

ASBESTOS DISEASES COMPENSATION BILL 2013

Second Reading

Resumed from 21 May.

HON SIMON O'BRIEN (South Metropolitan) [10.11 am]: We return to the Asbestos Diseases Compensation Bill 2013. It might help, given the time that has elapsed between the instalments of this debate, to remind members of the long title of the bill, so we can focus on it. It is a bill for —

An Act to provide for a second award of damages in the case of an injured person suffering more than one asbestos disease and to provide compensation for the loss or impairment of the injured person's capacity to perform domestic services for another person.

Although the debate thus far has canvassed, as well it might, questions of the impact of asbestos-related diseases on sufferers and their dependents or carers or extended family, the terms of the bill are relatively narrow. But that does not mean for a moment that the proposals contained in the bill are not far-reaching. By that apparently paradoxical statement I mean that although there is not a great deal of material in the bill, there are some important ramifications of the legislation at two levels, which I will nominate. Firstly, this matter matters a great deal to people suffering the effects of asbestos-related diseases and their carers and their families. In many cases, these people have been suffering and doing it tough for a very long time. The curse of asbestos-related disease, as we all know, casts very long shadows. If there is one thing that we all agree on in this place, it is that regardless of whether our own families have been immediately touched by this—some have—we all have a great deal of sympathy for our fellow Western Australians who are working through the difficult circumstances that can come with asbestos-related diseases and their effects. That is the first point. Secondly, this bill promises some fairly drastic changes that potentially could extend far beyond the ambit of the explanatory memorandum. I think the sponsor of the bill appreciates that. It is for that reason, I suppose, that the government is not inclined to just embrace this bill and say, “Yes, we want to help in the way prescribed.” Before we implement the provisions of this bill, we need to know the ramifications of the legislation. My enunciation of those two major considerations is in itself paradoxical, because, on the one hand, we genuinely want to do something, but on the other hand, we have to ensure that we do so in a way that does not open up further and possibly even worse problems in other parts of our community. It is necessarily a debate about a short bill that explores a great deal of complexity.

I indicated earlier that I have been watching the progress of the second reading debate with interest. It is a bit disappointing that the structure of our business program has meant that the debate has been interrupted. I think debate on this bill commenced in February last year; we had another stab at it in May last year and then again in May this year. And here we are at the end of September with one hour and 20 minutes to debate the bill. I indicated in my brief opening remarks in May that I would like to see us offer some ways in which we might be able to progress this matter, rather than just to bite off a chunk now and then and not achieve a resolution. I will frame my contribution with that sentiment very much in mind.

I have taken an interest in this bill from the start, although possibly an arms-length interest, because in a couple of other incarnations I have had some exposure to matters relating to asbestos-related diseases and the question of compensation for those affected by asbestos-related diseases and other compensable matters. In the past I was the minister responsible for workers' compensation, and a very long time ago I was opposition spokesman for disability services for quite a few years and also Minister for Disability Services. I want to compare and contrast the current bill with my experiences in those roles briefly to illustrate my point. There are three main cohorts of people who receive services in the disability sector. Apart from people who suffer disability because they are geriatric, there are probably three main cohorts of people with a disability. The first cohort is those who were born with a serious disability—a congenital disability. The second cohort is those who acquire, typically in early adulthood, a disease that develops to the point at which disability becomes a serious part of their lives. The third cohort is those who acquire disability through some unfortunate accident—a head injury from a motor car accident and so on. Of course, it will be no surprise to members that young men are seriously over-represented in that third cohort; that is, those with a disability acquired through misadventure.

That then leads to the question of acquired disability and brings me to the area of compensation, because that is when we start talking about workers compensation whereby, typically, an injury or an illness is acquired in the course of what should be day-to-day life but something goes wrong. I have had some degree of exposure to matters of compensation and been in the difficult position of being in a government and having to do something about that. I have done some things, but this is not about me. I am not going to go on about bills for workers' compensation, jockeys, or whatever it might be, that I have taken through this place; I just want to add some extra dimension to this matter.

Hon Ken Travers: So it's not your valedictory?

Hon SIMON O'BRIEN: With regret, no, it is not.

Hon Ken Travers: I'm just checking.

Hon SIMON O'BRIEN: That was a fair interjection, and Hon Ken Travers is entitled to ask those sorts of questions as a friend and colleague as I approach what is probably the halfway point of my career!

Hon Ken Travers: So you're going to stay here as long as me, then?

Hon SIMON O'BRIEN: No; there is a difference between commitment and masochism, my friend!

We have more serious matters before us this morning, and one of those that I was working up to is the question dealt with in Hon Kate Doust's bill about once-and-for-all damages. I want members to consider this, because there is a good chance that we have all had some exposure at some level with this phenomenon: for example, once-and-for-all damages would have happened in the past when someone had been involved in a traffic accident or some such, and then procedure in a court would have resulted in an amount of damages being calculated or awarded. We have all seen it: so and so was awarded record damages of \$2 million or \$4 million after being seriously disabled in an accident. The casual observer could have thought, "Well, that will set them up; that will do them right," but of course that may not be the case. One of the problems of once-and-for-all damages is that early on it does not and it cannot contemplate what is going to happen as that 22-year-old young man who has suffered a catastrophic injury through misadventure goes through the rest of his life, because his care requirements—the things that he needs to do the basic tasks to get him through the day—are going to change and evolve over time. So that official lump sum may or may not be adequate to deal with all that chopping and changing. In particular, we have all heard about, particularly in days gone by, the big payout being spent on buying a property for the victim and then there not being much money left over to provide for the ongoing day-to-day care needs that are required forever. So what do they do then? I think we are all familiar with those tragic cases.

