LEGISLATIVE COUNCIL

Thursday 21 June 2012

The President (The Hon. Donald Thomas Harwin) took the chair at 9.30 a.m.

The President read the Prayers.

PROCEDURE COMMITTEE

Report

The President tabled report No. 7 of the Procedure Committee entitled "Notices of motions", dated June 2012, together with correspondence.

Report ordered to be printed on motion by the Hon. Michael Gallacher.

Pursuant to sessional orders Formal Business Notices of Motions proceeded with.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 63 outside the Order of Precedence objected to as being taken as formal business.

WALK SAFELY TO SCHOOL DAY

Motion by the Hon. NATASHA MACLAREN-JONES agreed to:

That this House notes that:

(a) Friday 18 May 2012 is Walk Safely to School Day, an initiative of the Pedestrian Council of Australia,

(b) Walk Safely to School Day is an annual national event when all primary school children are encouraged to walk and commute safely to school, and

(c) this important community event promotes road safety, healthy physical activity, public transport and the environment.

LOVING V VIRGINIA COURT CASE

Motion by the Hon. DR PETER PHELPS, on behalf of the Hon. TREVOR KHAN, agreed to:

1. This House notes that:

(a) on 12 June 1967, the Supreme Court of the United States of America delivered judgement in the case of *Loving v Virginia*,

(b) the plaintiffs in the case were Richard Loving and Mildred Loving, a white man and an African-American woman,

(c) the plaintiffs were convicted of breaching a Virginia statute that prohibited marriage between the races, and

(d) the Supreme Court of the United States of America struck down the law with Chief Justice Earl Warren saying:

> The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival.

2. That this House notes that on 16 June 2007, the 40th anniversary of the decision, Mildred Loving issued a statement in which she said:

> I am proud that Richard's and my name is on a court case that can help reinforce the love, the commitment, the fairness, and the family that so many people, black or white, young or old, gay or straight seek in life. I support the freedom to marry for all. That's what Loving, and loving, are all about.

3. That this House congratulates the members of this House for the manner in which they participated in the marriage equality debate on 31 May 2012.

TRIBUTE TO JOSEPH BENEDICT CHIFLEY

Motion by the Hon. Dr PETER PHELPS, on behalf of the Hon. TREVOR KHAN, agreed to:

That this House notes that:

(a) on 13 June 1951, the former Prime Minister of Australia, Joseph Benedict Chifley, Ben Chifley, died of a heart attack,

(b) Ben Chifley first became the member for Macquarie, based in Bathurst, in 1928, however lost the seat when the Scullin Government fell in 1930,

(c) in 1940, he won the seat of Macquarie again and held it until his death,

(d) in July 1945, Ben Chifley became Prime Minister following the death of John Curtin and remained Prime Minister until the defeat of his Government in 1949, and

(e) upon hearing of Ben Chifley's death, during a function in the King's Hall of Parliament House, Prime Minister Robert Menzies said:

> It is my very sorrowful duty during this celebration tonight to tell you that Mr Chifley has died. I don't want to try to talk about him now because although we were political opponents, he was a friend of mine and yours, and a fine Australian. You will all agree that in the circumstances the festivities should end. It doesn't matter about party politics on an occasion such as this. Oddly enough, in Parliament we get on very well. We sometimes find we have the warmest friendships among people whose politics are not ours. Mr Chifley served this country magnificently for years.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item Nos. 773 outside the Order of Precedence objected to as being taken as formal business.

TRIBUTE TO MR MICK WILSON

Motion by the Hon. GREG DONNELLY agreed to:

1. That this House notes:

   (a) the tragic death on 24 December 2011 of paramedic Mick Wilson who died in a rescue operation near Wollongong, and

   (b) that Mick Wilson was a member of the elite Special Casualty Access Team that forms part of the Ambulance Service of New South Wales, which is tasked with dealing with the most hazardous and dangerous rescue operations.

2. That this House notes that:

   (a) Mick Wilson was a highly skilled paramedic who had over 15 years experience,

   (b) in 2008 Mick Wilson was a bravery medal recipient, and

   (c) Mr Wilson was married and a father of three young children.

3. That this House acknowledges the bravery and professionalism of Mick Wilson who paid the ultimate price in carrying out his duties as a paramedic.

4. That this House offers its sincere condolence to Mick Wilson's wife Kelly, children Aliza, Grace and Hugo, his extended family and all his Ambulance Service of New South Wales work colleagues.

FAIRFAX MEDIA RESTRUCTURE

Motion by Dr JOHN KAYE agreed to:

1. That this House notes that the Fairfax publication the *Sydney Morning Herald* is one of only two statewide daily newspapers and that Fairfax is the publisher of 14 suburban newspapers and 87 regional newspapers, including the *Newcastle Herald* and the *Illawarra Mercury*.

2. That this House notes the importance of a vibrant and diverse print media sector for the health of a democracy.

3. That this House notes that:

   (a) on 18 June 2012, Fairfax management announced that it would make a number of changes to its operations, including:

      (i) cutting 1,900 staff, including approximately 150 jobs from editorial positions in the metropolitan mastheads such as the *Sydney Morning Herald*,

      (ii) creating a "digital-first editorial" model that would operate across Sydney, Melbourne and Canberra and fully integrate across all platforms, using a "more flexible staffing model",

   (b) the reorganisation will also result in the closure of the printing facilities in Chullora in New South Wales by June 2014,

   (c) the restructure points towards the inevitable creation of a single editorial model for the *Age* and the *Sydney Morning Herald* and a lower standard of scrutiny of state politics,

   (d) any cuts to rural and regional print media would unfairly disadvantage those communities, given that local television news services have already been pared back in most parts of the state, and

   (e) staff reductions at Fairfax are likely to impact on the company's rural and regional titles, reducing the amount of local news and commentary those publications can provide for their communities.

4. That this House places on record its grave concerns at the implications of Fairfax's proposed changes for the *Sydney Morning Herald* and Fairfax suburban and regional publications in New South Wales and the health of democracy in this state, given that the changes are likely to:

   (a) dramatically reduce the amount and quality of State and local news and commentary available in newsprint in New South Wales,

   (b) move towards the creation of a single editorial model for the *Age* and the *Sydney Morning Herald*, and consequently a lower standard of scrutiny of state political affairs and New South Wales-specific cultural and social issues, and

   (c) reduce the quality of print media in this State.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 788 outside the Order of Precedence objected to as being taken as formal business.

NSW FEDERATION OF COMMUNITY LANGUAGE SCHOOLS

Motion by the Hon. MARIE FICARRA agreed to:

1. That this House notes that:

   (a) the NSW Federation of Community Language Schools [NSWFCLS] held its 2012 Annual Dinner on Saturday 16 June 2012 at the Cyprus Community Club, commencing at 7.30 p.m.,

   (b) there were two award categories, the first being awards for Mainstream School Principals who host and contribute to the successful operation of community language schools through the use of their schools' facilities to teach a community language, and the second to students of community language schools who produced a tourist video in the language they are being taught, and

(c) the following dignitaries attended:

(i) the Hon. Victor Dominello, MP, Minister for Citizenship and Communities and Minister for Aboriginal Affairs,

(ii) the Hon. Marie Ficarra, MLC, Parliamentary Secretary to the Premier, and her husband, Dr Alan Carless,

(iii) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice,

(iv) Mr Andrew Rohan, MP, member for Smithfield,

(v) the Hon. Carmel Tebbutt, MP, shadow Minister for Education and Training,

(vi) Mr Michael Christodoulou, AM, Commissioner of the Community Relations Commission and President of the Cyprus Community Club,

(vii) Mr Albert Vella, President of the NSW Federation of Community Language Schools,

(viii) members of the NSW Consular Corp.

2. That this House congratulates and commends:

(a) members of the NSWFCLS Committee, including Albert Vella, Thiru Thirunanthakumar, Lucia Tavers-Johns, Elizabeth Cesarski, Con Confinas, Zofia Kingsley, Jubaida Hossain, Badih Habib, Anagan Babu Ramia, Zaklina Mihajlova, Ahmed Alamedine, Katerina Vetsikas, Phoebe Alexander, Fariborz Maghami and Dr Lakshmi Sathyanarayana for their work in promoting community languages and cultural heritage, and

(b) the recipients of awards, including:

(i) Principals Mr Rick Symons, Marrickville High School - Vietnamese Language School; Ms Kathryn Methven, North Parramatta Public School - Sinhala Cultural Forum, Ms Vicki Craze, Minto Public School - Sinhala Cultural Forum, Ms Karen Shehata, Bexley North Public School - Hellenic Orthodox Centre for Bexley North, Mr Jack Liston, Homebush Public School - Tamil Study Centre Homebush, Mr Paul Miller, Thornleigh West Public School - Indo Australian Bal Bharathi Hindi Language School, Ms Angelica Lapi, Clemton Park Public School - Greek Orthodox Community of NSW, Ms Fran Larkin, Stanmore Public School- Buddharangsee Thai Community Language School, Ms Cheryl Robens, Canterbury Public School - Canterbury Greek Afternoon School, Ms Cassandra Michell, Naremburn School - Bulgarian Language School, Ms Linda Wickham, Yagoona Public School - Macedonian Ethnic School, Ms Ruth Bradfield Ling, Marrickville West Public School - Assoc. for Brazilian Bilingual Children's Development, Ms Beverly Maunder, Brookvale Public School - Assoc. for Brazilian Bilingual Children's Development, Mr David Scotter, Manly Vale Public School - Swedish School of Sydney, Ms Maureen Davis-Catterall, Wiley Park Girls' High School - Tripoli & Mena Arabic School Association, Mr Paul Mallia, Horsley Park Public School - The Maltese Language School of NSW, Ms Sue French, St Johns Park High School - The Sunshine Chinese School, Ms Annette McKeown, Mascot Public School - Mascot Saturday Greek School, Ms Diane O'Connor, Nuwarra Public School - Visva Hindu Parsiahd Sanskrit School of Australia, Mr Luke Witney, Eastwood Public School - Eastwood Tamil Study Centre, Ms Leslee Mitton, Canterbury Boys' High School - Sydney Datong Chinese School, Ms Daisy Kokkalis, Ashfield Boys' High School - Sydney Datong Chinese School Ashfield, Ms Jessica Wiltshire, Killarney Heights Public School - Assoc. for Brazilian Bilingual Children's Development, Mr Greg Way, Marsden Rd Public School - Sydney Sanskrit School, Mr Ian Adamson, Newington Public School - Happy Chinese Language School and Ms Erika Southam, North Ryde Public School - North Shore Polish Saturday School,

(ii) Tourist Videos, Seniors: 1st Prize: Ambassadors Multicultural Chinese School, 2nd Prize: Sydney Sanskrit School, 3rd Prize: Thai Buddharangsee Community Language School, Juniors: 1st Prize: Central Coast Japanese School, 2nd Prize: Liverpool Polish Saturday School.

GUNNEDAH EISTEDDFOD SIXTIETH ANNIVERSARY

Motion by the Hon. SARAH MITCHELL agreed to:

1. That this House:

(a) notes that the Gunnedah Eisteddfod celebrated its 60th year in 2012, a milestone which was recognised by a Civic Reception held on 10 May 2012,

(b) acknowledges all the committee members who have made a valuable contribution to the Gunnedah Eisteddfod Society, including current President George Truman and the late Sheelah Baxter who was one of the Gunnedah Eisteddfod's greatest advocates, and

(c) congratulates the many volunteers who have ensured the success of the Gunnedah Eisteddfod over the past sixty years, including Clare Walker, Nancy Jaeger, Russell Heath, Lizzie and Tony Blake, Ross Fiddes and Meryl Hennessy.

2. That this House recognises the important role local eisteddfods play in encouraging young people to develop their creative and performing arts skills.

ASSOCIATION OF BHANIN EL-MINIEH

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

1. That this House notes that:

   (a) the Association of Bhanin El-Minieh and Australian Arabic Community Welfare Centre were both established and then incorporated as a non-profit organisation in 1977,

   (b) the association is voluntarily managed by community representatives,

   (c) the centre's main activities are the development and delivery of direct welfare and related services, community development and the provision of support services for people of culturally and linguistically diverse backgrounds, specifically the Arabic speaking community, and

   (d) the Association employs approximately 10 staff on a full-time, part-time and casual basis to deliver programs in many service areas, namely to:

      (i) identify settlement needs and develop strategies to address these needs on an ongoing basis,

      (ii) develop programs to further the participation of the community in aspects of Australia's social life,

      (iii) promote principles of access and equity,

      (iv) enhance cultural sensitivity and promote multicultural initiatives and activities,

      (v) encourage the preservation of the Arabic culture and language,

      (vi) disseminate information to government and non-government organizations to ensure better service delivery to the community.

2. That this House:

   (a) notes the valuable community work of Bhanin El Minieh Association, and

   (b) commends its past and current leaders, namely Mr Mustapha Hamed, Mr Khaled Wehbe, Mr Aref Ghamraoui, Mr Mohamed Dib Al Sadiq, Mr Mustapha Asaad Al Sadiq, Mr Nadim Alhamy, Mr Ahmad Mohamed Al Sadiq, Mr Mustapha Sowaid and Mr AbdulSalam Sowaid.

TRIBUTE TO CAPTAIN GRAHAM PARKS

Motion by the Hon. NIALL BLAIR agreed to:

1. That this House notes that:

   (a) on Friday 22 June 2012, Fire and Rescue NSW Captain Graham Parks will have served 30 years with the Leeton Fire Brigade, Station, 360,

   (b) as a Retained Firefighter, Captain Parks is required to attend emergencies 24 hours a day, and

   (c) as a Retained Firefighter, Captain Parks has contributed to his community in a variety of different ways, including:

      (i) extinguishing fires,

      (ii) engaging in community education,

      (iii) fire prevention activities,

      (iv) taking effective action at rescue and hazardous material incidents, and

      (v) assisting other emergency services as required.

2. That this House congratulates Captain Parks and thanks both him and his family for their dedication to the Leeton community and Fire and Rescue NSW over the past 30 years.

ST MARK COPTIC ORTHODOX CATHEDRAL, ARNCLIFFE

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

1. That this House notes that:

   (a) St Mark Coptic Orthodox Cathedral Arncliffe was established in 1978 by the Reverend Father Moussa Soilman, and a new Sunday school building to accommodate religious lessons for children and youth was built in 1985,

   (b) St Mark was the first church visited by His Holiness the late Pope Shenounda III on his first visit to Australia on Sunday 19 November 1989 and on that visit His Holiness consecrated St Mark Altar, and

   (c) today St Mark is the largest Coptic Church in Australian with 4,000 members of which 500 youth attend every week with 250 servants that serve the elderly, the youth and children.

2. That this House notes that St Mark is lead by Father Yacoub Magdy, a much loved priest who served since his ordinations:

   (a) A priest for 21 years, Father Magdy has a doctoral degree and is a Senior Lecturer in Electrical Engineering at the University of Wollongong, and

   (b) Father Yacoub Magdy has worked tirelessly to establish the St Mark Parish, today St Mark is a thriving centre of activities and spirituality.

3. That this House notes that Father Jonathan Isak is also a loved priest serving St Mark since his ordination nine years ago, he has a doctor degree in statics, and was lecturer at the University of Technology, Sydney:

   (a) Father Isak, a tireless priest, always fundraising for the poor and needy and under privileged families, and

   (b) he also looks after the Coptic church newspaper and weekly newsletter.

4. That this House notes that Father Augustinos Nada was ordained 16 years ago, served at St Bakhomios Church Kirrawee for two years and has been at St Mark for 14 years:

   (a) he was a Pathology Technical Officer for 12 years working at a western Sydney hospital in a haematology department,

   (b) his service has been with youth and young children, and

   (c) he was involved in establishing Coptic churches in Singapore and Thailand, and he and Father Jonathan are responsible for services in Singapore, Thailand and Malaysia.

5. That this House notes the importance of St Mark Cathedral and congratulates Father Yacoub Magdy, Father Jonathan Isak, Father Augustinos Nada, all church servants and all who serve the Coptic community of New South Wales.

HARVEY NORMAN WOMEN IN LEAGUE ROUND

Motion by the Hon. SARAH MITCHELL agreed to:

1. That this House notes that:

   (a) the Harvey Norman Women in League Round is held annually to recognise and reward the role that women play in rugby league,

   (b) the sixth annual Women in League Round will be held from 22 to 25 June 2012,

   (c) Women in League is about recognising women at all levels of the game, including directors, staff, players, members, volunteers, administrators, mothers, grandmothers, sisters and wives,

   (d) Managing Director of Harvey Norman, Ms Katie Page, initiated the concept and has worked with the National Rugby League to build it into what it is today, and

   (e) funds raised through the Women in League Round will help the McGrath Foundation place more breast care nurses across Australia.

2. That this House congratulates those involved with the Harvey Norman Women in League Round 2012 for their dedication to such an important initiative.

PROSTATE CANCER

Motion by the Hon. MARIE FICARRA agreed to:

1. That this House notes that:

   (a) Australia's first ever prostate surgery with ThinStrand was undertaken by New South Wales surgeon David Malouf, Urologist, and Joseph Bucci, Radiation Oncologist, in St George Hospital,

   (b) the surgery was carried out at the recently opened operating theatre of the Prostate Cancer Institute at St George Hospital for which the Government allocated $860,000 for equipment and fit out of new treatment areas, and

   (c) prostate cancer is the most common form of cancer in men with over 5,900 cases diagnosed in 2011.

2. That this House congratulates Dr David Malouf and Dr Joseph Bucci on their ground-breaking surgery.

TRIBUTE TO PROFESSOR BENG HOCK CHONG

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

1. That this House notes that:

   (a) Beng Hock Chong is a Professor of Medicine and Head of the Department of Medicine, St George Clinical School, University of New South Wales and Director of the Department of Haematology, at St George and Sutherland Public Hospitals in Sydney,

   (b) Professor Chong is an internationally known and highly regarded medical researcher, medical educator and clinician who has devoted his life to research and has made numerous significant contributions to medicine and public health,

   (c) he is a world leader, advancing medical care and research in his particular field of expertise, namely blood diseases, which include thrombotic and bleeding disorders, leukaemia and other blood cancers,

   (d) Professor Chong's voluntary contribution to the community is significant, as locally, he helped establish the St George Medical Research Foundation to raise funds for medical research at St George Public and Private Hospitals, and Sutherland Hospital and internationally, Professor Chong helped researchers in the United States of America, Europe, including the United Kingdom, France, Germany, and Italy, Asia including Thailand, Malaysia, Hong Kong, Korea and Japan, and he assisted in the planning of Singapore's first research and training laboratory and trained Chinese scientists and researchers from various hospitals in China, particularly the Hospital of Traditional Chinese Medicine (TCM), Hangzhou, Zhejiang, China,

   (e) as a result of this collaboration, Professor Chong received a prestigious award from the Governor of Zhejiang Province in October 2010 for his outstanding contributions to medicine and research in the Zhejiang Province, China, and

   (f) Professor Chong has provided continuous supervision of research students, and including PhD, MSc, and Hons and mentored post-doctoral research scientists for almost 30 years, and many of his mentees in Australia and overseas have progressed to make significant scientific contributions in their own right.

2. That this House notes Professor Chong's significant scientific contributions to medicine and medical research and congratulates him on his dedication to education and volunteering.

BUSINESS OF THE HOUSE

Formal Business Notices of Motion

Private Members' Business item No. 801 outside the Order of Precedence objected to as being taken as formal business.

