley relayed that story to my father, and my father actually had a photograph of a truck he drove for Gascoyne Trading in Wittenoom, parked next to a stockpile of blue asbestos that they were loading that day. My dad says that when they loaded asbestos into the closed canopy of the truck, the workers were all in there, shovelling the asbestos, and there were clouds of dust; they had to actually walk out to wait for it to settle before they could go back in and carry on their work. It was during one of those breaks that they had taken the photograph of the truck with a Gascoyne Trading logo on it, parked next to the stockpile of asbestos, with the workers all standing around. My dad actually supplied that photo to the lawyer, and it was only as a result of that photograph that Gascoyne Trading admitted its responsibility. I do not to this day know the name of the lawyer's other client, but it was only then that his family could gain some compensation.

I therefore have a very personal interest in this issue and, I guess, an undertaking to Barry Bickley and his children as my family friends throughout my life, and to my dad, who also was exposed to that industry in carting that product at that time. I want to see some more positive outcomes for people who suffer asbestos-related diseases and those who ultimately suffer the terminal stage of asbestosis in the form of mesothelioma.

When Hon Kate Doust brought this private member's bill to the house I was supportive from the outset. My parliamentary National Party colleagues and I discussed our position on this bill, and there was always an undertaking that we would certainly support the view that this is an important issue. There are areas of the bill that need to be improved and that is why, in the first instance, we undertook some engagement with the Australian Insurance Law Association and the Law Society of Western Australia to see how this bill could work in a legal environment, and whether we could actually achieve better outcomes for the victims of asbestos-related diseases and their families. Ultimately that is what we are trying to achieve, and I know that is what Hon Kate Doust is trying to achieve through the introduction of this bill. Whilst we have the opportunity to consider the ramifications of such a bill and the amendments suggested to the legislation, it is incumbent upon members of this house to do exactly that.

As my colleague Hon Martin Aldridge mentioned, we met with the Attorney General and I can tell members that we made it abundantly clear to him that we supported the investigation of the opportunity to bring this bill to fruition in this house. He was very clear on that after we had had that meeting, and we were able to negotiate the outcome of a referral to the Law Reform Commission. It was a genuine negotiation between the Attorney General and my colleagues in the National Party to gain some clarity around this bill and to make sure that, as an end result, we do not delay litigation for victims and their families, potentially resulting in people not getting compensation. We need to take that opportunity to make sure we get this right. Those were the reasons that I supported that inquiry. I was also disappointed to learn this morning that the Law Reform Commission will not be reporting to the house in June 2015, as first suggested a year ago. I, too, welcome the further comments of the Attorney General in this space, who will take the opportunity to report to the house and to members of this house who accepted that referral process as a genuine process that would be followed through on the time line of that referral response. I look forward to the Attorney General's comments on that and I am sure that he will clarify that position in this place when he has the opportunity to do so.

In preparing for today's debate I, too, read in *Hansard* some of the debate on this issue so far, and I have to agree with my colleague Hon Martin Aldridge that most members' contributions to this debate have been responsible and reasonable and made with compassion for the victims, and their families, of this terrible disease for whom we are trying to find a better outcome. I will not go into other members' contributions on this issue, suffice to say I think that some members probably owe every member in this Legislative Assembly an apology.

Hon Kate Doust: We're in the Council.

Hon JACQUI BOYDELL: In the Council—I apologise. I thank Hon Kate Doust for correcting me.

Members of the Legislative Council are owed an apology, because some comments made in the debate so far have been abhorrent and disrespectful, and do not do any justice to the debate; in fact, some members have brought down the quality of debate and what this house stands for by making those abhorrent comments. Until I re-read the *Hansard*, I could not believe the comments that were made by some members of this Legislative Council in which I am proud to sit and represent the people of the Mining and Pastoral Region. It is a privileged position and is not to be disrespected in the way in which some members of this house have done. I think that some members of the house need to remember that.