The matter contemplated in this bill is similar in some ways, but adds an extra dimension. It is basically about ensuring, once an asbestos disease that is compensable has been established and decided upon, whether any compensation given at that point is adequate or are we going to have the inadequacy that I have just described of taking a snapshot in time now without contemplating how the disease might develop or change, how the victim's needs might develop or change, how the circumstances of the care mechanism around that person and their family—for example, their spouse—will change, or how their life is going to evolve so that the care that would be built into the person's life in the first instance might change or disappear later? What do people do then? If a once-and-for-all damages judgement is given, nothing much can be done about it, so what do we do? Hon Kate Doust has made a genuine attempt through her bill to try to address this problem, and by getting the attention of the house focused upon it, she has really succeeded.

So, where do we go from there? The Attorney General, in his contribution—even though it was a very long time ago, I do not think the facts have changed—advised us of a number of matters. I will not go over that again. Members can go to the 8 May 2014 *Hansard*, blow the dust off that copy of *Hansard*, and refresh their memories, if they wish. I know a lot of members have been following this debate closely, as have I, so I will not summarise that. Nonetheless, the information that the Attorney General provided to the house on that occasion was, I believe, although not 100 per cent encouraging the proponents of the bill, well made, well given and pertinent to the considerations that we need to have.

The first thing that struck me about this bill, apart from the human dimension, which we have been discussing, was whether this bill can be introduced into this house. I am not reflecting in any way on, or even seeking to question, the fact that it is here before us. Obviously, it has been adjudged that it can be in this house. If it were to proceed through this house, would it be received in another place with its very narrow interpretation of what is a money bill? That is a fairly academic question. As I say, I do not want to go there now. We have a presiding member and a Clerk of the Parliament to provide advice about those matters, but I wonder how it would go if it was sought to be introduced into another place, having originated here.

Hon Ken Travers: It is an interesting point, because it raises implications for the Bell Group bill as well, if you take that interpretation of a money bill.

Hon SIMON O'BRIEN: Certainly the Bell Group bill—I mean, there is no suggestion that the Bell Group bill would have been introduced in this house.

Hon Ken Travers: The amendments.

Hon SIMON O'BRIEN: That is an interesting point. But I raise it not in a challenging way; I raise it in a constructive way. As I said earlier, I want to see how we progress this matter. The Attorney General raised a number of very pertinent points about the impacts of this bill and, indeed, I recall that he advised the house that he was then—I know that he subsequently has—referred this and related matters to the Law Reform

Commission. A comment about that was made during the debate, and I will come back to that in a moment. However, that just shows the importance of making sure we get this right. We have to know what the impacts will be on other systems before we bring in laws with the best of intentions that may have far-reaching consequences.

Hon Adele Farina: The modelling that's been done in the eastern states doesn't assist, and that's actually in practice in the eastern states.

Hon SIMON O'BRIEN: That would be a very good indicator, but we have to look at the application of it here in Western Australia. What I am trying to say is that this bill and the provisions in it would not necessarily function in isolation, even though it seems to be about a very discrete and clearly defined matter—indeed, half the bill consists of several definitions. I am not so sure that it is limited to that, so I think a bit more homework needs to be done by all of us, not just the proponent of the bill, before it gets too much further. I think we can usefully do that.

The government is doing something with the Law Reform Commission. I think as recently as the last time this bill came on for debate in May this year, Hon Martin Aldridge commented about his disappointment that even though the Law Reform Commission had been asked to report by 30 June, there was then very little prospect of it doing so, and I do not believe it has done so yet. Perhaps that is a reflection of the complexity of some of the matters that it has been asked to review. I do not know; I have not been initiated into the mysteries of the Law Reform Commission, I am glad to say. However, there may be some other avenues or recourse that we may wish to pursue, and I will be very interested in due course to get the benefit of the advice of Hon Nick Goiran. I was disappointed that he ran out of time when he last made a contribution, but hopefully we can hear a little more from him, because he has, I think—I am just looking around the chamber—some unique experience in this particular area of law and practice.

What else could we do? I think that advancing this bill and the spirit within it means that we have to find out exactly what it would mean for our systems in Western Australia. We need some more advice from some instrumentalities in Western Australia that would be very useful to us in contemplating this bill and sourcing actuarial advice about the costs and who will pay them. Again, that is not to show any mean-spiritedness or wish to delay this, but it certainly has been my experience that matters of compensation need to be approached carefully to preserve the integrity of a system that by and large works well for Western Australians. It is probably not often appreciated that in the area of, say, workers' compensation, we have a very good agency here—I dare say that most members do not come into contact with it—called WorkCover. When I last checked, its financial position was very sound and certainly in the black, yet if that is contrasted with some of the systems in other jurisdictions in Australia, they have compensation systems that are very heavily in debt. As we know from our discussion of the Revenue Laws Amendment Bill, that is something that the opposition is not keen on.

Hon Adele Farina: Perhaps it also suggests that we haven't got the balance right and the plaintiffs are not being properly done by.