TRIBUTE TO HAJ ADIB MARABANI

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

1. That this House notes that:

   (a) Haj Adib Marabani passed away on 15 May 2012,

   (b) Haj Adib Marabani was born in Lebanon in 1928, the first son of Muhammad Marabani and Ramziyeh Hejazi in Tripoli,

   (c) at the tender age of 22, Haj Adib Marabani arrived on Australian shores on 6 January 1951,

   (d) he successfully completed an international baccalaureate and had aspiration to study medicine but circumstances dictated otherwise,

   (e) along with a number of Lebanese Muslim pioneers of the Lebanese community he established an association in 1961, the Lebanese Muslim Welfare Limited, which then over the years purchased land and subsequently developed the Imam Ali Mosque also known as the Lakemba Mosque,

   (f) Haj Adib Marabani was an executive member of the Australian Federation of Islamic Councils (AFIC),

   (g) in 2009, Haj Adib Marabani was granted the award the Medal of the Order of Australia for his service to the Australian Muslim community and the community at large,

   (h) in 1988, Haj Adib Marabani also founded Bayt Al-Zakat, a charitable organisation, formed to assist growing number of orphans in Lebanon, and an orphanage that currently supports over 500 orphans sponsored by Australian citizens,

(i) Bayt Alzakat runs several community projects including the high achievers awards across the Muslim community with an annual dinner recognising Australian Muslim Higher School Certificate students who achieve an Universities Admission Index above 90 per cent, and

(j) Haj Adib Marabani was married to Hiam and together they have four children and five grandchildren, and his children are Dr Mona Marabani, Fadi Marabani, Ronnie Marabani and Nabil Marabani.

2. That this House notes the passing of Haj Adib Marabani and expresses condolences to his family and the Muslim community in New South Wales.

PETITIONS

Foodbank New South Wales

Petition requesting a reversal of the decision to reduce transport subsidies to Foodbank New South Wales, a not-for-profit organisation that distributes surplus and donated food to welfare agencies throughout New South Wales, and the provision of additional funding to prevent the imposition of extra costs on charities and welfare agencies in country New South Wales, received from the **Hon. John Ajaka**.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Duncan Gay.

Government Business Orders of the Day Nos 1 to 5 postponed on motion by the Hon. Duncan Gay.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. ROBERT BROWN [9.49 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 63 outside the order of precedence relating to the Game and Feral Animal Control Amendment Bill 2012 be called on forthwith.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 20

Mr Ajaka	Mr Gallacher	Mrs Maclaren-Jones
Mr Blair	Miss Gardiner	Mr Mason-Cox
Mr Borsak	Mr Gay	Mrs Mitchell
Mr Brown	Mr Green	Reverend Nile
Mr Clarke	Mr Khan	*Tellers,*
Ms Cusack	Mr Lynn	Mr Colless
Ms Ficarra	Mr MacDonald	Dr Phelps

Noes, 17

Ms Barham	Mr Moselmane	Mr Shoebridge
Mr Buckingham	Mr Primrose	Ms Westwood
Ms Cotsis	Mr Roozendaal	Mr Whan
Ms Faehrmann	Mr Searle	*Tellers,*
Mr Foley	Mr Secord	Mr Donnelly
Dr Kaye	Ms Sharpe	Mr Veitch

Pairs

Mrs Pavey	Ms Fazio
Mr Pearce	Ms Voltz

Question resolved in the affirmative.

Motion agreed to.

Order of Business

Motion by the Hon. Robert Brown agreed to:

That Private Members' Business item No. 63 outside the order of precedence be called on forthwith.

GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL 2012

Third Reading

The Hon. ROBERT BROWN [9.58 a.m.]: I move:

That this bill be now read a third time.

Question put.

The House divided.

Ayes, 20

Mr Ajaka	Mr Gallacher	Mrs Maclaren-Jones
Mr Blair	Miss Gardiner	Mr Mason-Cox
Mr Borsak	Mr Gay	Mrs Mitchell
Mr Brown	Mr Green	Reverend Nile
Mr Clarke	Mr Khan	*Tellers,*
Ms Cusack	Mr Lynn	Mr Colless
Ms Ficarra	Mr MacDonald	Dr Phelps

Noes, 17

Ms Barham	Mr Moselmane	Mr Shoebridge
Mr Buckingham	Mr Primrose	Ms Westwood
Ms Cotsis	Mr Roozendaal	Mr Whan
Ms Faehrmann	Mr Searle	*Tellers,*
Mr Foley	Mr Secord	Mr Donnelly
Dr Kaye	Ms Sharpe	Mr Veitch

Pairs

Mrs Pavey	Ms Fazio
Mr Pearce	Ms Voltz

Question resolved in the affirmative.

Bill read a third time and transmitted to the Legislative Assembly with a message seeking its concurrence in the bill.

PRIVILEGES COMMITTEE

Report: The Right of Reply Process

The Hon. Trevor Khan, as Chair, tabled report No. 61 entitled "The right of reply process", dated June 2012, together with correspondence.

Report ordered to be printed on motion by the Hon. Trevor Khan.

The Hon. TREVOR KHAN [10.06 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Trevor Khan and set down as an order of the day for a future day.

SELECT COMMITTEE ON THE PARTIAL DEFENCE OF PROVOCATION

Membership

The PRESIDENT: I inform the House that the Clerk has received the following nominations for membership of the Select Committee on the Partial Defence of Provocation from the Leader of the Government:

The Hon. David Clarke
The Hon. Scot MacDonald
The Hon. Trevor Khan

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. STEVE WHAN [10.07 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 768 outside the Order of Precedence, relating to a select committee into the closure of the Cronulla Fisheries Research Centre, be called on forthwith.

As members would be aware, there is a long-running issue concerning the Government's decision to close the Cronulla Fisheries Research Centre. On 8 November last year the Minister for Primary Industries and the Deputy Premier announced that the centre would be closed and that all 147 workers would be relocated, initially to three sites. This has been an exercise in how not to undertake a decentralisation process. It is critical that the workers affected by the decision, who have been denied an opportunity to have their say about the process and how they have been affected, have an opportunity to present their views. More importantly, it is critical for the long term that Parliament have the opportunity to scrutinise the process to ensure that any future efforts at decentralisation are not completely botched, as this one has been. If this process had appeared in an episode of *Yes Minister* it would probably have been seen as far-fetched.

The Hon. Matthew Mason-Cox: Point of order—

The PRESIDENT: Order! Before I take the Hon. Matthew Mason-Cox's point of order, I ask members to resume their seats and to dramatically reduce the level of conversation. I need to be able to hear the member with the call and the member taking the point of order.

The Hon. Matthew Mason-Cox: My point of order is that the Hon. Steve Whan is speaking to the substantive motion, and not to urgency. I ask that you direct him to return to why the matter is urgent.

The PRESIDENT: Order! I remind members that at this stage of the debate they should confine their remarks to why standing and sessional orders should be suspended.

The Hon. STEVE WHAN: This matter needs to be considered now. It is an important issue that must be resolved so that we can get the process underway and look into this decentralisation. I recognise that it is probably too late to reverse the process completely. However, a committee of this place needs to inquire into critical issues so that the workers get the chance to have their say and so we can ensure that any future decentralisations do not cause similar hardship. That is why this matter is urgent and should be brought on as quickly as possible. In view of the workload in this place, I will not comment further at this stage.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [10.11 a.m.]: The Government believes it is just too late for a committee inquiry. The decision did not occur one month, two months or three months ago. It occurred nine months ago, and the workers have now moved on and are getting on with their lives. We are concerned that an inquiry will upset people's lives. But the Government is pragmatic. As an old cost accountant, I know how to count. I know that the member has the numbers for the inquiry to go ahead and it would be churlish of me to take up the House's time debating the issue. I certainly hope that the committee inquiry does not upset people who are now working in different positions and getting on with their lives. I hope that what the member said is true: the committee will examine the decentralisation process to see how it worked this time and how to do it well in the future. But, sadly, I suspect it is just another Labor political trick.

The Hon. CATE FAEHRMANN [10.11 a.m.]: In relation to the motion for urgency, I note that the Minister for Roads and Ports said people were getting on with their lives. By that I assume he means the staff at the Cronulla Fisheries Research Centre of Excellence. In fact, right now those staff are in turmoil. They have been told that there will be a phased relocation of staff. Several staff have already resigned from the centre. Many staff have indicated that they will need to leave rather than relocate. Between now and October, all staff at the Cronulla Fisheries Research Centre have been asked to choose between relocating to areas such as Coffs Harbour, Port Stephens, Nowra and a couple of alternative Sydney locations. They will have two weeks to respond when asked to relocate, and then they will have to move. The moves will have to occur before January. Staff members at the Cronulla Fisheries Research Centre are in a high state of flux. They are upset with the decision. They feel that the decision was not based on evidence but was a political decision and that this inquiry is urgent. It would have been good if it had happened six months ago, but it did not. It is imperative that it happens now, and The Greens support urgency.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

Order of Business

Motion by the Hon. Steve Whan agreed to:

That Private Members' Business item No. 768 outside the order of precedence be called on forthwith.

CRONULLA FISHERIES RESEARCH CENTRE

The Hon. STEVE WHAN [10.13 a.m.]: I seek leave to amend Private Members' Business item No. 768 by omitting the words "4 September 2012" in paragraph 6 and inserting instead "23 October 2012".

Leave granted.

The Hon. STEVE WHAN [10.14 a.m.]: I move:

1. That a select committee be appointed to inquire into and report on the closure of the Cronulla Fisheries Research Centre of Excellence, and in particular:

   (a) the basis for the decision including the documents and other records that were considered by the Minister, including any economic or financial analysis,

   (b) what consultation was undertaken prior to the decision with stakeholders, including commercial and recreational fishing groups, environmental groups and staff,

   (c) the costs and benefits of the decision to close the Centre and relocate its functions to other locations,

   (d) the extent to which the decision satisfies the Minister's responsibilities under the Fisheries Management Act 1994,

   (e) any advice received by the Minister on the ability to replicate the Cronulla facilities at other locations, including potential problems and other implications of the other locations,

   (f) the loss of the scientific expertise held by the staff who cannot relocate from Cronulla and the implications for sustainable fisheries management,

   (g) the impacts of the decision on service delivery to stakeholders,

   (h) the impact on staff and their families of the closure and the relocation, and

   (i) the impact on the heritage values of the Cronulla Fisheries Research Centre.

2. That the committee consist of seven members comprising:

   (a) three Government members,

   (b) two Opposition members,

   (c) Ms Cate Faehrmann, and

   (d) Reverend the Honourable Fred Nile.

3. That, notwithstanding anything contained in the standing orders:

   (a) the Chair of the committee be Reverend the Honourable Fred Nile, and

   (b) the Deputy Chair be elected by the committee.

4. That notwithstanding anything contained in the standing orders, at any meeting of the committee four members will constitute a quorum.

5. That a committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:

   (a) the Chair is present in the meeting room,

   (b) all members are able to speak and hear each other at all times, and

   (c) a member may not participate by electronic communication in a meeting to consider a draft report.

6. That the committee report by 23 October 2012.

I could say plenty of things about this matter but, given the amount of business before the House and the consideration that the Leader of the Government showed in speaking to the previous motion, I will limit my comments. I have been receiving calls from Cronulla Fisheries Research Centre staff about this matter on a weekly basis. The staff want an inquiry so they that have the opportunity to put their case and have their concerns heard. I have seen a Government Cabinet submission that sets out the process for decentralisation. It was not followed in this case. A number of extremely positive ideas could come out of the inquiry to assist future decentralisations but, importantly, it is an opportunity for the workers to have their voices heard.

Question—That the motion be agreed to—put and resolved in the affirmative.

Motion agreed to.

APPROPRIATION (BUDGET VARIATIONS) BILL 2012

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.16 a.m.], on behalf of the Hon. Greg Pearce: I move:

That this bill be now read a second time.

The Appropriation (Budget Variations) Bill 2012 has three main objectives: to set out payments from the Treasurer's advance for recurrent and capital services since the Appropriation Bill 2011; to appropriate amounts from the Consolidated Fund for the exigencies of government under section 22 of the Public Finance and Audit Act 1983; and to appropriate additional funds to provide for a payment to be made during this current financial year, where no provision was made in the annual appropriation bill. First, the bill sets out recurrent services and capital works and services expended from the Advance to the Treasurer. Each year Parliament makes an advance available to the Treasurer in the budget in order to meet unforeseen expenditures. This is known as the Treasurer's Advance. This bill gives Parliament the opportunity to scrutinise the actual payments made under the advance.

The previous Government's record on using the Treasurer's Advance provides another example of its lax attitude to managing costs. In 2007-08 the then Government spent $493.5 million—52 per cent more than the $325 million originally appropriated. In 2008-09 the then Government spent $565.7 million—41 per cent more than the $400 million originally appropriated. In 2009-10 the then Government spent $628.2 million—43 per cent more than the $440 million originally appropriated. In 2010-11, consistent with eight rather than 12 months under the former Government, spending of $378.8 million was below the $440 million originally appropriated. In stark contrast to this record, this bill reports that $93.5 million has been spent in 2011-12 from the Treasurer's Advance against a budget allocation of $285 million. I seek the leave of the House to incorporate the balance of my second reading speech in *Hansard*.

Leave granted.

This demonstrates that there has been a marked cultural change in the NSW government since March 2011. Ministers and their agencies now manage to their budgets, recognising that their budget allocations need to be respected rather than ignored.

The $93.5 million spent in 2011-12 under the Treasurer's Advance comprises:

- $27,608,000 for recurrent expenses; and
- $65,934,000 for capital expenditure.

Further, of the nearly $66 million in additional capital expenditure under the Treasurer's Advance, $64 million arises only from the reclassification of recurrent expenditure to capital spending rather than as new spending.

Transport for NSW will now invest $47.2 million as capital expenditure for the Inner West Extension of the Light Rail, rather than provide this as a capital grant to the previous private sector operator.

And the Department of Family and Community Services will itself now undertake capital spending worth $16.7 million for functions transferred from the NSW Land and Housing Corporation rather than pay a capital grant to the Corporation.

All up, this means that less than $30 million from the Treasurer's Advance, being the balance of $2 million in capital expenditure and the $27.6 million in recurrent expenditure, was solely new spending. This spending covers items such as additional work by the Crown Solicitor, the establishment of the independent Local Government Review Panel, redundancy payments for electoral staffers following the 2011 election and various national and local biosecurity responses.

In addition, there is $23,145,000 from the Treasurer's Advance made during 2010-11 that have not previously been reported.

Secondly, the bill appropriates payments totalling $61.2 million to provide for the exigencies of Government during 2011-12. These payments were required to be made in response to natural disasters and to provide relief to those affected.

These amounts were paid by the Treasurer pursuant to section 22 of the Public Finance and Audit Act 1983.

Thirdly, the bill appropriates $800,000,000 additional contribution for payments to State Super before 30 June 2012 to reduce superannuation liabilities.

This cash payment funds already incurred superannuation liabilities and so does not affect the Budget result.

I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.19 a.m.]: Of course, the best part of the Parliamentary Secretary's speech was the incorporated part.

The Hon. Matthew Mason-Cox: You didn't see the rest.

The Hon. ADAM SEARLE: I think we might have read in *Hansard* the rest of the Treasurer's speech in the other place. We will not oppose the Appropriation (Budget Variations) Bill 2012 but of course we will not accept any lectures from the other side of the House about economic management. The fact is that $880 million in capital amounts in last year's budget was unspent. Thousands of jobs hinged on this money and the Government is now announcing that general government sector spending on capital expenditure this year is a record amount, which is not true; it is a decrease of $1.5 billion. That is just another example of the dreadful spin coming out of this Government. Those opposite are spinning their wheels but they are not getting any traction.

The Hon. Matthew Mason-Cox: Fiscal responsibility.

The Hon. ADAM SEARLE: Fiscal responsibility? We will not be lectured by a Government that in its two budgets has not managed to produce a surplus despite the long record of surpluses left by the previous Labor Government. This Government is cutting 15,000 public sector jobs, it is slashing and burning, and it is attacking the most vulnerable, such as social housing tenants. Of course, we will see an example of this Government's propensity to attack the weak and vulnerable later when we return to the debate on the workers compensation legislation. The Government should be hanging its head in shame generally for its policies in attacking the weak and vulnerable but also for the dreadful hyperbole used by the Parliamentary Secretary on this occasion.

Dr JOHN KAYE [10.21 a.m.]: I speak on behalf of The Greens to the Appropriation (Budget Variations) Bill 2012. As the Parliamentary Secretary said—or it was in the part of his speech that was incorporated; at least, he telegraphed the idea—this is a standard procedure that all governments follow to inform the House and to expose to public scrutiny the variations within the budget. There are three such variations: payments from the Treasurer's Advance for recurrent and capital services since the previous

appropriation bill; the appropriation of amounts from the Consolidated Fund for the exigencies of government in respect of climatic events and natural disasters—in fact, there are no such provisions made this year, so it does not do that—and the appropriation of additional funds for the payments to be made during this current financial year for which no provision was made.

The Greens raise no objections to any of the budget variations reported. However, I was quite disappointed to hear the Treasurer in his speech, and presumably the Parliamentary Secretary in his speech, talk about how terrific it is that the Government has brought the variations down to $93.5 million against a budget allocation of $285 million and suggest that this is substantially smaller than previous governments' allocations, which ran more into the $300 million and $500 million marks. The Government says, "This is terrific. This is a change in culture." Is it a change in culture or simply a failure to respond to evolving circumstances? Is what we are really seeing here some sudden outbreak of fiscal rectitude or an artificial clamping down on spending?

It goes to the issue that in this State, as in most jurisdictions, the accounting standards are based around financial accounting. There is no triple bottom line accounting; there is no accounting for the environmental impacts or the social impacts of the budget. The budget is only one-third of the real story of the economy because the economy is much more than just a flow of dollars. It is also what happens to people and what happens to the environment we live in. Neither of those is accounted for here. It is always easy to bring in lower budget dollar amounts simply by sacrificing social and environmental outcomes. The Government is running this line, as it did during the budget process: "Look, aren't we terrific? We are able to spend less money." What the Government is not mentioning are the consequences of spending a smaller amount of money. It goes to the point that we live not just in an economy but in a society, and that society is located in an environment. What is needed in Australia, including New South Wales, are accounting standards that make sure that impacts on the environment and on society—on communities and humans and how they live—are accounted for properly.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.24 a.m.], in reply: I thank members for their contributions. I reaffirm to the Hon. Adam Searle that the Appropriation (Budget Variations) Bill 2012 certainly confirms the fiscal responsibility of this Government. With regard to the comments made by Dr John Kaye, the bill demonstrates there has been a marked cultural change in the New South Wales Government since March 2011. That cultural change is real and demonstrates that Ministers and their agencies will now manage to their budgets, recognising that budget allocations need to be respected rather than ignored. That is a very important change in culture in New South Wales, and accordingly I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Matthew Mason-Cox, on behalf of the Hon. Greg Pearce, agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2012

SAFETY, RETURN TO WORK AND SUPPORT BOARD BILL 2012

Second Reading

Debate resumed from 20 June 2012.

The Hon. SOPHIE COTSIS [10.28 a.m.]: I vehemently oppose this deplorable legislation and I urge members who are compassionate—and those few members on the Government side with a heart—to vote down

this despicable bill. Every member of this Government will wear this disgraceful piece of legislation around their neck. In time, it will become lead in their saddlebags. In the dead of night, in the wee hours of this morning, the O'Farrell Government is crushing workers and their families, and this will last for years and years. The heartbreak of a mother or a father who loses a teenager through a workplace death—

The Hon. Duncan Gay: Point of order: The trouble is that when you have a prepared speech that you are delivering at another time, not in the wee hours of the morning, you make mistakes. To say that this debate is occurring in the wee hours—

The Hon. SOPHIE COTSIS: I did not say that.