Although I am disappointed that the Law Reform Commission is not able to report to the house, I definitely want to put on record my support, if we cannot get a timely response from the commission, for the house seeking other ways and means to shine a light further on this bill to make sure that we get the amendments right. That may include having a conversation about referring the Asbestos Diseases Compensation Bill 2013 to the Standing Committee on Legislation, which I think the house is well within its right to do if the Law Reform Commission cannot report to the house, allowing the Attorney General to give members of the house some clarity around making sure we get a better outcome for victims and their families through this bill.

In closing my comments today, because I know other members want to speak, I thank Hon Kate Doust sincerely for bringing this bill to the house and I look forward to further responsible and constructive debate and conversation around this issue, because victims and their families are certainly relying on members of this house to get that right. I genuinely believe we are working towards doing that, and I look forward to the Attorney General reporting to the house on what stage the Law Reform Commission is up to so that we can positively move forward when that occurs. I thank members for their contributions so far and Hon Kate Doust for bringing the bill to the house.

HON ROBIN CHAPPLE (Mining and Pastoral) [10.45 am]: Thank you, Madam Acting Deputy President. Am I getting there?

The ACTING PRESIDENT (Hon Liz Behjat): Just Madam Acting President, Hon Robin Chapple. We have this conversation every time I am in the Chair.

Hon ROBIN CHAPPLE: The Greens will be supporting the Asbestos Diseases Compensation Bill 2013.

It is interesting that tomorrow is the day when most of us in this chamber reach an anniversary of our time in this place. For me, notwithstanding the fact that I cannot get Madam Acting President's title right, it is my tenth year in this place.

What I find interesting in the National Party's contribution to the debate—I am not going after or attacking the National Party here—is that I have seen on many occasions legislation that has been promulgated by oppositions, both Labor and Liberal, which by the nature of where the parties come from, has gone through a process whereby the opposition of the day has said that it supports the government but it thinks there needs to be a better way and we have watched those pieces of legislation disappear into the ether over time. The Greens will be supporting the legislation on the basis that it is the only legislation before us and it will actually give us some idea that the government of the day or other parties might be able to resolve what is presented to be some problems with the legislation as it stands, because no other legislation is before us and is a hypothetical into the future.

I want to talk a little about my experiences. I worked in Western Gorge for Hancock Prospecting in the old asbestos workshops. I lived in the community at the end of Western Gorge, and the place of work for Hancock Prospecting at that time was the old asbestos workshops, which are now long gone. I am one of the recipients of Dr Bill Musk and Professor Gary Lee's annual MRI scans. All of the people who worked in the asbestos industry in the past have annual tests and check-ups to see how we are progressing or not progressing, as is the case. I touch some very good Western Australian wood, because so far everything is rosy, but every time I get a cough I think about where I worked. Many of the people whom I worked with, interestingly enough, worked there for only a couple of days but subsequently, 20 years later, suffered as a result of that. I worked with an interesting character called Umberto, who was the bulldozer driver. For many years he worked in that environment, driving his truck and his grader, and up until a few years ago he still lived in Wittenoom. For many years, he was a

smoker and almost rolled in the dust and was not affected and considered himself to be invincible. Eventually, unfortunately, the issue got hold of him. There were people who did not live in the gorge system but in the town of Wittenoom and merely by going to the cinema there one night and getting in the dust that was kicked up on the ground of the old Sun Theatre that used to be in Wittenoom they have asbestosis. We have evidence of teachers who went there for literally a couple of weeks relief work who ended up with asbestos diseases. I think we need to do something and we need to do something now. My discussions with Robert Vojakovic and people in the asbestos diseases system, of which I am part, under the work of Dr Musk, think that we need to do something now. If we do not do something now and hold off and wait for some hypothetical advice that may or may not be funded into the future, we will miss a very important opportunity.

We talk about asbestos, but I think members need to understand the geology of the different types of asbestos. There is chrysotile and crocidolite asbestos. Crocidolite is blue asbestos and chrysotile is white asbestos. Crocidolite blue asbestos has a very, very fine fibrous component that is problematic. Unfortunately, we know this from the experiences of Aboriginal people who worked out of Roebourne in Wittenoom and would ride on the trucks from Wittenoom to the port at Wickham in the old days of CSR. Many—if not most—of those young men who to a large degree joy rode on the bags of blue asbestos have passed away without any compensation.