Hon SIMON O'BRIEN: There might be some element of truth in that—that there is room to move. So let us have a look. I was toying with the idea of suggesting to Hon Kate Doust that this matter could be referred to one of our standing committees to get that information. Sometimes referring a bill to a committee is seen by those who want to get on with it as a way of saying goodbye to it. In the case of this bill, and noting its progress, I do not know when it will come on again for debate, but I would like to have some more information that might give us the confidence to agree to the second reading of it and then approach the committee stage. I am serious about that. I do not know whether it is the opposition's intention to bring this debate on during the next non-government business or the next non-government business after that or whether the bill will not be seen until the new year. However, I know that the sort of report we could seek could be obtained before the next year's sitting and that would make good use of the time in between to make some progress. I believe it was Hon Kate Doust who reminded us when talking about the Criminal Code Amendment (Prevention of Lawful Activity) Bill that is currently before the house that it might have been easier to refer the bill to a committee months and months ago and then we would not take up the time of the house on a referral motion months down the track. That is what I was contemplating. I also contemplated which committee it might go to. I wondered whether the right fit for this bill could even be the Standing Committee on Estimates and Financial Operations, and the reason for that is it is specifically about looking at how to make this happen.

Hon Adele Farina: You didn't listen too closely to Hon Nick Goiran's contribution if you're seriously considering referring it to the estimates committee.

Hon SIMON O'BRIEN: This is a thought that I was toying with. Who knows? Hon Kate Doust and others may wish to contemplate, and maybe even explore, that so that we can have some answers after the actuarial ruler has been run over the bill. Failing that, I think we will have to wait until we get some further advice from the

Law Reform Commission, because that is the only detailed examination that is currently in train and is probably ever likely to be in train. All I know is that various levels of hell have frozen over in the past when waiting for Law Reform Commission reports before one attempts to move forward on any particular matter.

Hon Adele Farina: Are you going to move the referral motion?

Hon SIMON O'BRIEN: I think I said just now that I was toying with it, and I even got so far as to contemplate asking the Clerk to draft such a motion. I have not done that.

Hon Ken Travers: Do it!

Hon SIMON O'BRIEN: No, I am not going to do it now because I do not want there to be a suggestion that I am trying to send this second reading debate off in some other direction. I have not discussed it with the Leader of the House.

Hon Ken Travers: You're just making a positive contribution to progressing this legislation, aren't you?

Hon SIMON O'BRIEN: Yes, I am; that is exactly what I am proposing to do. The reason I have not discussed this in any great detail with my colleagues is not that I am trying to be maverick or anything; I just know that ministers lead mundane and dreary lives and I am just trying to introduce an element of spontaneity into the proceedings! However, no, I am not going to move that now.

Hon Ken Travers: They can think on their feet; it'll be good for them.

Hon SIMON O'BRIEN: I have contemplated all of that; do not worry. I have put the idea before members and if any member wants to move that way—I am giving the sponsor of the bill a bit of time to think about it by so doing—that might be a useful thing to contemplate.

I wanted to indicate in my remarks in the second reading debate that I understand what has been spoken of by those who support the bill. I am also cognisant of the other considerations that the minister very soberly has brought to the attention of the house. I am also aware of some other elements we have to consider in this debate that probably will be provided by Hon Nick Goiran from his particular area of expertise in these matters. I am therefore looking forward to hearing his contribution, while others might wish to mull over the prospect of a referral of the bill to our committee, which is most experienced and expert in looking at matters relating to finance.

Hon Ken Travers: But when you said "our" I thought you meant the public affairs committee where the best and brightest of the Council sit.

Hon SIMON O'BRIEN: Who is on that committee these days?

Hon Ken Travers: You said "our", so I thought you meant the environment and public affairs committee.

Hon SIMON O'BRIEN: The Standing Committee on Environment and Public Affairs?

Hon Ken Travers: Yes, the public affairs committee?

Hon SIMON O'BRIEN: That might be interesting. No, I think the experts in this matter would be members of the Standing Committee on Estimates and Financial Operations. They would be particularly good at this. I am actually on the environment and public affairs committee, just to remind the member, which may have slipped his mind.

Hon Ken Travers: No. That's why I said the best and brightest in this house sit on that committee!

Hon SIMON O'BRIEN: The honourable member is too kind, Mr President—correct, quite right, but too kind, and I must protest!

The other thing I must acknowledge is the spirit that I am sure has motivated Hon Kate Doust to bring forward this bill. She has done so in a way that I think is genuine. Perhaps that is not always the case when oppositions bring forward bills like this; they are sometimes used as vehicles to wedge the government or show that the government does not care. I do not think there has been any such base motive behind the genesis of this bill, and that stands to Hon Kate Doust's credit. I will watch the balance of this debate with great interest, Mr President.

HON NICK GOIRAN (South Metropolitan) [10.42 am]: I thank members for granting leave on the last occasion this Asbestos Diseases Compensation Bill 2013 was before the house so that I could continue my remarks. I regret that I was away on urgent parliamentary business when this matter was last before the house. The matter was before the house in May this year, which is almost exactly a year to the day from my last contribution on this important matter on 8 May 2014.

I will start by saying that I was somewhat surprised to receive a letter from Hon Sue Ellery yesterday indicating that it was the intention that non-government business today comprise this bill. By way of explanation, the

reason I was surprised yesterday to find that was the case is perhaps best summarised in the final comments I made in May last year, when I said —

I ask Hon Kate Doust to consider whether it might be appropriate to defer consideration of this bill until such time as we have the benefit of the recommendations of the Law Reform Commission. If the Law Reform Commission were to say that provisional damages is a good concept and it should apply to a broader range of people, I will have a great amount of sympathy towards that idea and I will be in a better position to support the progression of this bill, but I cannot support it in its current form. The Attorney General has quite rightly outlined in detail some of the difficulties. It is not a criticism of Hon Kate Doust because she does not have the benefit of the resources of government as the Attorney General does. I am much more confident that we will get to an appropriate conclusion of this matter with the benefit of the recommendations of the Law Reform Commission. I ask Hon Kate Doust to consider that as the second reading debate of this bill progresses.