The Hon. Duncan Gay: That was the inference.

The Hon. SOPHIE COTSIS: Did you hear what I said? I said in the dead of night.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! The Hon. Sophie Cotsis has a right to respond to the point of order after the Minister has concluded his remarks.

The Hon. Duncan Gay: My take on it was that we were forcing this through in the wee hours of the morning.

The Hon. SOPHIE COTSIS: You are.

The Hon. Duncan Gay: We are not; it is now well and truly in the middle of the morning and bright sunlight is shining upon us. Any other inference would be incorrect.

The Hon. Adam Searle: To the point of order: The Hon. Sophie Cotsis was clearly drawing the attention of the House to the fact that the Government commenced debate on this bill in the dead of night. The record shows that we commenced this very important bill after 11 o'clock last night and that many of the contributions were made after midnight. That is the point she was making.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! I do not uphold the point of order.

The Hon. SOPHIE COTSIS: The heartbreak of a mother or father who loses a teenager from a workplace death suffers pain and anguish, and this gutless Government will turn them away because of its despicable uncaring legislation. I was greatly appalled by the answer of the Minister for Finance and Services to one of my recent questions:

> Why is the Government removing payments to non-dependent family members such as a mother or father of a teenage worker who dies in the workplace?

His bureaucratic mumbo-jumbo response was:

> Regrettably it is not a scheme for general compensation for people who may be in a third party relationship and may be affected by the fact that there is an injury.

That was the cold, hard, mean answer from the Minister, who described the mother or father of a dead teenage worker as a "third party". That is a disgusting and unbelievable statement. As a mother, that cold, mean description from a Liberal will stay with me for life. It is a dark and shameful day for a Government that is drunk with power and a Premier so arrogant he does not have the decency to allow three million workers to review these proposed laws. This Government talked up its credentials to the people of this State that it was going to be an open and transparent Government but it has failed abysmally. This is a catastrophic piece of legislation because the O'Farrell Government is ramming through one of the State's most critical laws that affects all working people and employers.

Under this Government parliamentary democracy works by creating a crisis, softening the public by blaming the former Government, getting a few third parties on side, setting up a committee and beginning a carefully orchestrated media campaign. Two weeks before the committee tabled its report the Minister ordered Parliamentary Counsel to start drafting the legislation. The Government did not even wait for the first inquiry to be finalised in its haste to begin drafting this legislation. The Government waited until the last week before the

winter break to introduce the legislation and it is ramming it through both Houses before the Opposition and stakeholders and the people that it affects have a chance to review it properly. The Government tabled two complex bills a mere hour before the debate on them commenced.

The New South Wales Labor Opposition is committed to a scheme that supports workers but does not impose unreasonable burdens on businesses. The Opposition supports providing a balance between the competing complex interests that exist in matters of workers compensation. It is interesting that Government members in the Legislative Assembly like to spruik that the scheme suffered under Labor. However, Government members did not mention that employer premiums have reduced by 33 per cent during the past five years. Business groups that have let their name be associated with supporting this bill were happy to endorse the Labor Government and budget after budget that contained cuts to premiums. How can those Liberal lawyers across the Chamber show their face around the legal fraternity? How can the legal fraternity take them seriously when parts of these bills need serious consideration and analysis about the consequences and impacts to injured workers?

Today millions of workers who do shift work, sometimes double shifts, from all corners of our great State will suffer. For example, I refer to truck drivers, train drivers, nurses, service staff, firefighters—they are taking industrial action today, something they have not done since 1956—and nurses at special care units in hospitals. These bills strike at the heart of what should be fundamental to all Australians: the value of a fair go. A "fair go" means that they have the opportunity to work and to be fairly rewarded for the value of their work. A "fair go" means that they should not be worse off because they work. I want to talk about the Minister for Family and Community Services, the member for Goulburn, who made stupid, insensitive and ignorant remarks.

The Hon. Matthew Mason-Cox: Point of order: It is not within the rules of procedure of this Chamber to make aspersions on the character of a member of the Legislative Assembly. If the Hon. Sophie Cotsis wishes to cast aspersions she should do so by way of substantive motion.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! I uphold the point of order.

The Hon. SOPHIE COTSIS: The member for Goulburn spoke in her contribution to the second reading debate about the difference between members of the Coalition and members of the Australian Labor Party. She said that the Australian Labor Party sees work as an imposition, as something people have to suffer, completely denying the fact that for many people work is a joy and their primary society. The member for Goulburn has probably spent her entire working life surrounded by the genteel society, sipping chardonnay at cocktail parties.

However, where I come from, people of non-English speaking background have spilled blood, sweat and tears to build the New South Wales economy in factories and production kitchens, and in some cases they have been treated like dogs. Some do not speak English; they are left with no safety net. I say to the member for Goulburn that I am deeply offended by her ignorant and offensive remarks. We are the Labor Party; we represent hard workers; we represent the hardworking Australians who want to give their kids a better life. The member for Goulburn has no idea about how ordinary people—the silent majority—live in the suburbs. They go to work and do their job, and they expect to come home to their families every day.

I am happy to take the member for Goulburn to where I come from and educate her about the pride of cleaners, kitchen hands, factory workers and tradespeople who get up at 4.00 a.m. and drive for hours to get to their workplace. I am happy to show her the people who work three jobs and do the best they can to support their kids to become something better, and perhaps go to university. They want to give a better life to their families. That is where I come from. I am proud of people who are proud of the work they do. A "fair go" means that if people are a victim of an accident at work, they and their family should be fairly compensated. "Fair compensation" means help with medical bills, help because of lost earnings, help because of injuries or diseases arising from work, and compensation for their family if they are injured or killed and are no longer able to provide for them.

These bills undermine the Australian value of a fair go. These bills cut the entitlements and protections that New South Wales workers rely on if they are killed or injured because of their job. These bills undermine the basic protections that three million New South Wales workers rely on every day. What is more, these bills have been introduced into this House contrary to every expectation that the people of New South Wales have about how their democracy should work. These bills are motivated by the O'Farrell Government's ideological agenda and by its craven subservience to special interests. This legislation has been introduced after a shameful

process when the Government decided that it would introduce them without any election mandate or any consultation with the community. Yes, the Government held a parliamentary inquiry but it was a whitewash. On 14 June the Australian Associated Press published an article that stated:

> Premier Barry O'Farrell said the government was likely to make a decision next week, after admitting ministers had planned WorkCover changes before the report was released on Wednesday.

That is right: the Government held an inquiry and received 350 submissions in relation to a $14 billion scheme affecting 270,000 employers and three million workers, and it had legislation ready to go within a week. The Government had already decided what it was going to do. This is a disgrace. Premier O'Farrell has shown his contempt for the Parliament and contempt for the people of New South Wales. But that is nothing compared with the contempt shown by the Minister for Finance and Services for the working people of New South Wales. The Minister's arrogance and disdain for working people was on full display last week, when he told this House—

The Hon. Matthew Mason-Cox: Point of order: My point of order is that the Hon. Sophie Cotsis is verging into an attack on the Minister. If the Hon. Sophie Cotsis wishes to do so she should do it by way of substantive motion. I ask you to bring her back to the tenor of the bills.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! There is no point of order.

The Hon. SOPHIE COTSIS: The Minister has shown that these reforms are nothing to do with the financial sustainability of the New South Wales workers compensation scheme. These reforms are about the O'Farrell Government's mean, ideological agenda, hacking away at every protection that working families rely on. Under these reforms, injured workers and the families of deceased workers will receive less support. I challenge the Minister to tell the 42,000 people, who receive weekly benefits because they are unable to work, about his reforms in his own words. Right now 100,000 people receive medical treatment and assistance to return to work through WorkCover. I challenge the Minister to tell each of these 100,000 people that they have won a prize. On 28 March 2012 the Minister told this House:

> In the work injury damages space everybody gets a prize ...

This is the man making policy for New South Wales workers. He thinks that if a person is hurt at work they have won a prize.

The Hon. Dr Peter Phelps: Point of order: The honourable member is deliberately misleading the House. She knows that that is untrue and she should withdraw. The Premier was not talking about workers; he was talking about lawyers and other hangers-on who get money out of the system.

The Hon. SOPHIE COTSIS: Stop using up my time.

The Hon. Dr Peter Phelps: Then stop misleading the House.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! There is no point of order.

The Hon. SOPHIE COTSIS: The weight of this Government's reforms always falls on the shoulders of ordinary people. They are the ordinary people that you have no idea about.

The Hon. John Ajaka: Point of order—

The Hon. Dr Peter Phelps: I wasn't a trade union hack.

The Hon. SOPHIE COTSIS: You have no idea.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! The Hon. Sophie Cotsis will come to order.

The Hon. John Ajaka: It is clearly disorderly for the Hon. Sophie Cotsis not only to direct her comments to a member opposite but also to be screaming those comments. All comments should be directed through the Chair.

The Hon. Adam Searle: To the point of order: If the Hon. Sophie Cotsis had to elevate her voice, it was only because the Government Whip was yelling across the Chamber. This debate has been going on for some time and we have a long way to go. It is hoped that a spirit of cooperation across the House will ensure we proceed in an orderly manner.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! There is no point of order. The debate has been wide ranging and robust. Latitude has been extended to all members during the debate.

The Hon. SOPHIE COTSIS: It is always the people who are least able to afford it who are made to pay for the O'Farrell Government's so-called reforms. Just like its cap on public sector wages and its policy of sacking 15,000 public sector workers, these bills are heavy-handed. They lack any imagination and have not been subjected to good policy analysis. They will leave sick and injured workers worse off by hundreds of dollars a week within the first 26 weeks after being injured or the onset of illness. They will leave sick and injured workers to pay their own medical bills one year after compensation benefits cease and they will leave workers with scant coverage if they are injured on their way to or from work.

I place on the record my strong objection to the introduction of time limits on assistance with medical costs. As members know, I started my working life in the hospitality sector. Workers in that sector can be victim to all sorts of injuries. Women comprise a high proportion of the hospitality workforce and I have represented many who have been the victim of armed robbery while at work. They have had guns held to their head and knives to their throat, they have been taken hostage and gunmen have threatened to blow their brains out. That sort of trauma leaves scars and I have been witness to that damage. Such victims require a lifetime of counselling to overcome their shock. Many of them return to full duties and I acknowledge that it is important they be rehabilitated as quickly as possible. These people want to go back to work and we should do everything we can to ensure that they do because that restores their dignity. However, in these cases it is important that victims have access to counselling and welfare support.

Under the O'Farrell Government's reforms, after one year those workers will be on their own. Through no fault of their own they may have a life-long work-related injury, but despite that they are being made to pay. That is the essence of these bills: make the victim pay. That is what will happen to victims of accidents who are unable to return to work after the arbitrary time limit provided for in this legislation. Because of dramatic cuts imposed by these bills, people injured at work stand to lose their house. It may come as a shock to members of the Coalition that not everyone has a trust fund. These workers' main asset is their house. Most people that I know live from day to day financially. They do the right thing; they have a job; they have a mortgage; they pay their bills; they volunteer; they are involved in their community; they pay their taxes. Nevertheless, they will be punished. If these workers are injured through no fault of their own and cannot return to work, they will lose the money they need to pay their bills. They will be on the scrap heap and they will have to sell their house. The bank will start calling and the debt collectors will be on the doorstep. If they cannot return to work because of injury, it is tough luck.

The O'Farrell Government is making heartless changes. It is making the situation worse because it has failed to consider any alternatives. The WorkCover actuary, PricewaterhouseCoopers, stated that the scheme could be brought back to full funding within 10 years with an average premium increase of only 8 per cent and without any other improvements being made to the scheme. Premiums have been reduced by 33 per cent in the past five years, which is equivalent to a $1 billion windfall for employers since 2005. It is unconscionable that workers alone are being required to pay to bring the scheme back to full funding. That is especially galling given that a report prepared by PricewaterhouseCoopers in March 2012 attributed the scheme's deficit to a decline in the claims management experience of insurance agents and external influences on investment returns and discount rates.

The existence of the deficit that the O'Farrell Government is using to justify these bills is controversial. The Australian Lawyers Alliance and the Law Society of New South Wales have stated that over the past two and a half years the scheme's projected deficit has changed by $1.5 billion merely due to changes in the assumptions applied by PricewaterhouseCoopers. Even if one accepts that there is a deficit, cutting workers' entitlements is not the answer. These bills do nothing to improve claims management or WorkCover's guidelines or to address the escalation in costs attributed to insurers. The insurers' share of scheme expenses and costs has increased from about 7 per cent to nearly 18 per cent over the past decade.

Over the same period, total compensation benefits received by workers have declined by approximately 20 per cent in real terms. The Premier should be putting pressure on multibillion dollar, multinational insurance

companies such as Allianz, Xchanging, GIO and QBE to lift their game. Instead, he has taken the side of multinational insurance companies and is putting their profits ahead of the people who voted for him—the people of New South Wales. He is putting the interests of big business before the interests of the working people of this State. That is not how things should be. The Premier should be listening to what this State's workers have to say about WorkCover.

It appears that none of the submissions was given any consideration by the Government despite the fact that a great deal of work went into their preparation. I will refer to one submission—the submission prepared by the NSW Nurses Association—and ask the Minister to give the House his considered view of seven proposals suggested on behalf of this State's 54,000 nurses. These proposals include creating a financial incentive for employers to provide suitable work to injured workers. This could be in the form of a reduced premium. It was also suggested that the Government impose severe penalties on employers and individuals who refuse to provide work to injured workers where such work is available. Insurers should also be given the capacity and obligation to examine rigorously whether their clients are able to provide suitable work to an injured worker. These are disgraceful bills. This Government will wear the impact of this legislation. The Opposition will constantly remind the people of this State of this disgraceful legislation. [*Time expired.*]

The Hon. HELEN WESTWOOD [10.48 a.m.]: I oppose the Workers Compensation Legislation Amendment Bill 2012 and the Safety, Return to Work and Support Board Bill 2012. The manner in which these bills have been hatched and then introduced is reprehensible. Yet again, this Government is disrespecting the workers of New South Wales. These bills are yet another illustration of the fact that the O'Farrell-Stoner Government holds the workers of this State in contempt. New South Wales has historically led the nation in occupational health and safety reform and it currently has the lowest rate of workplace injuries since the WorkCover scheme commenced in 1987. That can be singularly attributed to the work of the Labor Government.

In the year ending June 2009 there were 9,300 fewer work-related injuries reported in New South Wales than in the previous year. That continues a downward trend in this State. In fact, thanks to the strong policies implemented over the 16 years of the Labor Government, the number of deaths in workplaces fell by 3.4 per 100,000 workers. In 1995 there were eight workplace deaths per 100,000 workers and by 2009 that figure had fallen to 4.6 deaths per 100,000 workers. In the year or so since the O'Farrell Government was elected it has systematically attacked the rights of workers in this State. We will now have the weakest set of workers compensation laws in the Commonwealth.

Figures from Safe Work Australia show that New South Wales had a lower number of workplace fatalities than Victoria and Queensland. Between July 2009 and May 2010 a total of 19 workplace fatalities were reported in New South Wales compared to 24 in Victoria and 23 in Queensland. It is a fact that New South Wales was reducing the number of serious injuries and fatalities in the workplace. Between 2004-05 and 2008-09 New South Wales had a 25 per cent improvement in the number of serious workplace compensated injuries and musculoskeletal claims. All of those results show that the New South Wales system delivers the right balance of protection to workers. I refer to dissenting statements in the workers compensation report at page 284, which state:

> Premiums have reduced by $1 billion a year since 2005, leading to a reduction in costs for employers in the State by some $7 billion. It is unnecessary, as well as harsh and unfair, that the entire burden of reform should fall upon those who are most vulnerable: namely the injured workers.

I found that the issues paper released by the Government and the subsequent report released last week are overly preoccupied with the notion that injured workers are somehow to blame for the state of the scheme. There are various references to the need for further financial disincentives as a means to encourage injured workers to get back to work. These inferences appear to be that, if workers' entitlements are slashed, it is more likely they will return to work sooner. This is an overly simplistic, ignorant view of the overall return to work process. Not surprisingly, it diverts attention away from the more pressing and substantive issues which are responsible for the deterioration in the scheme's performance. I refer again to the dissenting statements in the report at page 283:

> The Scheme actuary discloses that half the deterioration in the scheme finances is due to external economic factors. The evidence taken by the committee overwhelmingly indicates that the role of the scheme agents (insurers) has been a key factor in the deterioration of the scheme through claims management functions and failures to get injured workers into appropriate rehabilitation sufficiently soon.
>
> All important stakeholders and the committee accept that there needs to be a thorough review of the Scheme and the role played by the Scheme agents and we believe that this should occur rather than embarking upon wholesale slashing of the benefits to injured workers. We note in this regard that compensation payments to injured workers have fallen by almost 20 per cent from 2002 to 2010.

And:

> We believe that in particular having regard to the significant reduction in premiums over the last 7 years, modest premium increases could occur to stabilise the scheme while a more thorough review of needed systemic reforms such as the role played by scheme agents and their performance can be reviewed and developed.

That was a view I heard expressed by Associate Professor Brian Owler, who is a neurosurgeon and vice president of the Australian Medical Association. Anyone who heard Associate Professor Owler speak to Linda Mottram on 702 ABC yesterday would have heard him talk about his concerns about the proposals in this bill. He said it was a missed opportunity. He agrees that there is a problem but says that, instead of going after the benefits of workers, this Government should have been looking at how the system is administered. He talked about the sorts of decisions by agents—that is, the insurers—that we heard evidence of from workers before the committee. It is insurers who have caused the blowout in costs of this scheme. It is they who need to have their management approach and their administration structures addressed.

We heard from him and from workers about the high turnover of case managers, decisions being made by people who have no medical training, who are not clinicians and who do not understand the needs of injured workers, who have no understanding of how long it takes for workers with very serious injuries to recover or the sort of treatment they need and support they need to get back to work. That is the main problem with the scheme but, in keeping with all that this Government does, what does it do? It attacks workers. It takes away workers' rights. It slashes their benefits. That is what this Government does. It is never willing to look at the real cause because the easy target is workers and their representatives, both in the trade union movement and in this place.

I will expand the point regarding scheme agents a little further. I read with interest a number of submissions that raised the misadministration by scheme agents, namely, the insurance companies and their underperformance. I refer to submission 43 of the inquiry where we have some living examples of the incompetency inherent in the system, such as the fact that three different insurance companies had handled the claim, and an army of claims managers. The dollar value cost of reacquainting each insurance company and claims manager with the details of each individual claim is insurmountable.

I find it even more incomprehensible that this Government is now going to direct WorkCover inspectors to do extra training to get injured workers back to work. Let me spell that out. We pay the scheme agents—that is, insurance companies—who are responsible for preparing and implementing the return to work plans, but because they have been underperforming the State Government is going to pay WorkCover inspectors to do the insurance companies' job. In effect, we pay insurance companies twice for the same service when we take inspectors away from their valuable role of injury prevention. How inefficient is that? It is no wonder the scheme is in deficit. I do not see any clause in this bill that will address that disgraceful malpractice. It is evident that the deterioration in the performance of scheme agents has overwhelmingly contributed to the deterioration in scheme performance and, therefore, its financial deficit.