In my mind, the Asbestos Diseases Compensation Bill 2013 addresses many of the issues. If the government has a problem with components of the bill, it really is beholden to move amendments so we can progress with this legislation. Too many people will potentially suffer from this absolute scourge. Approximately 600 mesothelioma cases are reported each year. This is expected to rise to more than 900 cases by 2020. The National Health and Medical Research Council estimates that more than 25 000 Australians will die from mesothelioma in the next 40 years. This legislation is fundamentally important because we need to ensure that people exposed to the tragic legacy of blue asbestos—as was so well described in the song *Blue Sky Mine*—are helped.

I have always been very concerned that Hancock and Wright, who took over the asbestos mine and operated it for some time, have to a large degree been exempted from any litigation process in relation to the workers. In my case, hopefully, I do not need to worry. I am coming to the end of my years. I hope I have another 10 or 20 years left in me.

Hon Adele Farina: At least.

Hon ROBIN CHAPPLE: Given when my father went, I think that is mostly true.

Hon Simon O'Brien: We wish you a long life of happiness.

Hon ROBIN CHAPPLE: I thank the honourable member. I appreciate that honourable member. I thank him for his loud interjection; I heard it for a change.

I was exposed to asbestos in a very serious way. We had to sweep the workshop floors every morning because, with the dew, the stockpiles of blue asbestos, crocidolite, around us used to run down overnight into the workshop. The workshop floor had to be swept every morning, so we could work in that environment. Sweeping the floor was probably the worst thing we could ever do.

Notwithstanding that, we support the bill. The bill provides provisional damages for asbestos-related conditions and ensures that asbestos victims are able to recover damages for the loss of capacity to perform domestic services for another person such as a young child, elderly parent or partner with a disability. As we saw with the use of herbicide 245T in the Kimberley, many of the workers who used that material indirectly impacted their families and extended families because their clothes were washed by family members. Quite clearly, we need to ensure that anyone directly or indirectly impacted by asbestos has the ability to recover damages.

The tragic legacy of asbestos is not over and it continues to be felt in Western Australia today. That is a huge burden on the taxpayer. We must remember that every time somebody goes to hospital there is a massive fiscal impact on the state. Australia is now seeing a third wave of people diagnosed with mesothelioma or asbestosis. The first wave consisted of miners, manufacturers and people who worked in the Navy. Interestingly, my former wife went on to marry a really marvellous guy only to find out that as a result of his employment in the Navy, he got asbestosis. Once the diagnosis was made, he only survived another couple of years. It is a very, very virulent and invasive condition.

This was followed by a second wave of construction workers, carpenters and other tradespeople exposed to asbestos fibres from building materials. Obviously, out in the Pilbara and in the north west one comes across many houses made of asbestos. I am reminded of when the houses from BHP were handed over to various Aboriginal communities. Only a very short time later, the communities found out that the houses had come from Goldsworthy and were contaminated with asbestos. These gifts were never returned; they had to be torn down and buried. The old castle on Barrow Island was made of asbestos and had to be buried on the island. Around

Goldsworthy there are massive pits containing old asbestos panels, because out there asbestos was a very commonly used product. Even the Port Hedland Road Board used asbestos in road base and concrete. It was brought in as fill to be mixed with tar macadam to make road base. There is a concrete block in the old Wittenoom police station that nobody knows what to do with because asbestos was used in the concrete mix. Continually, there are problems around the north west that are the legacy of this. The people in the third wave who worked on some of these buildings—home handy people—are now being diagnosed with this deadly disease. They have been exposed to asbestos problems in the home when carrying out renovations or maintenance.

In 2012, Neil Gunningham wrote a very good summary on this that I will quote —

In Australia, much asbestos disease has been caused by asbestos mining, particularly at Wittenoom in Western Australia, but it can equally be caused by working with a variety of asbestos materials and products, such as asbestos-cement sheeting, insulation containing asbestos, brake and clutch materials, and the handling and transport of asbestos as a raw material.