Hon Kate Doust: Member, as you will be aware, the Law Reform Commission hasn't actually formally commenced its inquiries, more than a year after you actually spoke. So how long does one have to wait before you could actually bring a bill back on for some discussion?

Hon Michael Mischin: So you bring back a badly drafted, half-baked bill?

Hon Adele Farina: I wouldn't speak, if I were you. You need to explain why you gave a direction to the Law Reform Commission and then did nothing about ensuring it was implemented for a whole year.

Hon Michael Mischin: I recall you complaining —

Hon Adele Farina: You're the minister.

Hon Michael Mischin: — about the idea of the Law Reform Commission being administered through DOTAG that there wouldn't be any independence in the way that it operated, yet you want me to interfere in its operation.

Hon Adele Farina: But you stood in this place and said that you had instructed them—your words.

Hon Michael Mischin: Yes. I could show you the letter.

The PRESIDENT: Order, members! I was happy to let the little interchange go, as it was instructive, but we will now go back to the speaker.

Hon NICK GOIRAN: Thanks, Mr President. Like you, I think that was useful and particularly I thank Hon Kate Doust for indicating what has motivated the desire to bring this matter on today.

I can understand that whenever one is passionate about a particular area, it is easy to get frustrated with the timing and progression of things. I have had a fair amount of experience in trying to progress certain things through government. Might I say that some of those things are still happening and they have taken a lot longer than 12 months. I therefore understand the frustration and sometimes I understand the exasperation. But my question really this morning is whether this is the best mechanism to seek progress in this matter. If the complaint this morning is that the Law Reform Commission is not progressing at adequate speed —

Hon Kate Doust: It is; it is about to start.

Hon NICK GOIRAN: Yes.

If the complaint is that nothing has happened over the past 12 months, or words to that effect, it is not for me to put that complaint. I am just trying to understand what the motivation is. I think it would be open to members opposite to move a motion this morning expressing that frustration. However, I do not know that the progress of this particular bill in a second reading debate will bring us any further, because I regret to say that my position is still the same. I need the benefit of the recommendations of the Law Reform Commission, and that does not exist at the moment. I think we are all in agreement that the fact simply is that there are no recommendations from the Law Reform Commission. People may have a view about that and about the speed of the commission and so on, but that is for other people to debate. My concern goes to the heart of what Hon Kate Doust is trying to do here. She is trying to help people who, through no fault of their own, find themselves in a predicament that not one single person in here would ever wish upon their worst enemy. I understand the motivation behind the bill. However, the fact simply remains, as I mentioned in May last year, that if we were to pass the bill in its current form and assuming that it was workable in its current form, it would apply only to that narrow, discrete range of people that are captured by the bill. I have a philosophical objection to the bill with which I hope all members will agree. If a terminally ill person in a matter for which they are seeking compensation cannot reasonably obtain all the compensation they might otherwise be entitled to after the event, they should be able to come back for a second bite of the cherry, so to speak. As I said in May last year, I do not have a problem with that. I am sympathetic towards it, but I think it should apply to an asbestos disease sufferer just as much as it does to a patient who, through no fault of their own, goes to a general practitioner who negligently fails to diagnose the

cancer in the individual, fails to undertake the proper tests and fails to refer the person to a specialist. This poor person has put their life in the hands of a GP who has undertaken diabolical malpractice, and the person has ended up with a far worse progression of cancer than they would have had if the GP had practised their profession competently. Our heart goes out to that poor person who is now dying of cancer, just as much as it does to the person with an asbestos disease. The problem I have with the bill in its present form is that it will apply only to the asbestos disease sufferer. My heart breaks for that person, but how can I cast my vote in support of this bill knowing full well that other people in society—other constituents—are in equally terminal phases, again through no fault of their own?

Hon Adele Farina: Sadly, we do that every day. Look at the compensation scheme.

Hon NICK GOIRAN: Thank you, Hon Adele Farina. I agree that this happens too often, and I am saying that it has to stop. We are the legislators; we have a professional responsibility to ensure that we legislate with competence. Just as we expect the employer to competently ensure that the worker is not put in a diabolical predicament, ending up with an asbestos disease because of the poor practices of the employer; just as we expect a general practitioner to refer the person for the correct tests for whether they have cancer; and just as we expect lawyers to provide correct advice to their clients, we expect the members of this chamber to competently practise their profession. I am saying that I believe that, in this instance, in debating the policy of whether people should have a so-called second bite of the cherry, or what we are referring to here as provisional damages, it should apply to a broad range of people who find themselves in that predicament and not just one group in society.

I was not in the chamber last time this matter was debated, but from my quick scan of what he had to say, Hon Martin Aldridge seems to have made some excellent remarks. I do not want to digress too much, but I thank him, in his absence, for correcting the public record of some of the shameful remarks made by Hon Darren West, who I regret has been spectacularly unhelpful in this debate. A very well-meaning bill was introduced by Hon Kate Doust. If my memory serves me correctly, I think there was a contribution from Hon Stephen Dawson, who made some useful and considerate remarks. I think Hon Rick Mazza may have previously spoken on this bill as well, and I also recall hearing from Hon Col Holt. Maybe some other members have spoken, but I am just operating from memory. All those people made sensible, respectful comments. Unfortunately, Hon Darren West, as was very well prosecuted by Hon Martin Aldridge, made disgraceful comments, basically saying that if we did not agree to progressing this bill instantly—right now, press the “go” button—then we are basically happy to see people die. That is in effect what he was saying. If members are unsure that I am not somehow misquoting him, I encourage them to read his speech. I read both his speech and the contribution by Hon Martin Aldridge, and I fully endorse his condemnation of Hon Darren West.