I cannot fathom why you would go to the trouble, not to mention expense, of calling an inquiry and taking submissions, and then producing a report that disregards the evidence presented—unless, of course, it is all a farce. I believe that is just what has occurred here. This O'Farrell Government has seized on yet another opportunity to kick the worker and this time they have gone one lower. This time the worker that the Government has in its sights is the injured worker and the family of the worker killed on the job. It is an absolute disgrace.

The O'Farrell Government has attempted to portray injured workers as malingerers. It argues that the New South Wales workers compensation scheme is unviable because workers are not returning to work quickly enough and are claiming benefits unnecessarily or even fraudulently. What this dishonest O'Farrell Government is out there arguing is that compensation must be cut to force lazy workers back to work. To suggest that injuries to workers are unique to New South Wales because we have such a generous scheme flies in the face of the reality of work-related injuries. The fact is that worldwide each year more than two million women and men die as a result of work-related accidents and diseases.

Workers suffer approximately 270 million occupational accidents each year and fall victim to some 160 million incidents of work-related illnesses. Hazardous substances kill 440,000 workers annually. Asbestos claims 100,000 lives. One worker dies every 15 seconds worldwide; 6,000 workers die every day. More people die whilst at work than fighting wars. Members may think we are immune in Australia; however, the deaths and injuries that occur here are damning. According to the Australian Bureau of Statistics, more that 15 serious

injuries occur every hour, or one injury every 4 minutes. Thousands of workers are killed and millions more are injured or diseased because of their jobs. This is all the more poignant because their deaths and injuries are largely preventable.

It is imperative that we defend our workers compensation laws as they have been put in place for the protection of workers. The union movement actively campaigns on occupational health and safety, and those efforts are partly reflected by the fact that the greater the degree of unionism in a workplace, the safer it is. Decades of struggle by workers and their unions have resulted in significant improvements in working conditions, but the toll of workplace injuries, illnesses and deaths remains enormous. The fact is that, despite the great improvements that have been made in this State to make our workplaces safer, workers are still injured every day in work-related accidents and workers still contract diseases as a direct result of the work they do. When workers are injured, it is imperative that a workers compensation scheme is in place to ensure that those workers and their families do not suffer further by loss of income and mounting medical bills that they cannot afford to pay.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! There is too much audible conversation in the Chamber.

The Hon. HELEN WESTWOOD: Currently the workers compensation scheme ensures peace of mind for the workers of this State that if injured at work a worker will receive a regular outcome and that worker will be able to pay for whatever medical costs are required to recover and, if possible, return to work as quickly as possible; and that they will be able to pay electricity bills, buy school uniforms for their children, pay for school fees and put food on the family table. It is our responsibility as legislators of the New South Wales Parliament to protect workers from the poverty into which a work-related injury can thrust them. If these bills are passed then the legislators on the other side of this Chamber have let the workers of this State and their families down. We have heard the pathetic justification of those opposite that the bill will simply restrict benefits. The workers in this State well know that "restricting benefits" is Liberal speak for attacking workers and their families.

The Hon. Mick Veitch: Point of order: My point of order is that because of the noise in the Chamber it is very difficult to hear the Hon. Helen Westwood's contribution. This is a very serious debate and members should be heard.

DEPUTY-PRESIDENT (The Hon. Sarah Mitchell): Order! I uphold the point of order. I ask members to keep conversations to a minimum.

The Hon. HELEN WESTWOOD: I thank the Hon. Mick Veitch for his point of order and I thank the Deputy-President for her ruling. Regrettably, those on the other side do not want to hear the facts. If they were to listen and take account of what I am saying they would hang their heads in shame. Let us consider what workers will be most affected—namely, the workers who work with their hands, construction workers, shearers, agricultural workers, factory workers, mechanics and transport workers; the workers who care for the sick, the elderly and people with disability, nurses, aged care workers and care attendants; and the workers who protect us, police, firefighters, ambulance officers and paramedics. These workers need the protection of a just and fair workers compensation scheme. The lives of these workers will be affected by this heartless Government's legislation. It will not be the merchant bankers or the barristers and lawyers from the big end of town, and it will not be the company directors; no, it will be ordinary workers who have the misfortune of having a work-related accident.

Interestingly, the agriculture and fishing industries are quite high on the list of injuries. I advise members who claim to represent those industries to pay particular note. I refer to the report from Safe Work Australia: Compendium of Workers' Compensation Statistics Australia 2009-10. Industry employees in transport and storage sustained the highest incidence rate of all industries: 24.0 serious claims per 1,000 employees, nearly twice the national rate of 12.6. In manufacturing, employees made 21.9 serious claims per 1,000 employees. In agriculture, forestry and fishing employees made 21.5 serious claims per 1,000 employees. In construction, employees made 19.6 serious claims per 1,000 employees. These four industry divisions also experienced high frequency rates. Employees working as labourers and related workers sustained the highest incidence rate of all occupation groups: 29.5 serious claims per 1,000 employees, more than twice the national rate. In intermediate production and transport employees made 28.3 claims per 1,000 employees. Tradespersons and related workers made 22.6 claims per 1,000 employees. These three occupation groups also recorded the highest frequency rates.

Not surprisingly, those workers do not receive high incomes. They do not have a portfolio of shares, nor do they have assets all around the State that they can rely upon to support them and their families if they are injured. What they need is a fair and just workers compensation scheme, which that lot on the other side are about to dismantle. Workers' rights will be slashed. The benefits that workers need to keep a roof over their heads, put food on their tables and pay for electricity for their families will be taken away. Those opposite should hang their heads in shame. This is an attack on the most vulnerable workers in this State, and it retrospective. Unions NSW Secretary Mark Lennon said in its current form, the changes would therefore apply to the vast majority of people injured before today. He said:

> How can working people in New South Wales have confidence in this Government when it clearly does not understand its own legislation?

We heard that clearly from the Premier yesterday. How embarrassing: a Premier who is taking away workers' rights does not understand his own legislation. If that is not the case then the Premier is lying. Either way, it is an absolute disgrace. I continue the quote:

> This is cruel, retrospective legislation that pulls the rug from under sick and injured workers.
>
> We know of specific cases where grieving widows who were set to seek compensation for nervous shock will now be denied the right to even make a claim.
>
> Crossbench MPs need to take heed—how can they have confidence in laws that the Government doesn't even understand?

Removing journey claims is a short-sighted and retrograde step. It will force people into the public health system and add further burden to a system that has significantly deteriorated in the last year. Journey claims account for only 2.6 per cent of all workers compensation claims. How can they be considered a financial drain on the scheme? It has been an entitlement to the citizens of New South Wales since 1926. I refer to submission 116 to the inquiry, from a worker who was seriously injured by a vehicle on her way to work. As a result she was hospitalised and was unable to work for two months. She is a widow with no other family support. She was also the main carer for an elderly mother. Without her workers compensation entitlements she and her elderly mother would have been in dire financial hardship. What will happen to such workers? The Government clearly does not care if women, families or their dependants are thrown on the street as a consequence of this bill.

The Hon. Dr Peter Phelps: What about widowers? Don't be sexist. Don't forget widowers.

The Hon. HELEN WESTWOOD: Widowers will also be thrown onto the street because the Government does not care about people's worth. These WorkCover reforms will continue to deliver record profits for private insurers while pushing the families of many injured workers into poverty. I urge all members with any conscience in this place to oppose this reprehensible legislation.

The Hon. CATE FAEHRMANN [11.07 a.m.]: I speak strongly against the Workers Compensation Legislation Amendment Bill 2012 and the Safety, Return to Work and Support Board Bill 2012. My colleagues in this place, in particular Mr David Shoebridge, have spoken at length about many of the worst aspects of the bills. I do not intend to use the full 20 minutes allowed to me for my contribution. However, I will flag some of the worst aspects of the bills and I will read onto the *Hansard* some of the emails received from lawyers and injured workers who have contacted members over the past month expressing grave concerns about these drastic changes to workers compensation.

DEPUTY-PRESIDENT (The Hon. Sarah Mitchell): Order! There is too much audible conversation in the Chamber.

The Hon. CATE FAEHRMANN: Treasurer Mike Baird said in his second reading speech:

> Schedule 3 to the bill makes a change to the area of work injury damages with proposed new section 151AD limiting common law claims for nervous shock suffered by a relative or dependant of a deceased or injured worker, unless the nervous shock is itself a work injury. This reflects the view that an employer's liability for psychological injury to family members does not fall within the object of the workers compensation legislation.

That is outrageous in view of the trauma faced by the families of construction workers, police and others who die on the job. Changing the workers compensation legislation so that relatives of an injured worker can no longer claim compensation for nervous shock as a result of the death of that worker is appalling. Of course, many of the other changes are also appalling. Many members spoke about the amendments to section 10 of the Workers Compensation Act which mean that journey claims will no longer be covered. Much of the correspondence received by members referred to that matter. I will quote some emails shortly.

Opposition members and The Greens have talked at length about weekly payments being savaged in the legislation. Those severe cuts have been laid out in detail. I will read some emails in which people tell their stories. Hearing people's stories is most powerful. When we are considering drastic changes to something as fundamental as workers compensation it is important that members opposite hear from those who will be directly affected by the changes. If thousands of people rallying outside Parliament House is not enough, if the submissions to the workers compensation inquiry were not enough, if people writing letters to the editor across the State are not enough, if the hundreds, if not thousands, of emails in our inboxes are not enough, we do not know what will make the Government listen to stories about the impact of the drastic changes to the workers compensation legislation which it is hurling onto ordinary families across the State. But I will read the emails onto the record anyway. One email stated:

> As a nurse and as a voter in NSW I write to voice my concerns about the changes …
>
> When I travel to and from work, I expect to be covered by workers compensation if I'm in an accident. But under the changes being considered, workers will not be covered on their journey to and from work. This seems a huge step backwards for the people of NSW—

Yes, it is a huge step backwards—

> As a nurse I travel to and from work at different times of day, sometimes after working long shifts or working quick shifts. Because of this I am at increased risk of being in an accident, and if I am unfortunate enough to be involved in one, my work would be a major contributing factor to this. To then deny me access to workers compensation is incomprehensible.
>
> I also expect that if the worst should happen and I get hurt at work, my pay and my medical bills will be covered until I get better.

Of course, that will not be the case because the legislation limits medical expenses to 12 months. How many work injuries? Some injuries require ongoing medical treatment. For example, a worker sitting at a computer doing data entry for six, seven or eight hours a day could suffer a work injury simply from doing that work, and such an injury may require medical treatment and expenses for longer than 12 months. For many injuries medical treatment such as physiotherapy, osteopathy or whatever is usually ongoing. Workers may be injured because of the work they are required to do to stay in employment, often by multinational corporations and sometimes by employers who cut corners. We know that in many cases medical treatment for a work injury is necessary for more than 12 months.

It is not as though injured workers will suddenly get better. It is not as though there is anything in the legislation to ensure that workers have safer workplaces. The Government has not explained to this House or the other place what it intends to do to reduce the level of risk for workers, to make people's journeys to and from work safer and to ensure that injured workers will have fewer, if any, medical expenses after 12 months. The Government has not done anything like that. Instead, it hastily introduced 100 pages of legislation, and members have not had sufficient time to examine every clause to find out the true intent of the legislation. Once again the Government is rushing through the Parliament an attack on workers in this State rather than thinking holistically about the problem and whether there is a different way to address some of the problems in workers compensation.

The Government's 100 per cent attack on workers' rights and conditions fits snugly with the Liberal Party's ideology. Clearly that has been the Government's agenda since day one. Of course, the Coalition did not go to the election telling the workers of New South Wales that a Coalition government intended to cut workers compensation. It did not go to the election telling the workers of New South Wales, "If you happen to be on workers compensation right now you better start thinking about how you will get off it because many of you will not be on it probably within about two years. If you are on workers compensation with an injury that is less than 30 per cent incapacity, sorry, you might need to start thinking about your future." The workers of New South Wales did not know that the Government intended to change the workers compensation scheme. Indeed, at the election they swarmed to the Coalition in droves because the Coalition's pre-election promises and plans for New South Wales did not include the attacks on workers' right and conditions that have been rolled out over the past 14 sorry months that this Government has been in power. Another email stated:

> As an injured ambulance paramedic who suffered a back injury lifting someone down 3 flights of stairs who was bleeding. I was forced out of the job in 1996. I lost my career, superannuation benefits, long service leave, suffer depression and anxiety and suffered physical pain and emotional trauma for 2 years—

not 12 months—

> I applied for over 50 plus jobs and got about 25 interviews over this period. Each time I thought this is the one I've got the job but then the "Dear Anthony letter in the mail sorry but".
>
> …

> Instead of cutting employee benefits what about the excess cost of insurance companies charge, lawyers fees and administration charges. What about employers made to ensure they have suitable duties for injured workers and not just send them home. Most injured workers want to return to work as soon as possible. I ask you to not support any legislation which will cut workers benefits at the coal face …
>
> Start the reforms at the top and hold employers who breach WHS laws accountable and leave injured workers alone.

Another email stated:

> I am an injured worker and have undergone two knee replacements due to an injury in the workplace and because of the employer's negligence. Currently I am unfit to work and I am on weekly payments from WorkCover compensation scheme. My injury took place in Dec 2006 and initially I was given some suitable duties by my company. But after some time they terminated my employment. I have to get by on weekly payments which are a fourth of what I used to earn and have two dependent sons … Life is hard for our family and if payments are further going to be reduced or cut off as one hears, then life becomes impossible …
>
> As an employee with an injury one's life is turned upside down. The pain and suffering is immense and it takes a long time to recover.

I apologise to the person who wrote that email because their life is about to be turned upside down and around in a way they have not known—once again, because of the Government's callous disregard for workers. With bill after bill, the Government continues to look out for its mates in business and at the big end of town. Indeed, they are probably proudly singing from the rooftops about legislation that once again attacks workers' rights. We have to remember that Liberal Party members believe in small government, and with small government comes attacks on workers' rights. It would be expecting too much for them, with their ideology, to see in what way insurance companies, businesses or employers could assist in the matter before beginning attacks on injured workers. I refer to another email. It states:

> Dear Robyn Parker and Barry O'Farrell,
>
> I voted Liberal (for you). I have two children in high school and debts, loans and bills like everyone else. I was injured at work and have extensive qualifications (about eight years of courses night and day) that are now no use to me after I injured my back at work. I retrained into low paying community work as they were the only ones who would take a risk with my injuries and disabilities.

Back injuries that allow people to ambulate and move with not more than 30 per cent incapacitation are commonly caused by physical labour, factory labour and construction work. And they are increasing. Also increasing are injuries such as repetitive strain injuries caused by people having to work at computers for eight to ten hours a day, five days a week. These injuries are increasing, as a lot of work is now being done in front of a computer. None of those injuries would involve more than 30 per cent incapacity. However, I guarantee that many of those people find themselves with significant injuries and may not be able to type in the future. Those workers get injuries such as carpal tunnel syndrome in their arms and cannot continue to type. They will need assistance, which is the reason for workers compensation. Workers compensation is not just for distressing accidents where people become paralysed from horrendous injuries. It is more than that. I do not think the Government understands the responsibility it now has.

Workers compensation has historically been available for workers and the community to rely on. Workers knew that if—and often when—they got a work-related injury they would still be able to pay their bills while they were rehabilitated. Most injured workers do as much as they can to get back to work. Because of a few rotten eggs who may be rorting the system this Government has treated all workers alike and gutted the incredible workers compensation scheme. Because of the Government's small government ideology, it has been on their agenda since before the election. These changes have not come about because of an analysis of workers compensation finances or because of the inquiry; Government members had well and truly made up their minds before that. This was just another little dot point on their list of attacks on workers' rights and conditions and a pass to their mates in the business and insurance world. Another email we received was from a plaintiff lawyer with many years experience in personal injury matters, principally servicing clients with English as a second language. The lawyer said:

> Applying a threshold of more than 10 per cent whole person impairment may not sound too harsh at first light. However, the manner in which whole person impairment is assessed guarantees almost 90 per cent of all deafness claims will fail, only injured workers who undergo a back or neck operation will succeed, most if not all unilateral shoulder injuries will fail, irrespective if operated upon, all hand injuries and 80 per cent of leg injuries can not succeed.

This lawyer suggests:

> A fairer threshold which would eliminate smaller injuries would be to apply a 5 per cent threshold which would bring New South Wales into line with other States. As to deafness claims, no Australian jurisdiction has a higher threshold than Victoria which maintains a threshold of 5 per cent whole person impairment.

That is an interesting comment, because the Government has been going on and on about how New South Wales is being brought into line with workers compensation in other jurisdictions and in other States. Yet clearly it is not doing that consistently. Many people will be left in appalling circumstances as a result of this change to workers compensation law. Workers will have no choice but to go on unemployment benefits. They will have mortgages that they will not be able to pay on unemployment benefits. When someone gets a job they then decide to buy a house for their family and to do that they get a mortgage. That is what our society and our economy are geared to.

If that person suffers a workplace injury and after six months or 12 months has to go on to Centrelink benefits how can they manage? But that is the message the Government is sending these injured workers. That is their future. That is what we are going to see, more and more, with families and workers in this State. We are going to hear stories of injured workers having to sell their houses and go onto the public housing waiting list—a waiting list that is already about 10 years long. We are going to see some sorry situations and hear some sorry stories as a result of this Government's callous disregard for workers' rights and conditions. We have seen that sort of callous disregard ever since the Government was elected in March last year. The Greens think this is one of the most disgraceful pieces of legislation the Government has brought in yet and it is a sorry day for New South Wales.

The Hon. LUKE FOLEY (Leader of the Opposition) [11.27 a.m.]: I speak to add my opposition to the Workers Compensation Legislation Amendment Bill 2012 and its cognate bill, the Safety, Return to Work and Support Board Bill 2012. In January 1901 the colonies came together and federated as the Commonwealth of Australia. In that month of January 1901 in New South Wales my party—the Labor Party—adopted as a key plank in its platform support for a Workmen's Compensation Act. I refer to the minutes of the annual conference of the New South Wales Labor Party. On 26 January 1901—the very first Australia Day after the States came together as a new nation—the minutes of the conference of the New South Wales Labor Party record this:

> On behalf of the executive, Mr Lamond submitted a motion that a Workmen's Compensation Act should be made a plank of the platform. He pointed out that under the present law, as interpreted in a recent Supreme Court decision, no compensation could be claimed by a workman for injury in the exercise of a dangerous calling.
>
> The English law was much more liberal in this respect, making compensation for injury a charge on the particular industry. He generally approved of the measure introduced in the Council by Mr (now Judge) Haydon, but thought the English Act even better; and as a law of this kind was of the very highest importance to the workers, no party could urge it to better purpose than the Labor Party.

That is why we have a Labor Party in this State and nation—to insist on the fair and decent treatment of people who go to work. That is why we oppose so vehemently this legislation, which offends the dignity of working people in this State. My colleagues in the wee hours of this morning and again since the House resumed have gone into great detail about the very punitive and extreme measures in this bill that strip away the dignity of working people who, through no fault of their own, suffer a workplace accident or injury and are unfit to work. I adopt all of those submissions made by my many colleagues who have spoken in this debate. The very first Labor Government in this State was elected in 1910. In the policy speech in that campaign our leader, Jim McGowen, pledged to introduce a workers compensation Act. That played no small part in the election of the very first Labor Government in this State. But do you know what? A reactionary Legislative Council blocked it. But Labor kept going and in 1926 a Labor Government finally succeeded in legislating for a workers compensation Act in this State. Having fought for it in 1901, 1910 and 1926 we are certainly not going to walk away from it in 2012.

The Hon. Matthew Mason-Cox: Neither are we.

The Hon. Dr Peter Phelps: We're not walking away from it.