Just on that, I am reminded of a former member of this place, Hon Mark Nevill, who carried out an extensive review of asbestos dust that was in the air around Wittenoom, Tom Price and St Georges Terrace. One of the highest levels of airborne asbestos in Western Australia was found in St Georges Terrace, associated with motor vehicle braking in a confined space in that area. Asbestos is out there. Modern braking elements do not use crocidolite; they now use mainly white asbestos and other materials, mainly carbon, so we do not necessarily have the problems that we had even 10 years ago. I quote from Neil Gunningham in 2012, who refers to latter operations such as transport asbestos, home handiwork and those sorts of things —

Many of the multiple claims made against James Hardie Industries relate to some of the latter operations. It follows that the mining industry has been heavily implicated as a contributor to asbestos-related diseases, but it should also be borne in mind that high numbers of claims have been made by workers employed in the railways and construction industries where materials containing asbestos were in common use, and in the maritime industry where asbestos lagging was commonly used in ships as insulation.

I was involved with the locomotives that came from America to the mining industry in the Pilbara—the American Locomotive Company locos, the General Electric locos; the early ones—and they all had asbestos lagging around their exhaust systems. Our job was to tie that material on. I have not yet heard of any cases coming out of the industry—bear in mind there is a latent legacy of around 15 to 20 years—but I would not be at all surprised to find in the future that we start picking up mesothelioma cases or asbestos cases out of some of the rail industries that operated in the Pilbara. Going back to Neil Gunningham —

Australian data for mesothelioma indicate that both the number of new cases diagnosed annually, and deaths, have increased steadily over the last two decades and, taking into account the long latency for the disease, are expected to peak in the course of the next decade. The latest available data indicate —

Bear in mind that this was written in 2012 —

there were 579 new cases in 2006 and 551 deaths in 2007.

After New South Wales, Victoria and South Australia, Western Australia is the fourth state to propose better compensation provisions for asbestos sufferers, which is where I return to the Asbestos Diseases Compensation Bill 2013. In Victoria, such a bill was proposed in 2008. In Tasmania, it was proposed in 2011 and the bill came into effect on 31 October 2011. As far as I am aware, the bill is based on very good modelling. I find it interesting that the Attorney General has found a need to almost outright reject the bill, saying that it is deficient as—his quote—not to be amendable. I point to the many bills in this place that are now almost doorstops because they have been amended hundreds of times; any piece of legislation can be amended. For the Attorney General to say that, I think it was just a blatant excuse.

We will be supporting the legislation. As far as I understand, and according to Safe Work Australia's "Comparison of Workers' Compensation Arrangements for Asbestos Related Disease in Australia and New Zealand" 2011 paper, there are other statutory limitations to compensation claims in Western Australia under the Workers' Compensation and Injury Management Act 1981. I quote from the Safe Work Australia paper of March 2011, which states that current exclusionary provisions to compensation, as at September 2010, in Western Australia include —

No compensation for those who have received compensation under the laws of a place other than Western Australia; or have obtained a judgement against the employer independently of the 1986 Act—s23.

Compensation not payable unless employment connected with Western Australia—s20.

If, after receiving compensation for an asbestos related condition, a worker is subsequently employed in any processes entailing substantial exposure to asbestos dust, they are not entitled to any further compensation in respect of any aggravation or acceleration of that condition—s35.

Compensation not payable if, since the worker was last employed in the State in employment involving exposure to asbestos, the worker has been absent from the State for more than 6 months and, during that period, was employed in employment involving exposure to asbestos—s33.

No further compensation payable to workers who have received the full amount of compensation, even if they are subsequently employed in process entailing exposure to mineral dust—s46(2).

If it is proved that the injury of a worker is attributable to their —

- a) voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties
- b) failure, without reasonable excuse, proof of which is on them, to use protective equipment, clothing or accessories provided by their employer for the worker's use; or
- c) other serious and wilful misconduct any compensation claimed in respect of that injury shall be disallowed unless the injury has serious and permanent effects or results in death—s22.

I will quote further from Neil Gunningham's paper —

Dust diseases in general, and asbestos-related diseases in particular, have caused difficulties for workers' compensation schemes. Their long latency period, related challenges in establishing work-relatedness and attributing responsibility to particular employer(s), and the sometimes short time between diagnosis and death, suggest that exceptional compensation arrangements are needed.