This is a serious matter that has a material impact on people’s lives, and on the lives of their families. The matter is currently before the Law Reform Commission, whose website states —

The Law Reform Commission is to enquire into compensation regimes for persons suffering from asbestos related diseases with particular regard to the following areas:

Two areas are set out. The first is modifying the “once and for all” rule with regard to provisional damages, and the second is damages for the value of services provided by the plaintiff to others. As I mentioned in May last year, without the benefit of what the Law Reform Commission may or may not say on this matter, I have some sympathy for the idea of modifying the “once and for all” rule on provisional damages, conditional upon it applying to more than just asbestos disease sufferers. We would be doing the people of Western Australia a disservice if we said that the only people in our society worthy of having more than one chance before the courts are asbestos disease sufferers. There is no question that they are worthy of that; do not misconstrue my remarks to suggest otherwise. They are a category of individuals who are worthy of that second chance, but it simply cannot apply only to them. I am encouraged by what the Law Reform Commission has been asked to do, presumably by the learned Attorney General. He has, quite rightly, asked the commission, when considering this issue, to give consideration to whether asbestos disease sufferers should be the only individuals to benefit from such reforms. The list of things that the commission needs to consider specifically states as follows —

If such reform is recommended, the form of the proposed regime for award further damages, including but not limited to identifying:

- a. the circumstances in which a Court is to be authorised to award further damages, including whether such a power —
 - i. should be available in all personal injury claims or should be confined to claims of a particular class, such as claims relating to the contraction of an asbestos related disease;

I thank the Attorney General for including that provision in his referral to the Law Reform Commission, because that goes to the very heart of what we need to decide here. Should this apply to all personal injury claims,

a particular class of claims, or just asbestos-related diseases? If I have the opportunity, I will make some preliminary remarks about that. I do not think it should apply to all personal injury claims. There is a long history, and there is a good reason for wanting finality in litigation. We do not want to open the door for people to be constantly going back to the courts. To the extent that I have an appreciation of and sympathy for what is happening with the Bell Group matter, there is seemingly no finality to it, and it seems to be going on and on. No wonder people in government and in society are frustrated and exasperated by that, and are taking steps to provide that finality. There is great benefit to all of us if people get only one chance to litigate before the courts, and I think that needs to remain the default position. That is why, I hasten to add, it should not apply, in my view, to all personal injury claims. However, there are particular classes of matters, particularly when an individual is terminally ill, in which there is benefit to considering this. If I have a client with a terminal condition of any kind—let us not worry about what the actual condition is, let us just accept that they have a terminal condition—enormous pressure is on that individual at that moment in time, simply because of their affliction. However, when they are progressing their case, we must understand the position of people on the other side, typically an insurance company. Whatever people might think about insurance companies, at the end of the day their responsibility is to do the most financially prudent thing that they can, and the responsibility of their lawyers is to make sure that they act in the best interests of their client.

I find that disgraceful, but at the end of the day, that is what actually happens. There are many, many cases in which an individual is terminal and frankly, their opponents intentionally drag out the process. They do not settle the case; they make sure that the person has to go through every single hoop and hurdle. I have had personal experience in which the client has in fact died during the course of that process. The problem is that once an individual has died, under the law in our state, the significant majority of their claim passes away with them—not every aspect of their claim, but the significant majority of it. I think I mentioned in May last year, as a practical example, if somebody is suffering in that situation, they are entitled to claim both past and future economic loss. Once they die, their claim for future economic loss, which is typically the largest part of their claim, falls away. Their estate is not entitled to claim one single cent for future economic loss. The estate can, in certain circumstances, progress a claim for past economic loss that is typically a small amount—typically so small that the estate does not bother with the expensive exercise of trying to progress those parts of the claim. More importantly, their claim for general damages, which are for pain and suffering, loss of enjoyment of life and loss of amenities, is completely obliterated. It is quashed; they have no prospect of claiming one cent for that. That is the law at the present time. I do not sense from anybody that they are seeking to change that; nor am I. I am just explaining that that is the pressure that individuals are under. They know that if they do not settle quick smart for whatever they can get, the reality is if they are terminal they will die. They feel a moral obligation on behalf of their family to leave them at least something. That is typically the experience of the people going through these types of cases.

Hon Simon O'Brien: Tragically, of course—if you will take an interjection—what that generally means is that even with the best of intentions, the person who then becomes the widow is not actually left properly provided for as time progresses.

Hon NICK GOIRAN: That is exactly right, Hon Simon O'Brien. For those reasons, it seems both compassionate and sensible to give serious consideration to the idea that an individual in those circumstances could have a significant claim, but if, after settling that claim or after a judgement, something else happened that would give rise to them being able to have a second claim, they ought to be able to do that. Do not pressure these individuals to have to go through every single possible investigation and medical report known to man to make sure that they have covered all the bases because they feel a moral obligation to their families. Then, because they have had to go through all of that exercise, they find they have run out of time. It is an extraordinarily difficult thing, as a practitioner, to be able to run those cases, to say nothing for the individual who is really left in a no-win situation.