The Hon. LUKE FOLEY: I acknowledge the interjections. The heirs and successors of the reactionaries who blocked a workers compensation scheme advanced by a Labor Government in 1910 are here today once again trying to strip away the dignity of working people in this State. They are in every respect the true heirs and successors of the reactionaries who blocked a workers compensation Act in this State in the early years of the twentieth century. I want to make some comments to those in this place who wear their Christianity on their sleeve. I speak to Reverend the Hon. Fred Nile and his colleague, the Hon. Paul Green. I speak to those from the Liberal Party who profess their Christianity. This legislation offends Christian teaching and it offends Catholic social teaching. There is no doubt about that at all.

I want those in this place who come here and so often profess their Christian principles to reflect on what I am about to say. In 1891, the year the Labor Party was formed in New South Wales, the Catholic Pope

laid down that historic papal encyclical *Rerum Novarum.* For centuries the Catholic Church's message had been addressed to agricultural societies. In 1891 the Church finally addressed what the industrial revolution meant for men and women in our society. The industrial revolution presented to all institutions, and certainly to the Church, a critical challenge. Pope Leo XIII responded forcefully with the papal encyclical *Rerum Novarum*. The principles that he laid down have remained universally valid and perennially relevant for 121 years since. That encyclical was above all a heartfelt defence of the inalienable dignity of workers.

Over a century later, Pope John Paul II declared that labour has an intrinsic priority over capital. Why? It is because of church teaching about the dignity of human beings, the dignity of labour, and the dignity of people who go to work and do an honest day's work. Pope John Paul II in his encyclical *Laborem Exercens* taught us that this principle that labour has an intrinsic priority over capital is an evident truth that emerges from the whole of man's historical experience. He wrote that this "is part of the abiding heritage of the Church's teaching". Catholic social teaching tells us that the economic wellbeing of the country is measured not exclusively by the quantity of goods it produces but also by taking into account the manner in which they are produced and the level of equity in the distribution of income, which should allow everyone access to what is necessary for their personal development and perfection. An equitable distribution of income is to be sought on the basis of criteria not merely of commutative justice but also of social justice—that is, considering, beyond the objective value of the work rendered the human dignity of the subjects who perform it.

Pope John Paul in his 1981 encyclical *Laborem Exercens* directly addressed work-related accidents. In that encyclical he wrote of "the right to a pension and to insurance for old age, sickness, and in case of work-related accidents". I quote directly from that encyclical. So I say to those honourable members who constantly profess their Christianity: Consider Christian teaching on this matter. It is direct and clear. Workers are to be treated with dignity. People who suffer work-related accidents are to be treated with dignity. This legislation offends that principle because the reform of the workers compensation scheme in this State is to be done by diminishing, in a gross fashion, the rights and entitlements of working people. Workers are being asked to exclusively bear the burden of reform here. It is unbalanced. Speaker after speaker in the other place and in this place has gone into great detail about how the changes impact directly on working people and their families.

On 1 May 2000—May Day—Pope John Paul II delivered a homily at the Mass for the Jubilee of Workers. He preached that economic and social imbalances in the world of work must be addressed by restoring a just hierarchy of values and placing the human dignity of workers before all else. Christian teaching is clear. Many members of the Government and on the crossbench profess their Christianity as a driving force in their political activities. I take them in good faith and believe them. I ask them to study Christian teaching: It is clear and unambiguous, and these bills offend it. They should stand up for their principles and for Christian teaching and reject this legislation that is so unbalanced and offends the dignity of worker and of labour. We hear the voices of protesting workers outside Parliament House. The Minister is not in the Chamber but he will respond shortly to this debate. The Minister for Finance and Services is in every respect the true heir and successor of those reactionaries in this place who blocked a workers compensation scheme in this State when Labor tried to introduce it in 1910.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! Members will cease interjecting.

The Hon. LUKE FOLEY: The Minister for Finance and Services has pulled off a remarkable achievement today—our firefighters are striking for the first time in 56 years. I congratulate him. The heartlessness and viciousness of this Minister's workers compensation reforms have today driven our firefighters to strike for the first time since 1956—something he should be ashamed of, not proud of. The Liberal-Nationals Government should be ashamed of this legislation and its members should stand up and rebel against it. They should send the Minister and the Cabinet back to devise a decent, humane and balanced scheme, not this legislation that offends the dignity of human beings who go to work to support themselves and their families. The Australian Labor Party has fought for the scheme since the very month that this nation was formed, in January 1901, and it is certainly fighting for it today. For as long as our party is in politics we will fight that lot on this.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.42 a.m.]: The Minister will speak in reply to the Workers Compensation Legislation Amendment Bill and cognate bill because he has some very pertinent comments to make. In contributing to debate on this important legislation, I will respond to a number of comments made by members opposite. I start with those of the Leader of the Opposition, who mentioned a number of encyclicals of various popes throughout history. For the edification of those present and

in the public gallery, I will quote from the encyclical *Faith and Reason* by Pope John Paul II. Pope John Paul II contemplated the conflict between faith and reason, the conflict of philosophy and truth. In that encyclical Pope John Paul II said—I am paraphrasing—that faith and reason are like two wings on which the human condition soars in contemplation of truth. That is what we seek to do in this place today, as we do every day. We seek the truth of legislation and the position in which this House finds itself.

The truth is that the current workers compensation scheme is in significant decline and the House has no choice but to take action in respect of them. The WorkCover scheme is $4.1 billion in deficit because it was mismanaged by the Labor Government for the past 16 years. That was in keeping with its fiscal incompetence on all fronts in relation to the management of government in this State. Without change, in time the WorkCover scheme will simply cease to exist. It will become unviable and it simply will not be there to help injured employees return to work, which is the role of the scheme.

This Government is committed to ensuring that the WorkCover scheme is there for the workers of New South Wales well into the future, for as long as this Government is in office—and, in the interests of the people of New South Wales, we hope that is a very, very long time. This Government has taken a range of measures to address the fiscal problems of this State. Workers compensation is an area that has needed redress for some time. The committee produced a very learned report in relation to the workers compensation scheme, to which I will refer in due course. Its finding and that of experts in relation to the financial viability of the scheme is that if the Government does not take action now the scheme will become unviable. The implications for New South Wales businesses and workers are severe. Based on advice from PricewaterhouseCoopers, if nothing is done then workers compensation premiums will have to increase next financial year by 28 per cent to get the scheme back in the black by 2017.

For example, without reform of WorkCover the owners of a New South Wales cleaning company who pay approximately $150,000 in wages each year will see their workers compensation premium rise to approximately $13,600—more than double the premium paid by similar Victorian businesses. That is the sort of uncompetitive impost that New South Wales is piling onto businesses that seek to employ people in this State. It is simply unsustainable and it is driving businesses to the wall and interstate. We must correct this malaise otherwise we will have fewer people employed and more businesses will flee interstate—which has been the experience in this State for far too long. The NSW Business Chamber estimates that 12,600 jobs will disappear if the WorkCover scheme is not reformed by this Government. It goes against the public interest and the interests of this State to leave this scheme in its current malaise. I refer to the very weighty report that I am sure the students in the public gallery will reflect on in some detail in order to understand where the truth lies in this debate. This report was instituted by the Government after releasing an issues paper canvassing the workers compensation scheme. In so doing, the Government appointed a joint committee comprising members of all political parties and chaired by the Hon. Robert Borsak.

The Hon. Adam Searle: Not all parties; you locked out The Greens.

The Hon. MATTHEW MASON-COX: I acknowledge the interjection. That is the case.

The Hon. Luke Foley: Congratulations, you have emptied the gallery. Well done. They stayed for the main act, but they are going now.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! The Leader of the Opposition will cease interjecting.

The Hon. MATTHEW MASON-COX: After considering the evidence in 353 submissions from all stakeholders in the scheme, the committee produced the report that is the basis of the legislation before the House today. As members opposite have proclaimed repeatedly over the past day or so, this is very important legislation. However, I believe they have misrepresented it in many ways. The focus of this legislation is to ensure that the scheme is financially viable. It has at its heart—as it always has—the safe return to work and support of employees. That is the touchstone of the scheme and it is the measure by which these bills should be judged.

Debate adjourned on motion by the Hon. Matthew Mason-Cox and set down as an order of the day for a later hour.

CHILD PROTECTION (WORKING WITH CHILDREN) BILL 2012

Second Reading

The Hon. JOHN AJAKA (Parliamentary Secretary) [11.51 a.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The purpose of the Child Protection Working with Children) Bill 2012 is to introduce a new Working With Children Check that will provide greater protection for the children of New South Wales. The new Working With Children Check improves on the current model in four key ways: it provides the same Working With Children Check for all categories of worker, including paid workers, volunteers, self-employed people, authorised carers and adults sharing their homes. It accesses full criminal histories instead of a defined subset of records, and continuously monitors new New South Wales records to manage risks that occur after a person has received a clearance to work with children. It has only two outcomes: a clearance or a bar, so employers can no longer engage a person assessed as a serious risk. It is easier to operate, with streamlined online systems and centralised operations.

The model established through the Child Protection Working with Children) Bill 2012 is based on recommendations from the 2010 review of the Commission for Children and Young People Act 1998. The Government tabled the report from this review on 2 August 2011. The model proposed in this bill also implements recommendations of the Auditor General's performance audit of the Working With Children Check released on 25 January 2010. The Working With Children Check is an internationally recognised safeguard for protecting children and young people. The Commission for Children and Young People Act 1998 that established the current Working With Children Check, the first such check in Australia, was passed in this Parliament with bipartisan support. Since then, four other Australian jurisdictions have introduced Working With Children Checks and two others are on the verge of doing so. Each has followed the settings in the New South Wales model. However, unlike the current New South Wales model, all interstate models provide workers with a portable and renewable clearance that can be used over a fixed period for any child-related work.

The Government is modernising the Working With Children Check, extending its breadth and depth and making it consistent with those in other States. The changes I now introduce will give New South Wales the most up-to-date Working With Children Check in Australia. I turn now to the changes envisaged in the bill. To reiterate, the key features of the new Working With Children Check will be: the same check for volunteers, paid workers and self-employed people; only two outcomes—a clearance or a bar; a portable and renewable Working With Children Check clearance that lasts for five years; continuous monitoring of new criminal charges and disciplinary reports of clearance holders; cancellation of clearances where a new record indicates a risk to children; a simple process for employers to verify that workers are allowed to work with children; a stronger education, compliance and audit program to complement the Working With Children Check; and programs to help organisations to be child-safe and child-friendly.

I will now outline the provisions in the bill. The object of the bill as set out in part 1, clause 3 is to protect children by barring certain persons from child-related work and requiring all workers in child-related work to hold a Working With Children Check clearance. Part 2 of the bill defines "child-related work" and the basic obligations of employers and workers. One of the key strengths of the new Working With Children Check is that it applies the same checking program to all types of child-related engagement, whether the worker is a volunteer or a paid employee, and whether the work is in a child care centre or on the sports field. No longer will self-employed people need to get a certificate, nor will volunteers need to sign declarations, while other workers get a position-based Working With Children Check. From this point forward, workers, volunteers and self-employed people will get the same comprehensive Working With Children Check. Wherever child-related work occurs, the same Working With Children Check applies.

As the Working With Children Check imposes statutory obligations on workers and employers, it is essential to establish a clear definition of the services and roles where these obligations are incurred. The Working With Children Check must be used where it is specified in this bill, and the regulations that support it, but not in other situations where it is not specified. Division 1 lists the services that are "child-related" and in which child-related work may occur for the purposes of the Working With Children Check. The services are essentially the same as those in the current Act, and now explicitly include school crossing supervisors. The Government will develop regulations to further explain and define the situations in child-related settings where a Working With Children Check is mandated.

Child-related work in defined child- related services is work that requires direct contact with children as an essential element of the role, whether or not that work is supervised. Direct contact is physical or face-to-face contact, as it is in our current Working With Children Check. Most people in our community have direct contact with children in their daily lives. They do not all need a Working With Children Check. The Working With Children Check is reserved for people whose work is focussed on children and whose work requires ongoing role-oriented contact with children. For example a school teacher cannot teach without direct and ongoing contact with children, whereas a ward clerk in a hospital may see children in the ward, but have no working relationship with them. The teacher is in child-related employment and the ward clerk is not.

The Working With Children Check has never been intended for people who, as a normal part of their working day, may see a child or be in a place with a child but who do not work with the children. In the same vein, the Working With Children Check does not apply to services and roles where a child is a co-worker or a co-member of an organisation. Some examples of

child-related work are: teachers and teachers' assistants in schools; other school staff having regular direct contact with children; tutors and coaches in children's dance, music, sport and art; childcare workers; refuge workers, where children may be living at the refuge; foster carers and the adults living in their homes; religious camp leaders; youth group leaders; clinical staff in hospital wards; clinicians treating children without parental supervision; sports trainers and coaches; respite carers for children; and school bus drivers.

A workplace does not become a child-related service by virtue of having young workers or providing work experience placements. Similarly clubs and community groups do not become child-related services simply by allowing people under 18 to become members. As in the current Act, regulations will further define, extend or limit the ambit of child-related work. This flexibility allows the Government to fine-tune the application of the Working With Children Check in line with emerging knowledge. The bill defines child-related roles that are subject to the Working With Children Check. Clause 6 includes a list of roles that are of themselves child-related work in whatever setting or service they may occur. These roles are essentially roles already defined as child-related in the Act. They include work as an authorised carer, as a certified supervisor of an education and care service, formerly known as a childcare centre or preschool, and several other roles. People who work in these roles will be subject to exactly the same Working With Children Check as those working directly with children in a child-related service.

Clause 7 provides a further opportunity to protect children by allowing the Commission for Children and Young People to determine that certain additional paid roles may be considered a child-related role. These are roles in a child-related service where the worker does not have direct contact with children but has access to confidential records or information about children. To have a role deemed as child related, employers will need to identify the relevant roles and propose to the commission the reasons that these roles should be deemed as child- related. If the commission deems a role as child-related, all the obligations and penalties in the bill then apply with regard to that role. The commission may withdraw its deeming on application by the employer or on its own initiative if the work is no longer considered to present risks to children. Employers need the commission's approval to undeem a role that has been deemed child-related.

A further group of roles subject to the Working With Children Check cannot be easily defined as work. The bill lists these roles separately in clauses 10 and 11. They are adults who share the home of an authorised carer or home-based carer and applicants for adopting a child. People in these roles are also covered by the universal Working With Children Check. While being a resident in a carer's house or becoming an adoptive parent is not considered to be work, they are both roles that carry considerable risk to children. This is why such people are required to have a Working With Children Check. The agencies that oversight care or parent placement are responsible for ensuring that the Working With Children Check is undertaken. They are also responsible for ensuring that people who are barred from working with children do not reside with carers or adopted children.

There are penalties both for the carer or adoptive parent and for the agency if they do not comply with these obligations. Clause 52 (2) (b) provides that regulations can exempt classes of child-related workers from any or all of the provisions of the legislation. The existing categories of child-related work are closely aligned with definitions of child-related work in interstate Working With Children Checks. The proposed exemptions will also align closely with interstate exemptions and are outlined in the bill. There will also be an exemption relating to emergency appointments that will allow a person to be in child-related work for up to a week before having a valid Working With Children Check application or a clearance. Employers will need to access this provision in circumstances in which it is not possible for a worker to complete the application process before starting work with children.

Examples of such emergencies would be emergency child protection placements in the evening or at the weekend, emergency staffing at hospitals where children would be at risk if the service were not immediately staffed and emergency staffing of educational services where children would be at risk if the service were not immediately staffed. The exemptions proposed for parent volunteers recognise that parents already have relationships with children in teams, clubs and schools that their children attend and in the local community. The Government values the great contribution that volunteering parents make to the community and to their children's development. The Government will not create artificial barriers that limit this part of a parent's role. The exemption proposed for short-term interstate visitors will be a standard exemption that will be introduced around Australia this year for all Working With Children Checks. This promotes national consistency in interstate activities.

Clauses 8 and 9 in division 2 of the bill set out the mandatory provisions applying to child-related work. The Working With Children Check will now provide a universal and clearly recognisable standard for workers and employers. A Working With Children Check application can produce two outcomes: a clearance for all child-related work or a bar from all child-related work. A person must not engage in child-related work without a Working With Children Check clearance or a current Working With Children Check application. A person who has been barred cannot meet either of these standards and so must not engage in child-related work. It is an offence to breach this rule. A person has a current application if he or she has completed the application form successfully, verified his or her identity and paid any required application fee. As long as the commission has not issued a bar or terminated the application, a person awaiting the outcome of a current application may work with children. The commission's capacity to issue interim bars when there are demonstrated serious risks will continue to keep children safe while these risks are being assessed.

Any applicants whose records indicate a serious concern about the safety of children will be identified very early by their criminal and disciplinary records. The Commission for Children and Young People will be able to protect children in these cases by issuing an interim bar immediately pending the finalisation of its risk assessment. The power to issue an interim bar protects children from serious risks while maintaining a fair process for the applicant. While the interim bar is in place, the commission will complete a thorough risk assessment. If the commission has not completed its assessment within six months, the applicant may apply to the Administrative Decisions Tribunal for a review of the decision to issue an interim bar. The commission completes virtually all risk assessments under the current model of the Working With Children Check in less than six months. Therefore, it is not expected that there will be many appeals against interim bars.

The clear intention of this legislation is for the commission to complete risk assessments within this six-month period where it has issued an interim bar. Clause 12 establishes that there will be two classes of Working With Children Checks. One will allow the holder to work in both paid and volunteer roles and the other will allow the holder to work only in volunteer roles. The

following groups may use the volunteer clearance: authorised carers and the adults who share their houses; students on unpaid professional work placements; and volunteers and adoptive parents. A volunteer check is free while the non-volunteer check involves a fee of $80. This approach and fee level is consistent with Working With Children Checks in most of the other States. The new Working With Children Check will provide for a fair transition from a volunteer to a non-volunteer clearance. A person who holds a volunteer clearance will be able to work in a paid role for up to 30 consecutive days before upgrading to non-volunteer status.

This provision will allow new entrants into the paid workforce an opportunity to start earning before paying their Working With Children Check fee. Every upgrade will involve a new national criminal records check and a new start to the standard five-year clearance period. Employers will be required to establish whether a person has a Working With Children Check clearance or a current Working With Children Check application before engaging that person in a child-related role. They will do this by registering with the Commission for Children and Young People as a child-related employer. Once registered, employers will have direct access to the commission's Working With Children Check register. They will enter the Working With Children Check number provided by the applicant and the register will provide the full name of the person concerned and the current status of his or her Working With Children Check.

The register will advise the employer as to whether that person may work with children. A private individual engaging a person for child-related work—for example, engaging a nanny or a tutor—may also verify the Working With Children Check status by entering the holder's Working With Children Check number into the database. The holder of a clearance may also verify his or her own status. It will be an offence to engage a child-related worker without verifying that the worker has a Working With Children Check clearance or current Working With Children Check application. Employers will not be committing an offence if they can demonstrate that the commission had advised that the person was able to work with children or that the person was exempt from the Working With Children Check.

The new Working With Children Check protects children by identifying people whose records indicate a possible risk to children and by assessing the actual risk. The outcome of an application can only be a clearance or a bar. This provides clarity and certainty for both workers and employers. The processes established through this bill are designed to provide a consistent and fair outcome for applicants. Part 3 of the bill details the requirements for a Working With Children Check clearance. Clause 13 provides that the commission will determine how applications are made and the identity documents that are needed to support them. This information consists of complete national criminal records, disciplinary matters provided to the commission in accordance with this bill and the supporting information from police, courts and other government agencies that contextualise these records and their outcomes.