Those matters are brought before us with this legislation. As Hon Jacqui Boydell and her colleague have stated, I am really concerned that the advice that was being sought by the Attorney General is now on hold. As we know, we are in a very, very tight budgetary situation. I have not looked specifically within the budget to find out whether there is an allocation for moneys to continue the legal investigation into the potential for legislation.

I am assuming the Attorney General indicated that should the Law Reform Commission come up with some process, he will introduce legislation or at least, on the back of this legislation, move the relevant amendments that he indicates are needed for this legislation. I go back to the fact that the Asbestos Diseases Compensation Bill 2013, introduced by Hon Kate Doust, is a relatively simple bill. It is modelled on legislation in other states.

Hon Darren West: It is too hard for them; it is simple.

Hon ROBIN CHAPPLE: I think, Hon Darren West, part of the problem we suffer in the Western Australian Parliament more generally—I am mindful of other pieces of legislation—is that, not this government but governments in general, do not like oppositions putting up legislation because at the end of the day, it is not seen that they are doing a correct job. I am mindful that in previous Parliaments, Liberal Oppositions have put up some good legislation only to have it knocked back by the Labor Party in government and the Labor Party has introduced similar legislation. I am mindful of the Nuclear Waste Bill which, if I remember rightly, was put up originally by Geoff Gallop in the other place only to be opposed and three weeks later to be mimicked by Hon Richard Court when he introduced the same legislation, which was passed. I am not trying to make a point here —

Hon Darren West: But they are not doing it.

Hon ROBIN CHAPPLE: — against particularly the Liberal Party or the Nationals.

The ACTING PRESIDENT (Hon Liz Behjat): Order! Hon Robin Chapple has the call. The person interjecting I think has already made a contribution to this debate.

Hon ROBIN CHAPPLE: Sorry, Madam Acting President.

The ACTING PRESIDENT: No; it was not you.

Hon ROBIN CHAPPLE: The point I am making is that, unfortunately, such is the adversarial nature of Parliament that when a good thing is presented to it, the government of the day—coalition or whatever—invariably rails against it because they did not think of it first. I am concerned that we may see this good, honourable legislation voted down only to find out that over the time left to this government, nothing else will be introduced into this place. This goes particularly to the Nationals. I hope that if nothing comes before this place in a very short time or if the money is found for the Law Reform Commission to do its work, the Nationals will

introduce legislation that we can support, and the government may not support, and get through this place. If that does not happen —

Hon Martin Aldridge: You should've listened to my contribution.

Hon ROBIN CHAPPLE: I did listen to Hon Martin Aldridge's contribution.

Hon Martin Aldridge: I gave a better option.

Hon ROBIN CHAPPLE: Let us wait and see. I am a bit of an old hand in this place and I have seen these sorts of debates go through the long haul without anything eventuating.

We know that we still have not cleaned up the problem at Wittenoom. Luckily, the roads down Western Gorge have just about been washed away; people have to hike in. The place is littered with, in my estimation, three to four million tonnes of crocidolite fines. They are slowly moving down the creek system. Lumps of asbestos can even be found under the Fortescue Bridge on the highway next to the Fortescue roadhouse, which, unfortunately, is now a mining camp. It used to be a place where people could live, but there is a mining camp next to a river which is now littered with asbestos. Many years ago, I sat on a committee called the Minerals Environment Liaison Committee with the then Department of Mines, which looked at the possibility of cleaning up Wittenoom. At that time, it was really interesting that a commitment had been established by government and the Environmental Protection Authority to co-fund a clean-up of Wittenoom. Indeed, part of the MELC structure comprised representatives of the Chamber of Commerce and Industry of Western Australia. We sat around at committee meetings and discussed this as something we would do and that we would put some serious money into it. Unfortunately, at the end of the day, one of the parties decided not to put money into it. As to who that is, I will leave to members' conjecture given I mentioned who was going to put money in.