The second aspect of the proposal before us is a move by Hon Kate Doust for the allowance of what I refer to as a gratuitous services claim for third parties. I think I indicated more than a year ago when we initially considered this matter that it is not one I am as attracted to as I am with the inclusion of a provisional damages claim. But I am open to it; it is before the Law Reform Commission. I believe we should hear what it has to say about it. Again, unlike Hon Darren West's suggestion, the mere fact that I do not agree there should be gratuitous services to third parties does not mean I am happy to see people die—of course not. It just means that I respect the fact that the High Court has decided that there is no common law right to that head of damage. Consequently, I am not immediately enthusiastic with the Parliament injecting a statutory head of damage in lieu of something that the High Court states does not exist as a common law right. Before we get too enthusiastic about that particular provision, I think it needs weighty consideration by people such as the Law Reform Commissioners, who can then provide us with a recommendation. I understand, I think, from Hon Adele Farina's interjection to Hon Simon O'Brien earlier the point she made about what is happening in the eastern states. I think that has

some weight. Of course, I recognise that it is not universally the case in the eastern states that Sullivan and Gordon damages exist, but at least one state—possibly two—have it in place. Yes, there is no doubt those legislators have given that matter weighty consideration and have come to that conclusion; or, it might well be the case that the bill was rammed through the Parliament and no-one was paying any attention in those states. Suddenly they ended up with a head of damage. Shock, horror! Maybe that could happen in legislature and people would be none the wiser. I would feel more comforted knowing that due consideration has been given to that proposal.

In the time that has elapsed since my last contribution in May 2014, some further interesting things have happened with regard to how compensation is handled in our states. That is through no fault of Hon Kate Doust; it is just the machinery of government progressing and probably none of us are aware of it. Soon it may catch us by surprise. I am specifically referring—members may or may not recall—to my indication in my previous remarks that there is a \$19 000 threshold or deductible in place for all claims for general damages. In other words, from the compensation a person would receive for pain and suffering, loss of enjoyment of life and loss of amenities, a person does not receive the first \$19 000—at least, that was the case in May last year. They would not get one single cent of that. If a person's claim was adjudged by a judge of the court that they were entitled to \$20 000 of compensation, in May of last year they would have received \$1 000. If they had been injured so badly that they had that much damage done to them and lost that much of their life that they were entitled to \$20 000 normally, under our state laws they would get \$1 000. Guess what, Mr President? Today, that person would get nothing because the threshold, of course, increased to \$20 000 on 1 July this year. That will be the case even if this bill passes in its current form. I think that matter needs to be of concern to members. It is yet another matter that the Law Reform Commission should be considering because \$20 000 of compensation for loss of enjoyment of life is no small matter. I recall having several clients who were severely affected by incidents of sexual abuse who were entitled to about \$25 000, only, in compensation for their loss of enjoyment of life —

[Leave denied for the member's time to be extended.]

The PRESIDENT: Just before I give the call to the Leader of the Opposition, I welcome into the public gallery students and staff from Armadale Primary School. It is always terrific to see the schools that come to Parliament to get some idea of how our Parliament works and how our system of representative democracy works. Welcome.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [11.09 am]: I will begin my remarks by providing an explanation to Hon Nick Goiran. I do not like to refuse an extension of time, but this is a time-limited debate. If this was the normal consideration of a bill I would not have done what I just did. I do not like to do it because in my experience the member makes a sound contribution. Having said that, I will turn to the Asbestos Diseases Compensation Bill 2013 that is now before us. I was both heartened and disheartened by the events of this week around this bill. I was heartened by the comments of Hon Simon O'Brien and indeed by some of the comments of Hon Nick Goiran about their sympathy for wanting to see this matter progressed in a timely fashion. I was disheartened to be advised by my colleague Hon Kate Doust that only this week she was contacted by the Law Reform Commission to say that it is only just beginning its work into the reference given by the Attorney General. The Attorney General spoke on this matter in February 2014 and May 2014, which is when he gave the undertaking to refer the matters in this bill to the Law Reform Commission. It was disheartening to hear that it had taken so long for that to take effect and for the Law Reform Commission—I am a great admirer of the work that it does—to get the reference and start work on the matter.

Hon Michael Mischin: When did they get the reference? Did they tell you that?

Hon Kate Doust: In May of last year.

Hon Michael Mischin: So it is not due to any neglect on my part.

Hon SUE ELLERY: Perhaps the Attorney General should have asked the commission why it was taking so long; I certainly would have done that. In any event —

Hon Michael Mischin: I just want to make it clear that the reference was given to the commission, as I had undertaken to do so, in a timely fashion and after I made my contribution to this debate back in May last year.

Hon SUE ELLERY: I recognise the interjection just made by the Attorney General. Nevertheless it is still disappointing that he did not take steps to see what had happened. It is not like it has been just a few months; it has been more than a year. The undertaking was made in May last year and now we are in September.

Hon Ken Travers: Has he not resourced the law commission?

Hon SUE ELLERY: It could be a question of resources, but it can often be the message that the agency gets about the priority that the government places on a particular bit of work. I do not know whether that is the case or not.

Hon Michael Mischin interjected.

Hon SUE ELLERY: This is my contribution. The member has made his contribution and I have a limited amount of time to deal with what I think everyone in this house has agreed so far is a very serious matter. I was disheartened by the news from the commission, but heartened by the comments of Hon Simon O'Brien and Hon Nick Goiran. With that in mind, I have consulted with Hon Kate Doust and I advise, Mr President, the following —

Discharge of Order and Referral to Standing Committee on Environment and Public Affairs — Motion

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [11.13 am] — without notice:
I move —

That the order of the day for the Asbestos Diseases Compensation Bill 2013 be discharged and the bill referred to the Standing Committee on Environment and Public Affairs for consideration and report no later than 25 February 2016.