Applicants also consent to the NSW Police Force releasing records to the commission over the five-year life of a Working With Children Check. Its continuous monitoring of criminal history provides protection from new and emerging risks. In practice, all applicants will complete an online application form. Applicants unable to do this will be able to phone the commission's helpline and officers will complete the online forms for them. Applicants will all need to visit a motor registry with specified documents that verify their identity. The commission will publish a list of documents that are acceptable for this purpose. Identity verification is essential if we are to be sure that the Working With Children Check finds records that legitimately belong to the applicant. At the motor registry, applicants for the non-volunteer Working With Children Check will also pay the required fee. Applicants may withdraw an application if they no longer want to pursue a Working With Children Check. There is no refund of application fees in this situation.

The new Working With Children Check will receive an applicant's full national criminal records and the disciplinary matters reported under clause 35. The outcome of the assessment will be a clearance or a bar, an outcome that protects children and leaves no uncertainty for employers and workers. The centralisation of expertise from the four current screening agencies into the Commission for Children and Young People will provide for high-quality decision-making and consistent practice. Division 3 of part 3 explains how risk is assessed in the Working With Children Check. A risk assessment must be conducted if an applicant is found to have an assessment trigger. Schedule 1 lists specific criminal records and disciplinary matters as assessment triggers. If an applicant has one or more of these records, the commission must assess the risk that the applicant presents to children. On rare occasions a record may come to light that was not disclosed at the time of the applicant's application. In such cases, the commission may conduct a risk assessment, even if the applicant had previously been cleared, just as it would if a new record was revealed through the continuous monitoring of records by the NSW Police Force.

If this new assessment indicates that the applicant presents a serious risk to children, the commission will cancel his or her clearance by issuing a bar from child-related work. Clause 15 specifies the factors the commission may consider in a risk assessment. Essentially, the commission will consider factors about the record and about the offender. In relation to the record, the commission will consider the seriousness of the conduct and the likelihood of its repetition, how long ago it occurred, how the offender got access to the victim and the age difference between the offender and the victims. In relation to the offender, the commission will consider how old he or she was at the time and how old he or she is now; his or her criminal history, and his or her conduct since the offence took place. These are largely the same considerations as those currently used effectively by the commission and the Administrative Decisions Tribunal to assess applications for a review of prohibited status under the current Act.

The commission may ask agencies and employers for information to supplement its knowledge about these risk factors. It may ask the applicant to provide information that is essential for commencing a risk assessment. If the applicant fails to respond to such a request within six months, the commission can terminate the application. The point of this is to make sure that an application is properly and fully dealt with within a reasonable time. If the applicant does not provide the required information within this time frame and it therefore becomes impossible for the commission to assess the applicant's risk to children, the commission will terminate the application. When this happens the applicant no longer has a current application for a Working With Children Check. This will mean that the applicant cannot engage in child-related work.

Of course, an applicant presenting serious risks will already have received an interim bar. The commission will advise any employers who have verified the applicant's Working With Children Check status on the Working With Children Check register that the applicant may not engage in any child-related work. An applicant whose application has been terminated in this way may

make a new application at any point. If the commission identifies a serious potential risk to children partway through the assessment of an application, it will issue an interim bar. The applicant can seek a review of an interim bar by the Administrative Decisions Tribunal after six months. An interim bar may not remain in place for more than 12 months. The commission must make a decision whether to bar or to clear the applicant within 12 months of issuing an interim bar. An interim bar has the same impact as any other type of bar, except that it is limited to time.

The new Working With Children Check will identify and bar applicants who present a serious risk from all child-related work. There are, in effect, three ways to be barred in the new Working With Children Check. Firstly, a person will be automatically barred if he or she has a conviction or pending charge for serious nominated offences, committed as an adult. These offences are listed in schedule 2 and are generally the same as the offences that currently cause a person to be prohibited from child-related employment. Secondly, a person may be barred because of risks identified after assessment of a schedule 1 record and, thirdly, a person may be interim barred pending the completion of an assessment.

Any person convicted of an offence listed in schedule 2 to the bill, or with a pending charge for such an offence, will automatically be barred from working with children, if the offence was committed while the person was an adult. These offences are: serious sex offences, serious violence against a child and kidnapping of a child other than one's own. A person barred by this means is also defined as a disqualified person. The commission will automatically refuse a clearance to a person who is automatically barred, without undertaking a risk assessment. The commission will issue a bar if continuous monitoring identifies any new schedule 2 records. Any persons with a record listed in schedule 1 to the bill will be subject to assessment as to whether they present a serious risk to children. If they are assessed as presenting a serious risk they will be barred from child-related work. The commission will conduct an assessment if continuous monitoring identifies any further assessment triggers in schedule 1. Where the commission proposes to issue a bar following assessment of a schedule 1 record, it must advise the applicant of its intention to do so. The commission must invite the applicant to provide submissions about the proposed bar. If the applicant makes any submissions the commission must take them into account in making its final decision.

This is a fair process and will result in effective decision making. If the commission determines after this process to issue a bar, it must advise the applicant in writing and notify the newly barred person of his or her appeal rights. Any person who is barred or who is not authorised to work with children by this legislation and its regulations may not engage in child-related work and may be suspended or dismissed from a child-related role by his or her employer. As well as notifying the applicant that he or she has been barred, the commission will notify any employer that it is aware that the employer has engaged the applicant in child-related work or the roles defined in clauses 10 and 11. Employers and applicants will receive details of the obligations and rights resulting from the bar. This will keep children safe by making sure that employers take appropriate action to remove barred people from child-related work.

There are penalties for employers who retain a person who is either barred or not authorised to work with children in a child-related role. Penalties do not apply for roles exempted from the Working With Children Check. The commission will actively follow up employers to ensure that they do not put children at risk by employing barred people. A barred person who does not exercise his or her rights to seek a review of the bar in the Administrative Decisions Tribunal may not make a new Working With Children Check application for five years, unless there is a change in circumstances. Such a change would be withdrawal or dismissal of a pending charge against the person, a finding that the person was not guilty of the charge laid against him or her, a previous finding of guilt is quashed or set aside, and if the commission grants the person the right to an early application. A person may surrender a Working With Children Check clearance at any time and this will result in the commission cancelling the clearance. There is no refund of the application fee when a person surrenders clearance.

The parameters for reviews and appeals are set out in part 4. Apart from three exceptions, every barred person may seek a review of the bar by the Administrative Decisions Tribunal. The three situations in which a person may not seek a review are: people who have been barred for child murder, people whose barring offence is a pending charge that has not yet been heard, and people with an interim bar issued within the last six months. An application for a review must be made within 28 days of the notice that a Working With Children Check clearance has been refused—that is, the notice that the applicant is barred from child-related work. Those seeking a review of an interim bar may apply for a review once the stipulated six-month period is over. As in the current appeals process, the tribunal may order a stay on the operation of a bar, the tribunal may not award costs, appeals from the tribunal decisions lie to the Supreme Court, the onus rests on the applicant to demonstrate that he or she does not present a risk to children, and the commission is a party to all proceedings.

Matters may be reheard if the commission has new evidence. The Administrative Decisions Tribunal must consider the same issues that the commission considers in an assessment. It may determine that the person remains barred or it may order the commission to issue a clearance. The Administrative Decisions Tribunal may not issue any order with conditions. This is an important clarification of the current process where orders have, on occasion, been issued with conditions. The difficulty with conditions is that they need to be monitored and neither the commission nor any other body has statutory powers or resources for this purpose. The new Working With Children Check operates on a very simple assumption: A person is allowed to work with children or is not allowed to work with children.

The Administrative Decisions Tribunal will now need to determine whether an applicant presents a serious risk to children in the whole range of child-related work and the child-related activities as defined in clauses 10 and 11. If the tribunal cannot be sure that the applicant does not present a serious risk it will not be able to order that the applicant be granted a clearance. The commission may appeal to the Administrative Decisions Tribunal to revoke an order and the tribunal may either revoke the order or confirm it. The way risk is understood will be critical to the considerations of both the commission and the Administrative Decisions Tribunal. All adults can present a risk to children. The bill does not propose that all adults be barred from working with children because of a hidden potential for risk. Rather, the bill proposes that to bar a person from working with children the risk must be significant.

While the bill sets out the factors to be considered in an assessment and a review, the weighting given to these factors is not prescribed and is a matter of expert judgement. Expert judgement will consider the significance of the harm having been realised, whether the behaviour was beyond reasonable community norms, whether the behaviour was planned, whether the behaviour is part of a pattern of ongoing or escalating events, whether the behaviour is recent, and whether the behaviour, if repeated, would

do significant harm. Expert judgement will be applied to mitigating factors such as significant and sustained positive socialisation since the behaviour occurred, recurrence or cessation of concerning behaviours over a significant period, and genuine and sustained effort to remedy the conduct and past behaviour. Remorse on its own is not considered to be a factor that mitigates risk.

Part 5 details employer and agency obligations to provide information to the commission in relation to the Working With Children Check. Government agencies hold information that is critical for assessing risk. The information they hold will detail the age of victims, the circumstances surrounding the offending conduct and how the offender has been managed by government authorities since the offence or offences occurred. Without this information the commission cannot make an informed decision about the level of risk the applicant presents. The bill sets an obligation on government agencies to provide information about applicants being assessed for a Working With Children Check clearance. Employers and non-government agencies also hold information that will help the commission to determine risk. They have information about aspects of the applicant's life, including work, training and development, which can mitigate risks. The commission may request information from non-government agencies but is not able to compel its production.

The bill contains a new provision that allows the Director of Public Prosecutions to release information more easily. The Director of Public Prosecutions is the key source of information about why a prosecution did not proceed. This information is critically important in assessing risk, particularly where the case could not proceed because a victim was too young to give evidence or was too distressed to give evidence of a child sexual assault. Clause 34 allows the Director of Public Prosecutions to disclose this information by means of allowing risk assessors from the commission to access prosecution files to identify the relevant information. Information that is not relevant to the risk assessment may be seen in those files but may not be formally released to the commission. It will not be used to assess risk. This is an efficient process that releases the Director of Public Prosecutions from the work of identifying the required documents individually and speeds up assessments.

Part 5 allows the NSW Police Force to release criminal history information to the commission, both in initial record searches and in continuous monitoring. This will ensure that the Working With Children Check can continue to access spent convictions, charges and juvenile records as it currently does. Part 5 also provides for nominated employers to notify disciplinary matters to the commission for use as assessment triggers. The review of the commission's Act in 2010 recommended that the settings for "relevant employment proceedings" be overhauled. The review found that the broad definitions of these proceedings had led to the reporting of many low-level, minor or poorly investigated employment proceedings. The definition currently in use requires the reporting of proceedings even where a finding against the employee has not been sustained. This current definition of "reportable conduct" is aligned with the definition of "reportable conduct" in part 3A of the Ombudsman Act 1974.

This bill responds to those identified problems by redefining the definition of matters to be reported. The new disciplinary matters use a new definition. This definition is no longer identical to the definition of "reportable conduct" in part 3A of the Ombudsman Act 1974. The definition in the Ombudsman Act allows him to identify a broad range of relevant allegations made to employers, keeping children safe by ensuring appropriate management of these allegations. In accordance with the findings of the review of the Commission for Children and Young People Act 1998, the most serious workplace conduct is targeted for use in determining whether a person may work with children. The commission and the Ombudsman will continue to work closely together to protect children.

Any assessment trigger, whether a criminal matter or a disciplinary matter, must be able to sustain an appealable bar against working with children. There are two conditions that need to be met to achieve this. First, the investigation of the conduct must be sound and must have taken into account the principles of natural justice; and, second, the conduct must be of a serious nature and must have actually occurred. Unsustainable allegations will not sustain an appealable bar. Only employers whose investigation practice meets the first condition will be reporting bodies that report disciplinary matters. They will be obliged to do so by law.

The bill nominates five categories of agency that will be required to report disciplinary matters: New South Wales government agencies, as they are obliged to follow statutory processes for investigating allegations which take into account the principles of natural justice; a department or agency covered by the Public Sector Employment Management Act 2002; a registration or licensing authority constituted under an Act; an agency with whom the Ombudsman has entered into a class or kind agreement under section 25CA of the Ombudsman Act—these agreements reflect the Ombudsman's assessment that the agencies have achieved a high standard in their investigative practice—and other employers prescribed by regulation. The commission will continue to work with the Ombudsman and other authorities to ensure that employers in high-risk sectors reach the standards required to become a reporting body.

Only sexual assaults, sexual misconduct and serious physical assaults have been identified to date as meeting the second part of this requirement. The range of matters to be reported may be extended by regulation. It is envisaged that the Ombudsman will be empowered to notify additional serious conduct against children that would not otherwise be notified as a disciplinary matter. All reporting bodies will be required to report findings that sexual assault of a child or sexual misconduct with a child, including grooming a child, occurred or that serious physical violence against a child occurred. Part 6 sets out some specific functions of the commission not separately referenced in the other parts of the bill. The commission is given statutory power to retain information relating to the Working With Children Check functions: managing databases relating to reviews and appeals, employer reports of disciplinary matters and employer verifications of Working With Children Check clearances. These powers are similar to those the commission already has.

The commission will be responsible for promoting community awareness of the Working With Children Check. It will have the power to monitor and audit compliance with the requirements of the bill and the regulations, the importance of which was underlined by the Auditor General's 2010 Performance Audit of the Working With Children Check. The commission will have the power to compel the production of information for monitoring and auditing compliance to ensure that the Working With Children Check is used in accordance with the law by child-related employers and workers. Part 7 brings together the remaining powers and authorities required to make the Working With Children Check effective and efficient. Most of these provisions are simply transferred from the current legislation and protect the privacy and work of officers.

As I noted before, the new Working With Children Check provides two outcomes from a Working With Children Check application: the applicant is cleared or the applicant is barred. Employers have indicated that they must be free to suspend or

dismiss workers from child-related roles if the worker becomes barred or is not authorised to work with children under this legislation and its regulations. Clause 47 provides that a person suspended or dismissed as a result of being barred or not having the required authority to work with children may not be reinstated or re-employed, or given damages or compensation for this by any court or tribunal. This allows employers to carry out the intention of this bill to protect children without being caught by industrial rulings.

This does not mean that all applicants with an interim bar, or an appeal in progress, or a bar resulting from a pending charge, automatically will be dismissed by their employers. The Administrative Decisions Tribunal has the power to issue a stay of the bar so that the person may continue to work with children while a review of the bar is in progress. Employers with the capacity to do so may suspend a barred worker or redeploy such a worker to a non child-related role. Nevertheless, under clause 47, employers retain the right to dismiss a child-related worker who may not work with children as a result of being barred or not holding a clearance or a current application for a Working With Children Check.

Clause 52 provides the Governor with the power to make regulations to support the Act. Specifically, the Governor may regulate the information to be provided to applicants or holders of Working With Children Check clearances, the exemption of people or classes of people from the requirements of the Act, the amendment of schedules 1 and 2, where disqualifying offences and assessment requirement triggers are listed. This regulation-making power allows the Working With Children Check the flexibility to respond to emerging knowledge about risks to children. Schedule 1 lists the records that will trigger an assessment of risk. The schedule includes both criminal records and disciplinary matters.

The list of criminal records is closely modelled on the records defined in the current Working With Children Check as relevant criminal records, with minor adjustments to reflect the knowledge of risk factors developed over the 12 years of operating the current Working With Children Check. The list of disciplinary records is a focused subset of the relevant employment proceedings defined for the current Working With Children Check. The commission will provide further guidance to reporting bodies that clarifies what matters need to be reported. At present the list of disciplinary matters covers records that reporting bodies will be required to report. The Government is aware that the Ombudsman, through his role in part 3A of the Ombudsman Act 1974, will be able to provide some additional information critical to identifying risk in applicants.

The Government intends that a regulation will specify additional schedule 2 records to ensure that the Ombudsman is able to refer additional assessment triggers to the commission. Clause 37 allows more bodies to be named as reporting bodies by regulation. The commission is working with the Ombudsman to prepare this regulation. Schedule 2 lists the records that will lead to an automatic bar from working with children. The current Act includes a reference to people registered under the Child Protection (Offender Registration) Act 2000. This reference has been found to be unnecessary as all the offences that lead to registration under that Act are now individually listed in schedule 2. People who are awaiting trial for an offence listed on schedule 2 are automatically barred from working with children. These people have been charged with serious offences that are clear indicators of risk to children.

Schedule 3 to the bill provides for the transitional arrangements from the current Working With Children Check to the new Working With Children Check. The new Working With Children Check will apply immediately on commencement to all people entering a new paid child-related position. The key transitional arrangements are for people who remain in their current child-related positions. They will not immediately be required to have a Working With Children Check clearance if staying in the same position. All child-related workers, including volunteers, will need to hold a clearance within five years of the commencement of the new Working With Children Check. A regulation will establish a timetable that brings child-related sectors and workers on board in a planned way. The regulation will set out year by year which sectors, roles and types of worker will come on board.

The Commission for Children and Young People will establish this timetable after extensive consultation with peak bodies and employers in child-related sectors and an assessment of risk factors in each setting. People who hold a Certificate for Self Employed People will be able to use the certificate until its expiry but will then need a new Working With Children Check to work with children. Schedule 4 amends a variety of Acts that reference the Working With Children Check or particular features of the Working With Children Check. The new Working With Children Check will provide a fast and efficient service to the child-related community. For people with no criminal or disciplinary records, clearances will frequently be provided on the same day as the motor registry verifies applicant identity. The Commission for Children and Young People anticipates that only a small proportion of applicants will need to wait more than two weeks for their clearances. The new Working With Children Check will be operated by the Commission for Children and Young People rather than by four separate screening agencies. For the first time all the expertise on the Working With Children Check will be in one agency.

To ensure that we have the detailed settings right, the Government has committed to a two-year review of this new Working With Children Check. This review will be informed by data about the actual use of the Working With Children Check, identified risks and case reviews. The review will be supported through ongoing consultation with key stakeholders. The Government is delivering the upgrade that the community has sought. This Working With Children Check is a state-of-the-art service that puts New South Wales at the cutting edge of Working With Children Checks around Australia. I bring this bill forward confident of the strong protection it gives to children and the clear benefits it provides to both employers and workers. This is a bill that will benefit the whole community. I particularly thank the Commissioner for Children and Young People, Megan Mitchell, Virginia Neighbour and their team on demonstrating public sector excellence in the development of this bill. It is an outstanding piece of work. I commend the bill to the House.

The Hon. MARIE FICARRA (Parliamentary Secretary) [11.52 a.m.]: I support the Child Protection (Working with Children) Bill 2012. As honourable members know, this bill is intended to implement a new and improved version of the Working With Children Check that will provide more protection to the children of New South Wales and also make the entire process of obtaining, transporting and assessing Working With Children Checks simpler, more effective and better regulated. The bill is based on the 2010 review of the Commission for Children and Young People Act 1998 and recommendations implemented arising from the Auditor-General's performance audit of the Working With Children Check in 2011.

The New South Wales Government is widely recognised as a leader in the provision of modern protection laws designed to ensure the safety of our children. Ours was the first Australian State to establish a Working With Children Check procedure through the Commission for Children and Young People Act 1998. Since then, four other States have passed their own versions of this Act, with ours being their key reference. This Government will strive to keep improving and setting the example for others to follow in the context of standards applied to everyone working with children and young people. We all hope that the extraordinary bipartisan cooperation seen during the debate on the 1998 Act will transfer to the debate on this legislation and thereby demonstrate to the community our commitment and ability to establish the highest standards and procedures to protect and provide for our youth.