Unfortunately, the Wittenoom legacy is still there in many ways. It is in our state. The tunnels there are very small. We must remember that mining for asbestos was pretty horrendous. A little stope no bigger than this doorway was driven into the asbestos vein, and the miners rode on a little trolley cart on a set of rails. When they got to the other end they literally chipped out the asbestos with a pick and shovel and put it into the trolley cart, which then went out. It then went down into a crusher where the asbestos was bagged. I used to go into that crusher building; it was not working but it was full of dust. When the crusher was working, the workers would not have been able to see a couple of metres in front of their face. We put a lot of workers through that. A lot of immigrant workers such as Italians and Yugoslavs went into the CSR mine up there and suffered as a result. That suffering continues not only for those workers but, as I said, the third tier of workers—people who have done maintenance on their homes without knowing they were dealing with blue asbestos panels, thinking they were dealing with normal chipboard or whatever. We are now seeing those impacts. I have to say that the bizarre thing about asbestos and mesothelioma is that it is random. People can come into contact with it for one day and get that disease but they can work around it for 10 years and, touch wood, not suffer. It is the random nature of these really fine fibrous particles from blue asbestos that get into our lungs and, similar to what smoking does and to what happens from the ingestion of alpha emitters from uranium, it creates a macrophage or alveoli of the lung that leads eventually to cancer. In this case, we are talking about mesothelioma and asbestosis. In conclusion, unfortunately my colleague is not here so I, on behalf of the Greens, will support the legislation.

I suppose the only other thing I have to say on this is that the Attorney General made a couple of comments in his contribution—I think there was some genuineness in his contribution—which I felt were heartfelt and compassionate. For the Attorney General to say that he agrees with the legislation but cannot accept passing it, I find is in absolute contradiction to the beginning of his contribution to the chamber.

As somebody who lived and worked in that environment and who has lost some dear friends to this disease, we need to support this legislation. I am just reading through some notes.

The ACTING PRESIDENT (Hon Liz Behjat): Take your time.

Hon ROBIN CHAPPLE: Thank you, Madam Acting President.

The ACTING PRESIDENT: Well done; third time lucky!

Hon ROBIN CHAPPLE: As members in this place will know, I have trouble with names. I can remember facts and figures and all that sort of stuff, but when it comes to names I have to say in all honesty that if I met someone outside I would have difficulty remembering their name. I would have difficulty remembering the names of everybody in this chamber!

I really support this legislation. There are many people out there who would want this legislation to pass and would be absolutely supportive of it. All I can do is continue to hopefully encourage the better nature of my colleagues in the National Party to consider supporting this legislation and, in doing so, remember that in most cases historically when a government has said it will do something about an issue because the opposition has raised it, it has never occurred. I have listened to the contributions of the members of the National Party. I have

heard what they have had to say and I really hope that at the end of the day, if within the next year nothing has happened because they vote against this legislation, they can come into this chamber and tell us that something will happen. In that case, they will have my support. My gut feeling is that, unfortunately, that will not happen because of a lack of will by government, not through the lack of intent from members of the National Party. Again, I commend the bill to the house. To all my past colleagues in Wittenoom within Hancock Prospecting, I have done my best in this chamber to hopefully encourage the government to support this legislation. I encourage the National Party to support this legislation. It is a really important piece of legislation. It needs to be passed. There are so many people out there who are suffering and/or will suffer if we do not do something about this with immediacy. Having looked at what has been done in Victoria, the ACT and other places, this bill is modelled on that and in my opinion it would do a very good job.

HON SIMON O'BRIEN (South Metropolitan) [11.23 am]: I have listened closely at some length to previous speakers on the Asbestos Diseases Compensation Bill 2013, and particularly to the last one, which illustrates the point I will make in the 50-odd seconds I have left. We need to get rid of these timers. Members speak to these timers instead of getting on with the business of the house. That is a subject I will come back to at another time and I will show members how that works. The tragedy of this is that I hear a succession of members stand and use up that time talking about how they want to progress the very important matters contained in this bill and then flap their gums instead of finding a way ahead to progress it. If we keep coming back to this bill when the opposition decides to bring it up once a year, we will not get the matter ahead. I look forward to returning to this debate to say how we might progress this matter in due course.

Debate adjourned, pursuant to standing orders.