I will not take up the rest of the time talking about this because we can bring this matter to a resolution now. We can make a decision now to refer this bill to a committee. With the goodwill of everyone who has spoken so far to indicate that they want this matter resolved, and with the indication at least by Hon Simon O'Brien and that perhaps even hinted at by Hon Nick Goiran that they would be supportive of receiving further advice on some of the issues they raised, the house can decide to refer this bill and that is what I am asking it to do.

HON LYNN MacLAREN (South Metropolitan) [11.15 am]: On behalf of the Greens I was prepared to give a second reading contribution to the debate before us on the Asbestos Diseases Compensation Bill 2013. We are possibly the only party that has not yet spoken on this bill, so I advise the house that we fully support the legislation. We would have liked to have seen it progress more quickly through Parliament and it is with some dismay that we have seen ongoing delays. However, we welcome the current move before the house and the examination by the Law Reform Commission only because it may produce a much better piece of legislation than if we pass the bill as it stands. Therefore I support this move by Leader of the Opposition in this place to discharge this bill and refer it to the Standing Committee on Environment and Public Affairs. I will reserve the right to give a second reading contribution at some later stage.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [11.16 am]: I share the dismay at the length of time it has taken the Law Reform Commission to deal with the term of reference, which was in fact conveyed to them as I had foreshadowed.

Hon Sue Ellery: She's telling them now to talk it out.

Hon MICHAEL MISCHIN: Telling who what?—sorry.

Hon Sue Ellery: She is telling the backbenchers to talk it out.

Hon MICHAEL MISCHIN: I am sorry, I do not understand. I thought that was an interjection to contribute to the debate that I was hoping to say something about; that is, a motion to refer this bill to a committee. As I indicated back in May last year when I spoke on myriad problems and defects with the bill as it is drafted, I identified several matters that were of concern to me and the government about the manner in which the bill was drafted. I made an undertaking that a more appropriate course would be to either defer or withdraw the bill in favour of it being considered more fully by the Law Reform Commission, as would be the normal course with a matter of this sort of complexity and with the potential consequences it would have. I note that that was not supported by the opposition, with some surprise I must add, because some of the features of the bill are exactly the sort of features that Hon Adele Farina routinely complains about with government legislation. For example, she complains about a regulation-making provision that talks about making regulations to promote the purposes of the bill as necessary when there is nothing for regulations to fasten onto in the bill, and also about skeletal legislation and leaving too much to the discretion of the executive by way of regulations, and yet that is inherent in the way in which this bill has been drafted. Nevertheless, the opposition has seen —

Hon Ken Travers: Is the Attorney General opposed to those concepts now?

Hon MICHAEL MISCHIN: I am saying that this bill explicitly demonstrates far more skeletal legislation and an enormous and undefined discretion to make regulations than anything else the government has put. But Hon Adele Farina seems to have sacrificed her principles for expediency in that regard. I pointed out the numerous problems with the bill —

Hon Sue Ellery: It is a narrow debate.

Hon MICHAEL MISCHIN: It is and I am going to get to that. The point of referring a matter such as this to a committee is twofold: the first reason is to consider the policy behind the bill or whether the bill affects the policy in a proper way.

I have indicated the broader considerations that attach to this particular bill, whether it ought to be limited in the way that has been suggested, the implications more broadly on the question of damages in civil claims, and whether it ought to be confined in the way that it is. There are matters of principle involved.

The Law Reform Commission received very broad, but carefully crafted, references to look into these matters. In my reference to the commission—I will quote from the letter that I sent to the commission; unfortunately I do not have a dated copy—I said —

I would be grateful if the Commission could conclude its investigation on this matter and provide a report to me by 30 June 2015.

That has not happened, for a variety reasons. Nevertheless, the Law Reform Commission has engaged a consultant, because of the complexity of the matters to be considered, and has indicated that its discussion paper will be completed by the end of November this year. It has already briefed Hon Kate Doust. I understand that Hon Kate Doust saw the commission yesterday —

Hon Kate Doust: Yesterday afternoon.

Hon MICHAEL MISCHIN: — and has made her own contribution as to who ought to be consulted in the crafting of the discussion paper.

The Law Reform Commission has indicated to me that it expects its report to be available by the end of May and certainly by the end of June next year. I challenge members to indicate how a committee of this house will be able to help. What will it look at? Will it look at the broad policy of the bill?

Hon Kate Doust: Hon Simon O'Brien has put forward that it go to a committee as well.

Hon MICHAEL MISCHIN: Yes, he did. However, as I understand it, his preference is that it go to the finance and estimates side of the committee system in order to look at the actuarial matters and the financial aspects and the implications of that.

Hon Kate Doust: Are you saying our committee cannot do that?

Hon MICHAEL MISCHIN: It appears that Hon Ken Travers and those who are on that committee are not keen on that idea. Instead, presumably a committee will be looking at the broader policy of this bill, in a way that will duplicate the work of the Law Reform Commission, presumably draw on the same people and interest holders to contribute to that debate and discussion, and then presumably look at this bill and say, “Hey, there are all sorts of problems with this bill that need to be fixed”, and make recommendations on it.

Hon Darren West: You're the minister for doing nothing!

Several members interjected.

The PRESIDENT: Order! Let us stick with the referral motion.

Hon MICHAEL MISCHIN: Thank you, Mr President. It is a shame that Hon Darren West has gained the reputation of being the class clown with his contributions.

Several members interjected.