This bill makes four main improvements to the legislation. First, it provides the same Working With Children Check for all types of workers, be they a paid worker, a volunteer, a self-employed person or an authorised carer. The Working With Children Check will be used in all specified areas listed in the bill, but not in other areas that are not specified. For the most part, the areas and services listed are those listed in the Act, but they now specifically include school crossing supervisors. The term "child-related services" is defined as work that requires direct contact with children as the primary role regardless of whether it is supervised. Many of us would fall within that description but would not require a Working With Children Check. The Minister for Citizenship and Communities stated in his second reading speech given in the Legislative Assembly on 13 June 2012:

> The Working With Children Check is reserved for people whose work is focussed on children and whose work requires ongoing role-oriented contact with children.

Therefore, not every person whose work involves contact with children will need a Working With Children Check. Only those whose main work or service depends on direct and continuous contact with children, such as school teachers and day-care workers, are affected. The second improvement in this bill is that it allows access to a person's full criminal history rather than to a defined subset of records. It also provides for the continuous tracking of new New South Wales records after a person is cleared to work with children. This improvement should be seen as practical and warranted to monitor and manage those who work most closely with children on an ongoing basis. It will decrease the risk of having an employee sneak through the cracks by checking their criminal record even after receiving clearance and being able to cancel the employee's clearance if something on their record is missed or something is added.

Thirdly, this bill will provide the outcome of either a clearance or a bar. This outcome will create a universal standard for all Working With Children Checks. A clearance or approval of an application will be the only way in which a person will be allowed to work with children. This process no longer runs the risk of having employers engage a person who is seen to be high risk. People who are barred and who do not meet these requirements will not be allowed to work with children. Moreover, they will not be given the chance to be hired in a child-related work environment.

The bill also lists three new ways in which a person will be barred. First, a person will be barred if they have been convicted of or have a pending charge in relation to a serious offence committed as an adult. Secondly, a person may be barred due to risks made apparent by a schedule 1 assessment. Finally, a person can receive an interim bar pending the completion of their assessment. These new bars will ensure that we have the fairest and most practical process to assess applicants because the Commission for Children and Young People will still have primary responsibility for conducting all risk assessments while using the current Working With Children Check model. Requiring either a universal standard of clearance or a bar will make it clear who is acceptable and who is not acceptable to work with children. Workers and employers alike will feel confident that no high-risk people are working with them.

The fourth main improvement in this bill is that it will be easier to operate, manage and assess Working with Child Checks. Computer online systems and centralised operations have become invaluable tools in increasing the effectiveness and efficiency of Working With Children Checks. Online access will be crucial in undertaking the thorough analysis that is required in investigations and for disciplinary measures. This bill nominates the five categories of agencies that will be required to report on Working With Children Checks. It is imperative that all agencies are able to obtain the same information within the same time frame to come to a justifiable and concise decision. These four primary improvements are continuing examples of how New South Wales is still raising the bar in protecting our children and young people and enabling them to live in a caring, nurturing and safe environment.

The bill has other notable provisions, including clauses relating to clearances which will be portable and renewable and which will last for five years. Child-related employers will also be required to verify the

status of their workers' Working With Children Check through an online registrar, current employees will be covered for five years and there will be an $80 application fee for paid workers but no fee for volunteer workers. Many hundreds of thousands of volunteers are involved in almost every facet of our Australian way of life, from scouts, girl guides, the State Emergency Service, special religious educators and special ethics educators, and the list goes on. The organisations overseeing those wonderful volunteers are extremely thankful for the no-charge Working With Children Checks.

The Child Protection (Working with Children) Bill 2012 is an improvement on an already highly respected child protection standard. New South Wales continues to take positive steps forward to reduce the incidence and risk of having unqualified, and at times unethical, people working with children in our community. This legislation, once enacted, will give families in New South Wales peace of mind that this Government is doing all it can in respect of its regulatory responsibilities. I commend the bill to the House.

The Hon. SOPHIE COTSIS [12.01 p.m.]: I speak to the Child Protection (Working with Children) Bill 2012. I state at the outset that the New South Wales Labor Opposition will support the legislation. My colleague Ms Tania Mihailuk, who is the shadow Minister, spoke in the other place and provided an historical overview of the bill. The Working With Children Check was established by the Carr Government in 1998 with bipartisan support. It was the first scheme of that nature to be introduced in Australia. Most States followed New South Wales in implementing similar schemes. It is appropriate to take this opportunity to ensure that New South Wales has the strongest protection scheme possible for our children.

As the mother of two small children, I can relate to many members of our community who are concerned about this matter. I am sure that all members of this House are horrified by media reports of crimes against children. It is important that as parliamentarians we do all we can to keep children safe. The bill arises from recommendations of the 2012 review of the Commission for Children and Young People Act 1998 and the Auditor-General's performance audit of the Working With Children Checks. I note that similar Working With Children Checks are presently in force in other Australian jurisdictions, including Victoria, Queensland and the Northern Territory. I understand a scheme is in the process of implementation in Western Australia. Given the different political persuasions of those State and Territory governments, as well as the governments that took the first steps on this issue, it is clear that it is a matter that enjoys bipartisan support.

In his second reading speech Minister Dominello outlined key differences between this bill and preceding child protection laws. The bill provides the same process for all categories of workers—paid workers, volunteers, self-employed people, authorised carers and adults who are sharing their homes. The check will access full criminal histories instead of a defined subset of records and will continuously monitor New South Wales records to manage risks after a person has been cleared to work with children for criminal charges and any disciplinary reports. The checks provide for two outcomes—a clearance or a bar. If the process results in a bar, employers can no longer engage that person. The bill will streamline operating systems and centralise operations. One of the provisions of the bill includes a portable renewable clearance that can be used over a fixed period for any child-related work. The period has been set for five years and the applicant is required to seek to renew the application three months prior to its expiry.

The bill will allow the Commissioner of Police to provide information regarding potential offenders to the New South Wales Commission for Children and Young People. The provisions will assist in identifying individuals who gain clearance but then might commit a criminal offence. The Opposition welcomes that this provision aims to address any issues that might arise between sharing information between the New South Wales Police Force and the Commission for Children and Young People. The bill will require Working With Children Checks for professions and volunteers who previously were not required to undergo checks. The positions include volunteers with children's sporting teams, school crossing supervisors and adult persons who reside in the homes of authorised carers but are not carers themselves.

My colleague Ms Tania Mihailuk described a horrible case in her electorate. She talked about a long-term coach and sporting volunteer of Canterbury-Bankstown Junior Rugby League team, Les Bateman, who was charged and finally convicted of sexually assaulting a minor in 2010. It was a shocking case and for 30 years he was a monster in the midst of junior rugby league teams. He built trust among parents and, of course, among children. It is a horrific case and I am pleased that he is now behind bars. That case reminds us of how important it is to extend Working With Children Checks to volunteers who are involved with children's sporting teams.

The bill differentiates between employees who may see children during the course of their work and those who have a working relationship with children. In order to require a Working With Children Check, an

employee must have direct contact with children, which is defined as physical contact or face-to-face contact. The bill makes it an offence to engage in child-related work without active clearance or without an ongoing review before the commission. The offence carries punishment of 100 penalty units or two years' imprisonment. The same penalty applies if a person engages in child-related work while the subject of an interim bar. Similarly, employers are obligated to ensure that employees have clearance. The maximum penalty for an offence is 100 penalty units for a corporation or 50 penalty units for an individual. Different models for child protection checks have placed the responsibility for certification entirely on the employer, which is the case in Tasmania. The penalties provided in the bill ensure that it is in the interests of both the employer and the employee to have Working With Children Checks in place.

The shadow Minister requested Minister Dominello in his reply to confirm that there will be an extensive information and awareness campaign to ensure that all employers and employees are aware of their obligations under the new legislation. I understand from the shadow Minister that the Minister mentioned compliance and awareness campaigns in his speech. The Opposition would welcome further information. In particular, the Minister might consider whether local members could take a role in promoting awareness about these changes.

Under the bill, an interim bar can be issued by the Commission for Children and Young People if the commission has concerns prior to completion of a thorough review of an application. The application process is expected to take six months and in instances of paid employment that could have a significant financial impact on an employee. It is appropriate for a mechanism to be in place to review such decisions through the Administrative Decisions Tribunal. The bill will allow for access to full criminal histories instead of a defined subset of records.

I note that specific prohibited offences are outlined in schedule 2 [1] to ensure that offenders who might pose a risk to children will be excluded, referring to administrative procedures. I note that applicants will have to reapply every five years. Given that there are provisions for ongoing checks and communication of information about new offences by the New South Wales Police Force that seems to be a reasonable period. I note also that there is a fee of $80 for all non-volunteers, paid employees or potential employees. I think this fee has been determined on a cost recovery basis. I wonder if that has been confirmed in Minister Dominello's reply or whether the Parliamentary Secretary could check that.

Last week's budget projected an increase of 75,000 Working With Children Checks during the next financial year, which will bring the projected total checks to 165,000. The shadow Minister stated that she had not received an opportunity for a briefing and asked the Minister to address in reply whether additional staffing would be provided to the commission to deal with its increased workload. The shadow Minister also sought an assurance from the Minister to rule out any job cuts to commission employees who are responsible for Working With Children Checks as part of the Government's plans to cut public service numbers. She also asked the Minister to confirm that there are no plans to cut public service staff involved in Working With Children Checks.

The Legislation Review Committee considered the bill in detail and I draw the attention of the House to some of the issues raised in Digest No. 20/55. The committee referred to Parliament whether the reversal of the onus of proof in relation to an individual seeking a Working With Children Check who is found to pose a risk to the safety of children is reasonable in certain circumstances. While these are legitimate concerns, it has long been recognised in both Australian and international laws that the rights of children are paramount and, as such, where children are concerned, legislators are occasionally required to make exceptions. Furthermore, unsuccessful applicants, although subject to interim bars, are able to appeal to the Administrative Appeals Tribunal.

The Minister also referred to an exemption to parent volunteers on the basis that parents already have relationships with children in teams, clubs and at the schools their children attend in the local communities. The Opposition requests that this area should continue to be monitored. We understand the difficulties in administrating any types of checks in that area. In this regard I refer to a case recently reported in the media. In that case, which is currently before the courts, a 38-year-old man, a parent volunteer, was charged with molesting seven boys between the ages of six and eight in a Western Australian school. I repeat that the Opposition supports this legislation. The Opposition will continue to wholeheartedly support, on a bipartisan basis, any measures taken by the Government to protect children in this State.

The Hon. JAN BARHAM [12.17 p.m.]: I lead for The Greens in support of the Child Protection (Working with Children) Bill 2012. I indicate at the outset that The Greens will support this bill. It is a great

honour to debate legislation in this House in which all parties are in agreement about the roles and responsibilities of government in the protection of the people of New South Wales. As legislators we have no greater responsibility than the protection of our young people. In 2000 New South Wales was the first State in Australia to introduce a Working With Children Checks process, and we should be proud of that legacy. Since that time screening agencies have conducted more than 200 checks each year. It is often the case when a pioneer initiative is put in place that improvements evolve in its wake and a review is then undertaken. Indeed, over the past 12 years New South Wales has learnt many things from the different risk-management systems of other States. New South Wales is now proposing to put in place a better system.

The review of this process was triggered by a performance audit undertaken by the Auditor-General in 2010. A review of the Children and Young Persons (Care and Protection) Act was commissioned by then Minister Peter Primrose. Since then many have compared the merits of the New South Wales system with the risk-management systems of other States. A key issue in this bill is the turnaround of responsibility for clearance checks for those working with children. Employers previously had that responsibility; employees will now have it. Employees will now need a certificate to prove their suitability for employment in child-related workplaces. This is an important change. In the past volunteers have not been subjected to these stringent checks. Volunteers will now need to obtain such a certificate, and the commission will perform that check at no cost to them. Unfortunately, some in our society have the intent to cause harm or choose to take advantage of our young people, and to that end our risk-management system has been vulnerable. The bill will overcome that. It will enhance the risk-management process to ensure that children are protected and safe at all times.

When it comes to the safety and wellbeing of their children, parents place an incredible amount of trust in other adults. For instance, when parents drop their children off at sporting practice or at scout meetings, when they enrol their children in school or child care, they are entrusting other adults with the care and protection of their children. All levels of government should take every measure possible to ensure that trust is not misplaced and Working With Children Checks are the first line of defence in ensuring that children are not placed in situations of risk. It is important to get the system right. A number of recent reports highlighted some of the flaws and inconsistencies in that process. The Government has also noted all the submissions received during the review of the Act. In those submissions many offered their views and assessments not only of what was happening in New South Wales but also of what was happening in other States, to ensure that New South Wales has the best possible system.

Some of those who made submissions believed that they would have the opportunity to access exposure bills and see the legislation before it is presented to this House. It appears that was an old-fashioned process. It is not the way of present day democracy because in New South Wales things move quickly. The Government no longer provides the community or indeed members with that opportunity. Unfortunately, there were those who felt they could have given greater input and support for this change if they had been given the opportunity to see draft legislation in a reasonable time frame. That created a call by many for a move to slow democracy because we need to do things properly. To do things properly we must take time and create opportunity for people to look at things carefully. We will then have the confidence to move forward in support of things.

I turn now to the Auditor-General's report, which was released in February in 2010. At that time the Auditor-General tabled a performance audit into the Working With Children Check. He also made a number of conclusions, including that the Working With Children Check does not reliably identify all those who may pose a risk to children because the commission does not promote or monitor employee compliance with the Working With Children Check. He also concluded that some organisations are overly cautious in identifying positions that are checked, with a 2005 review finding that 22 per cent of checks were for positions that did not need to be checked. That means unnecessary costs were incurred by the commission for the staff who conducted those reviews. It also means there was a misunderstanding in the workplace about responsibility for the checking and who needed to be checked. So whether or not the overcautious behaviour of some employers was a misunderstanding, these matters need to be audited to find out exactly why there was a misunderstanding and some individuals were overchecked. The Auditor-General stated that employers who recruit short-term or seasonal staff, such as casual teachers and swimming coaches, are requesting Working With Children Checks for each period of employment.

We have heard from some people who were required to make up to eight applications for checks within a two-year period. Interestingly, in a world where we are seeing greater casualisation of the workforce, it is nonsensical for repeated checks to be done when a person can obtain a certificate, which is transferable, that ensures they met all the tests and are approved to work in child-related workplaces. The Auditor-General found that prohibited people cannot be employed but the commission cannot stop employers from hiring people

estimated to be of significant risk. For example, in 2008-09, 14 people were assessed as significant risks when they were employed. That must identify that something is wrong when employers are not fully aware of their responsibilities or they do not understand what it means for a person to be of significant risk and their responsibility in employing people who are so identified. The sad reality is that some employers do not realise that they hold a special role in employing people. For those employers not to understand that they may be putting children and families at risk in the community is unbelievable. However, it signifies that there is a problem with the system.

The Auditor-General also found that ongoing management of an employee considered to be of significant risk is left entirely to the employer. He stated that the commission advised employers on how to mitigate the risk a person may bring to a position and an organisation but it does not have an ongoing role of advising employers. The reports by the Auditor-General and the review by Mr Ayres concluded that New South Wales needed to change the Working With Children Checks. That is why there is strong support for a shift in focus in terms of obtaining a five-year certificate, which is transferable, that allows someone to work in child-related workplaces. Hopefully, these changes will improve the system so that young people are no longer put at risk.

I believe that the concerns raised warrant an annual report to Parliament on the matter. There should be a higher level of reporting to keep the Parliament up to date on whether there are concerns about the new system of Working With Children Checks. That would mean that it would no longer be necessary for the Ombudsman or the Auditor-General to identify and inform the Parliament of problems in the system, especially as the legislation would have benefitted from being in the public arena for a longer time to give those who made submissions during the review process an opportunity to review the draft legislation.

There are important issues relating not only to volunteers but also to foster carers, as I said. It is necessary for foster carers to undergo Working With Children Checks because—unfortunately, as we know from reports—there are risks for young people in that environment. In the foster care environment adults are dealing with young people who are vulnerable, who do not have the support of a stable family home and who have already suffered. We cannot move young people into what is meant to be a State-sanctioned safe environment in which they are put at risk and are subjected to behaviour that has a big impact on their lives. The need for Working With Children Checks is much greater in that situation.

As I mentioned before, the Government is changing the payment process for Working With Children Checks. The Government has identified that Working With Children Checks for volunteers will be free of charge. That is an important move because I am aware that the cost and time involved in undertaking such checks has meant that some volunteer organisations have simply not undertaken the checks. Sadly, some people in volunteer organisations intend to harm or take advantage of young people. Some people quickly identify opportunities to enter a workplace or organisation without being assessed as being of significant risk. The system must be changed to ensure that thorough checks are required. Importantly, those checks will be free.

In the past, public servants had their Working With Children Checks paid for by their employers—that is, the Government. Under this legislation, that will no longer be the case. However, I intend to move an amendment in Committee relating to that. Concern has been raised that the Government should take responsibility for covering the cost of Working With Children Checks for government employees. We are talking about a cost of $80 for a five-year certificate, and some people that have made representations on that matter. Another report that highlighted concerns about the Working With Children Checks was the Ombudsman's report entitled "Improving probity standards for funded organisations", dated December 2010. In that report the Ombudsman supported the call for a more rigorous system of checking the background of employees, volunteers and board members who work with children, people with disabilities and other vulnerable citizens.

The Ombudsman, as part of his inquiry, looked at the system of Working With Children Checks in New South Wales and identified that one key problem was a lack of review and a lack of up-to-date information. The Ombudsman expressed concern that the necessary monitoring of the commission was not being undertaken. With the introduction of these changes, the Government must ensure that complementary funding is available to ensure that the system is properly monitored. There is no sense in introducing a new system but not funding the review and monitoring of that system. The system of Working With Children Checks is not working as well as it could. An example is contained in the Auditor-General's Performance Audit Report 2010.

The Commissioner for Children and Young People commenced a three-year project in 2009 to verify a sample of prohibited employment declarations completed by volunteers. Of the 144 volunteers checked in the pilot project, one was found to be a prohibited person. However, further investigation found that this person was not working with children and should not have completed a prohibited employment declaration. The bill's changes will improve the system. Previously applicants were required to complete a declaration, but that was not necessary in some cases because the areas of work were not defined.

It will be necessary to educate the community about these changes. It is important that people understand these important changes and what child-related workplaces fall under the parameters identified in the bill. I have raised this matter in discussion with the commissioner's office. I believe that the areas of risk in volunteer organisations should be identified on a site listing organisations that fall within that category and require a Working With Children Check, particularly in rural and regional areas. The Child Protection (Working with Children) Bill 2012 is an important step forward and I commend the Government for taking this action, despite the fact that I believe that it could have been introduced with greater consultation in order to gain greater support and understanding in the community. I appreciate the opportunity to support the bill.

The Hon. JOHN AJAKA (Parliamentary Secretary) [12.32 p.m.], in reply: I thank members for their contribution to the debate. It is pleasing to note the support of all members. I will briefly address some of the matters that have been raised in the debate. In relation to the Hon. Jan Barham's comments, I note the suggestion of a progress report at the one year mark of the new model. In view of the fact that a full review is already slated at the two year mark, and that evidence of the experience of the new model will be collected from the first day, the Government is in a good position to further share that evidence. The Government has always been committed to a transparent approach to continued improvement of the model and to building community ownership and awareness of children's safety. Therefore, the Government commenced progress reporting at the one year mark through dedicated specific content provided by the Commission for Children and Young People. There is also the Joint Committee on Children and Young People, which is chaired by the member for Charlestown, Andrew Cornwell.