Hon MICHAEL MISCHIN: People come to this place, and I have an awful lot of sympathy for those —

Hon Sue Ellery: It's a narrow debate

Hon MICHAEL MISCHIN: If members opposite do not interject, I might be able to get through it.

The PRESIDENT: Order! Do members want me to read the referral motion again? I will read it again —

That the order of the day for the Asbestos Diseases Compensation Bill 2013 be discharged and the bill referred to the Standing Committee on Environment and Public Affairs for consideration and report no later than 25 February 2016.

I can see no reference to class clowns or anything else in that. So let us stick to the referral motion.

Hon MICHAEL MISCHIN: Thank you, Mr President.

The work that the committee would be doing would be entirely duplicating the work that will be undertaken by a consultant to the Law Reform Commission. If the committee will be looking at the broad policy behind the bill, I think it is pretty plain that the feeling in the house is that most members at least, albeit in a qualified and provisional fashion, are supportive of the general theme of the bill and what it intends to achieve. It is also pretty

plain that there are enormous defects with the bill as drafted, none of which have been addressed, notwithstanding that one year has elapsed since I pointed out the several questions that are still at large by the nature of the way in which the bill has been drafted, and there has been no contribution from anyone in the opposition who supports the bill to try to refine those issues and give some indication as to how the bill is meant to deal with those issues, let alone propose amendments to fix it. The committee will be looking at a bill that is inadequate and does not meet its objectives in a clear enough fashion —

Hon Adele Farina interjected.

Hon MICHAEL MISCHIN: Here we go again!

The committee will be duplicating the work that the Law Reform Commission will be undertaking. Apart from anything else, it will be drawing on the same people and speaking about the same matters, and it will be doing that in a less focused fashion, because it will not be producing any discussion paper to tease out the issues that will be relevant to the proper formulation of legislation and the determination of how far it ought to go. Instead, it will just be hearing a morass of information, and presumably, without taking the necessary advice that will be available to the Law Reform Commission, will be producing its own version of whether this bill, or something like it, ought to proceed, and without any particular clear instructions necessarily to parliamentary counsel to draft anything.

It seems, with respect, that apart from the actuarial issue and the financial implications issue that Hon Simon O'Brien I think is aiming at, the resources of the committee and the Parliament, and the energies of the several members on whichever committee this bill is referred to, will be duplicating the work—the much more focused and expert work—of the Law Reform Commission over the same period of time and will not come to a resolution any quicker. However, if that is the way the house believes it ought to be using its talents, its energy and its resources, I do not have too much of a problem with it. It does seem to me to be a waste of time. However, if that is what the house insists on, then by all means refer this bill to a committee and waste the time of a committee. I personally will be voting against this motion, because I see it as a waste of the resources of this house and the energies of a committee of this house, which can be much better devoted to other more productive exercises.

If at the end of the day the Law Reform Commission came up with something that was unsatisfactory, of course a committee of the Parliament could go and look into it. However, at the moment it would be simply a duplication of effort and a waste of resources, and I for my part—although I am not speaking on behalf of the government in this regard—would be voting against that sort of motion because I see it as a waste of resources.

Hon Sue Ellery: Who does speak on behalf of the government if it's not you?

Hon MICHAEL MISCHIN: The government has not had the opportunity, because no notice had been given of this motion, to form a position on it. I am speaking not only in my capacity as Attorney General, to indicate what is the problem with the bill and why it would be a waste of effort to do what is being proposed, but also as a member of this place with a responsibility to ensure the sensible use of its resources. If this place wants to use its time and effort to run in parallel and in a much less focused way to the work of the Law Reform Commission—the terms of reference of which go beyond the scope of this particular bill and include the issue of whether there ought to be provisional damages and the extent that that ought to be allowed in our civil system, and the general issue of how one deals with the question of damages for services—then so be it, but I think it is a waste of time.

HON SIMON O'BRIEN (South Metropolitan) [11.28 am]: I wonder what was in the mind of the mover of this referral motion to refer this bill not to the Standing Committee on Estimates and Financial Operations, as I have suggested—I am the only member who has spoken on this—but to the Standing Committee on Environment and Public Affairs.

Hon Sue Ellery: Read the standing orders!

Hon SIMON O'BRIEN: There are a number of committees that this bill could be referred to.

Hon Sue Ellery: And your committee is one of them.

Hon SIMON O'BRIEN: My committee is by far the best and most skilled committee in this place, as Hon Ken Travers says. I am surprised, therefore, that on the narrow matters that are at issue here, which are the financial matters, he wants to refer this bill somewhere else. Having said that, I am quite happy for the bill to go to a committee for examination and report, and if it needs to come to the Standing Committee on Environment and Public Affairs, so be it. But I must admit I am a little surprised that that is the direction in which the house wants to go.

HON NICK GOIRAN (South Metropolitan) [11.30 am]: I thank Hon Sue Ellery for moving this motion proposing that the Asbestos Diseases Compensation Bill 2013 be referred to a parliamentary committee. Being

a sucker for punishment, as soon as Hon Sue Ellery indicated that that is what she was going to do, I quickly refreshed my memory on the provisions for substitute and participating members because, selfishly, I would be delighted to serve on a committee—I am delighted to serve on committees full stop —

Hon Adele Farina: And you are very good on them.

Hon NICK GOIRAN: I thank Hon Adele Farina. In all seriousness, I would like to serve on a committee that has the opportunity to look into these matters, because it is an area I am passionate about. Having said that, I recognise that the matter is currently before the Law Reform Commission of Western Australia and it is consulting with experts in the field.

Debate adjourned, pursuant to standing orders.