I was pleased to have the opportunity to serve on that committee myself and I am aware of the good supervisory work it undertakes. The matters raised by the Hon. Sophie Cotsis were replied to by the Minister for Citizenship and Communities, and Minister for Aboriginal Affairs in his address in reply in the other place, where he addressed to four specific matters that were raised by the member for Bankstown. I refer the Hon. Sophie Cotsis to that reply. The bill establishes a new Working With Children Check that will keep our children safer by checking a broader range of workers and by allowing more high-risk applicants to be barred. This bill ensures fair and transparent decision-making by providing processes for applicants who are refused the Working With Children Check clearance to appeal to the Administrative Decisions Tribunal. The Child Protection (Working with Children) Bill 2012 simplifies and clarifies employer and worker obligations for the Working With Children Check. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Jennifer Gardiner): Order! If there is no objection I propose to deal with the bill in parts.

Parts 1 and 2 [Clauses 1 to 11] agreed to.

The Hon. JAN BARHAM [12.36 p.m.]: I move The Greens amendment No.1 on sheet C2012-112.

No. 1 Page 11, clause 13. Insert after line 3:

(5) Any application fee payable by an applicant who is a member of staff of a public sector service (within the meaning of the Public Sector Employment and Management Act 2002) is payable by the applicant's employer and not by the applicant.

This is a matter of great concern for people who work for the Government. Under this new legislation public sector workers will be required to pay for the Working With Children Check required for them to work in

child-related workplaces. Public sector workers work in the areas of disability and childcare and in schools. As well as the other impositions and requirements that are put upon them, these workers are now going to be required to pay for the Working With Children Check themselves.

The Greens believe that placing this burden on people who work in the public sector is an unnecessary and unwarranted imposition. Such people make an enormous contribution to the lives of the citizens of New South Wales, but particularly to the care and protection of children. I appeal to members of the House to recognise that this is a major change that has not been well advertised to those workers. They have not seen the bill or had adequate time to understand these changes. There is broad support from many in the public sector for this bill, which is designed to ensure that we have greater protection of young people; however, it is an unfortunate consequence of this legislation that a fee will now be paid by those workers. That change has not been publicised. It is an additional burden on the people on whom we rely so heavily to protect, educate and support young people in New South Wales.

The Hon. JOHN AJAKA (Parliamentary Secretary) [12.37 p.m.]: The Government does not support the amendment. The new Working With Children Check delivers significant improvements to the safety of children in New South Wales. It provides full checking for volunteers and for a generally broader range of workers. The benefits of the new check come at a cost, which is why the new Working With Children Check imposes a fee for paid workers. This is how every other government in Australia funds its Working With Children Check. To adopt the check that other States, use New South Wales must adopt the funding model for that check. The amendment does not provide equity for workers in New South Wales. There is no reason for public servants, who have generally excellent pay and conditions, to be privileged by not paying for their own Working With Children Checks. Why do The Greens propose to privilege this group over any other workers—for example, lower paid child-care workers?

The cost to the Government would be substantial. The $80 fee is the average cost of undertaking a Working With Children Check. The Government has agreed to fund the check for volunteers. The argument here is clear: volunteers are not paid for their work and should not have to pay for the privilege of offering their time and expertise free to the community. The Government would need to find $19.2 million per annum to fully fund the check for both paid and volunteer workers. The revenue from fees from paid workers will be approximately $12 million. There is no additional $12 million for the Government to put into this program. As with other jurisdictions, New South Wales funds this improved and extended Working With Children Check through user fees. These fees for paid workers must apply universally and without exception as in other jurisdictions.

No user fees would mean that the Government would not have the capacity to extend this new Working With Children Check to volunteers or the other paid workers now included for the first time. Essentially, any reduction in the user fee built into this model would undermine the Government's capacity to operate the new model at all. The new Working With Children Check transfers the ownership of the check from the employer to the worker. The worker may use his or her clearance for five years in any child-related role—for volunteering, paid work with any employer, foster care and so on. The worker, not the employer, is responsible for obtaining the clearance. A worker paying for his or her own clearance may seek a tax deduction where the worker needs a clearance to work. The proposed amendment makes no sense in this new model. Now the worker pays the fee. The worker receives the benefit for five years regardless of who is employing them. Many jobs require a person to hold a licence or an authority. It is not standard practice for government or other employers to fund these licences.

The Hon. SOPHIE COTSIS [12.41 p.m.]: The Opposition opposes The Greens amendment to require New South Wales departments to cover the cost of Working With Children Checks for their employees. We acknowledge the admirable intent of this amendment but note that there are many workers in the community private sector at childcare agencies and other non-government organisations who are often paid even less than public sector workers and so it is a matter of inequality to provide an exemption to only public sector workers. We expect that the majority of New South Wales departments would already cover the cost of their employees. We call on the Government to confirm this. The Opposition notes that the Government proposes that volunteers be exempt from fees for Working With Children Checks. Minister Dominello has confirmed that those fees which apply only to paid employment will be on a partial cost-recovery basis with the Government covering the rest of the expense.

The Hon. PAUL GREEN [12.42 p.m.]: I also acknowledge that this is an admirable amendment moved by the Hon. Jan Barham, but on this occasion, for the same reason noted previously—that it is

inequitable—we oppose the amendment. The private sector has to pay for it and childcare teachers have to pay for their fees. It is an investment, not a cost. It goes on workers' résumés and it can be used time and again in new job applications. It also is tax deductible. We will not be supporting this amendment.

Dr JOHN KAYE [12.43 p.m.]: I support The Greens amendment No. 1. The Parliamentary Secretary suggested that this amendment would cost $19.2 million a year—

The Hon. John Ajaka: I didn't say that.

Dr JOHN KAYE: What did you say?

The Hon. John Ajaka: I said the total cost of the scheme is $19.2 million, which includes fees paid for the volunteers.

Dr JOHN KAYE: Okay. I misunderstood. That covers about a million workers. I understand now what the Parliamentary Secretary is saying. If we take the public sector education workforce, it is the teachers who require this coverage. My estimate is that this would be less than a 0.01 per cent increase in the education budget. It would be hardly seen. My rough estimate is that it is about $1.2 million a year, which is a really marginal amount. The issue here is: Do we demand that public sector workers get this coverage and then say, "Sorry, you have to pay it yourself"? It is unfair for the permanent workforce—there is a reasonable anticipation that they will continue in their job—to be asked to pay an additional $80 every four years in order to continue their work. This is not money that comes out of the scheme; it is money that would come out of the public education budget.

The amendment as drafted by the Hon. Jan Barham is very clear. It says that it is payable by the applicant's employer and not by the applicant. It is not paid by the scheme; it is not a fee waiver. It is just saying that the applicant's employer has to pay it. It does not interfere in any way with the cost of the scheme. The amount of money coming in in respect of public sector teachers, nurses and child-care workers would still be the same. It is just that the money to pay for their check would come from the budget of their employers. It is a small matter but it is a matter of justice for those employees, particularly in an environment in which all of those employees have seen their pay increases capped at 2.5 per cent and they are about to see their workers compensation rights cut quite dramatically. This is an important commitment to the public sector workforce.

The Hon. JOHN AJAKA (Parliamentary Secretary) [12.45 p.m.]: Just to be clear so there is no confusion for Dr John Kaye, I stated that the Government would need to find $19.2 million per annum to fully fund the check for both paid and volunteer workers. The revenue raised from fees paid by workers will be approximately $12 million. There is no additional $12 million for the Government to put into this program.

The Hon. JAN BARHAM [12.46 p.m.], in reply: I would like to respond to some of the comments that have been made and pick up on the points made by my colleague Dr John Kaye. This is not an additional cost to the scheme. From what has been said there is an obvious saving in some departments and agencies that will no longer be required as employers to do those checks or make a payment. It is a bit disingenuous to make a point about additional costs that would be generated when these aspects have not been revealed. I reiterate that this matter has not been properly disclosed so that people can have a thorough look at it. It is not correct to say it would be a further burden on the scheme for the commission, because these workplace checks would be undertaken by the agencies that employ the workers. We are talking about the Department of Education, the Department of Health, and the Department of Ageing and Disability—the areas where public sector workers require these checks. There would be a great benefit to those workers in this payment being made.

I agree wholeheartedly with my colleague that those workers often spend their whole working lives in the public sector serving the community, and they give more than is required. They are being disadvantaged by this proposal. It is not as though they are going to jump jobs to the private sector and use the certificate that the Government has paid for. We are talking about people who are genuinely committed to the public sector. That is their commitment in life. They are working in areas where they do not get benefits and very often do not get the same recognition as people working in the private sector. These are people who make a huge commitment to the

public sector and the wellbeing of all people in society. This would be a small contribution to them. We will watch very closely in the estimates committee for the figures for the savings across government agencies through not having to pay for these checks. We will see the meanness of government in not allowing that payment to be made by the agencies.

Question—That The Greens amendment No. 1 [C2012-112] be agreed to—put.

The Committee divided.

Ayes, 5

Mr Buckingham
Ms Faehrmann
Mr Shoebridge

Tellers,
Ms Barham
Dr Kaye

Noes, 29

Mr Ajaka	Mr Khan	Mr Roozendaal
Mr Blair	Mr Lynn	Mr Searle
Mr Borsak	Mr MacDonald	Mr Secord
Mr Brown	Mrs Maclaren-Jones	Ms Sharpe
Mr Colless	Mr Mason-Cox	Mr Veitch
Ms Cotsis	Mrs Mitchell	Ms Westwood
Ms Ficarra	Mr Moselmane	Mr Whan
Mr Gallacher	Reverend Nile	*Tellers,*
Mr Gay	Mr Pearce	Mr Donnelly
Mr Green	Mr Primrose	Dr Phelps

Question resolved in the negative.

The Greens amendment No. 1 [C2012-112] negatived.

Part 3 [Clauses 12 to 25] agreed to.

Parts 4 to 7 [Clauses 26 to 53] agreed to.

Schedules 1 to 5 agreed to.

Title agreed to.

Bill reported from committee without amendment.

Adoption of Report

Motion by the Hon. John Ajaka, on behalf of the Hon. Michael Gallacher, agreed to:

That the report be adopted.

Third Reading

Motion by the Hon. John Ajaka, on behalf of the Hon. Michael Gallacher, agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Membership

The PRESIDENT: I report receipt of the following message from the Legislative Assembly:

MR PRESIDENT

The Legislative Assembly has this day agreed to the following resolution:

That:

(1) Clause (4) of the resolution of 22 June 2011 appointing the Joint Standing Committee on Electoral Matters be amended to read as follows:

"(4) The Committee consists of ten members, as follows:

(a) five members of the Legislative Assembly; and

(b) five members of the Legislative Council."

(2) A message be sent acquainting the Legislative Council of the resolution and requesting the Legislative Council to pass a similar resolution.

(3) Should the Legislative Council agreed to amend the committee's terms of reference:

(a) Mr Daryl Maguire and Mr Jai Rowell; and

(b) One member nominated by the Leader of the Opposition,

be appointed to serve on such committee as the additional members of the Legislative Assembly.

Legislative Assembly
21 June 2012

Shelley Hancock
Speaker

Motion by the Hon. Duncan Gay agreed to:

That this House agrees with the request of the Legislative Assembly in its message dated 21 June 2012 that clause (4) of the resolution of 22 June 2011 appointing the Joint Standing Committee on Electoral Matters be amended to read as follows:

(4) The Committee consists of ten members, as follows:

(a) five members of the Legislative Assembly, and

(b) five members of the Legislative Council."

Message forwarded to the Legislative Assembly advising it of the resolution.

[*The President left the chair at 1.03 p.m. The House resumed at 2.30 p.m.*]

Pursuant to sessional orders business interrupted at 2.30 p.m. for questions.

QUESTIONS WITHOUT NOTICE

PACIFIC HIGHWAY UPGRADE

The Hon. LUKE FOLEY: My question is directed to the Minister for Roads and Ports. Given the promise the Premier made in Kempsey on 8 March 2011 that the New South Wales Liberals and Nationals are committed to completing the upgrade of the Pacific Highway by 2016, why has he not done his fair share and matched the Federal Government funding to get this road completed?

The Hon. Michael Gallacher: He is the best parliamentary secretary you have ever had.

The Hon. DUNCAN GAY: He is the best parliamentary secretary. I have been following the wanderings of Anthony Albanese along the Pacific Highway in the past week. In Queensland—

The Hon. Greg Donnelly: That is against the law, Duncan.

The PRESIDENT: Order!

The Hon. DUNCAN GAY: I would have thought those opposite would be interested in the wanderings of the lost tribe. When Anthony got to Queensland last week he said, "Here is Can-Do Campbell—he can do. We will put some of the money that we have into the Pacific Highway. There might be some for Queensland and there could be some for Victoria." Three days later, he contacted the *Port Macquarie News* and was reported in an article as saying, "I have locked that $3.5 billion into the Pacific Highway". That is a lot of money and certainly well appreciated—

The Hon. Penny Sharpe: Where's yours?

The Hon. DUNCAN GAY: Ours is in the budget, if you read it, love. That would be beyond you. You are the one who wanted to take money—

The Hon. Eric Roozendaal: Point of order: I find the sexist expression "love" offensive. I believe it is not parliamentary to address any member in that sort of sexist tone and I believe the honourable member should withdraw.

The Hon. DUNCAN GAY: Sorry, sweetheart.

The Hon. Eric Roozendaal: He is doing it again.

The Hon. Greg Donnelly: What about the petals over there?

The PRESIDENT: Order! I call the Hon. Greg Donnelly to order for the first time. Was the Hon. Penny Sharpe offended?

The Hon. Penny Sharpe: Yes.

The Hon. DUNCAN GAY: If the honourable member is offended, I withdraw. Of course, the people of western Sydney would be offended as well. Because their Federal Minister stole $2.31 billion from New South Wales, the member, at his behest, wants the money that we are putting into western Sydney to go to the Pacific Highway to cover up what Albo stole from the people of northern New South Wales. I was distracted for a moment, but I am back to the wanderings of the lost tribe of Albo. There he was, having finally got the story into the *Port Macquarie News*. I thought it was a good story and they were good words. In fact, I responded, as a person should in this case—

The Hon. Penny Sharpe: Point of order—

The Hon. DUNCAN GAY: Dear me, you will be hard-pressed on this one. You don't want him to be praised.

The Hon. Penny Sharpe: I raise the issue of relevance. The Opposition has asked whether the Government stands by the promise made by the Premier, and the Minister has not gone anywhere close to answering that question.

The Hon. DUNCAN GAY: I am on the Pacific Highway. You were asleep.

The PRESIDENT: Order! The Minister was being generally relevant.

The Hon. DUNCAN GAY: I know the member is feeling the hurt because we will be writing a letter to the editor—and to everyone in the western suburbs—reminding them of the care that the Labor Party takes in western Sydney. Back to the Pacific Highway— [*Time expired.*]

WESTPAC LIFE SAVER RESCUE HELICOPTER

The Hon. MARIE FICARRA: My question is directed to the Minister for Police and Emergency Services. Can the Minister update the House on the funding arrangements for the Westpac Life Saver Rescue helicopter?

The Hon. MICHAEL GALLACHER: I am pleased to inform the House about this Government's commitment to one of the State's most iconic symbols of water safety, the Westpac Life Saver Rescue Helicopter. This year the New South Wales Government will contribute an extra $1.5 million in additional funding for this vital service to continue its lifesaving operations. This funding ensures that the Westpac rescue helicopter will continue its 24/7 operations in the Greater Sydney region and a second service on the New South Wales South Coast operating in daytime all year round. On Monday I was delighted to visit the home base of the rescue helicopter with the Premier, the Minister for Sport and Recreation and the member for Coogee to announce this $1.5 million funding commitment by the New South Wales Liberal-Nationals Government.

Established nearly 40 years ago, the Westpac rescue helicopter, which is owned by Surf Life Saving Australia, has played a vital role in some of the most significant events in our history, such as the 1998 Sydney to Hobart yacht race, the Waterfall train disaster, and recently the floods in Moree, the South Coast and Wagga Wagga. We are all familiar with that footage. In providing its services, the Westpac rescue helicopter and Surf Life Saving New South Wales work closely with other agencies, including the NSW Police Force, Fire and Rescue NSW, Rural Fire Service, State Emergency Service and Australian Search and Rescue, in providing rapid-response rescue services.

Funding for the Westpac helicopter is provided through four revenue streams: fundraising, Westpac sponsorship, operational funding and interest. The funding provided by the Government will supplement this. Since its inception, the Westpac Life Saver Rescue Helicopter has been involved in more than 22,000 rescue operations—337 in the last year alone. Recently the helicopter was deployed in the search for missing rock fishermen on the Central Coast, and I am sure all members are familiar with the tragic footage that was seen over the weekend and in the past couple of days. I am informed by the State Emergency Service that during the recent flood events the rescue helicopter was called on for a number of rescue missions, including rescuing a male from the roof of his car near Narrandera. The dramatic footage of that rescue demonstrates the skill of the Westpac crew. The Westpac helicopter is one of few services that can provide night rescue services and it also runs crucial winch-capable flood rescue operations for the New South Wales State Emergency Service in particular, and other emergency services.

The additional funding that this Government is providing will ensure that the helicopter continues to operate its Sydney night-time operations, which make up nearly half of all its missions. It will also enable the helicopter to continue its vital work in reducing the number of drownings in the community as well responding to natural disasters and other major emergencies. Funding for the Westpac Life Saver Rescue Helicopter is being provided for 2012-13 and the Government is commissioning an independent review to determine how we can ensure the rescue helicopter can continue to provide its services to the community into the future. This is unlike those opposite, who sought a short-term response simply to get through the 2011 election. This Government is working to ensure the future of the service. With these additional funds, the Westpac Life Saver Rescue Helicopter will continue to play an important role in saving the lives of men, women and children in our community.

PACIFIC HIGHWAY UPGRADE

The Hon. ADAM SEARLE: I direct my question to the Minister for Roads and Ports. Given that the Deputy Premier told the *Coffs Harbour Advocate* on 31 March 2011 that, "The NSW Liberals and Nationals are committed to road safety and plan for the upgrade of the Pacific Highway to be completed by 2016", why has the Government not matched Federal Government funding to get the road completed?

The Hon. DUNCAN GAY: The comment by the Deputy Premier was absolutely proper, and I totally support it. When talking about funding for the Pacific Highway and percentages, it is interesting to note who the responsible Minister was at that time. The Hon. Walt Secord would have worked for him. He would have organised his itinerary on a daily basis.

The Hon. Michael Gallacher: Who was it?

The Hon. DUNCAN GAY: David Campbell. He would also have helped to write his press releases. The Hon. Eric Roozendaal would have been in Cabinet with him. The former member for Monaro, who is sitting there on the losers' lounge—

The Hon. Eric Roozendaal: Point of order: The Minister is rattling off members of the former Cabinet. That has no relevance to the question he was asked.

The PRESIDENT: Order! Previous Presidents have ruled consistently that some generality is allowed when answering questions but the majority of the answer must be relevant. Hence, the requirement that Ministers be generally relevant in the answers that they give.

The Hon. DUNCAN GAY: The question was about the split of Pacific Highway funding. There can be no doubt about that after reading the document provided to the Federal Parliament last week. After Anthony Albanese had returned from his wanderings across the country and the radio waves, musing about the Pacific Highway—and changing his mind on a daily basis as he went—he decided he would do a hit. So he got his good friend—that friend of the Labor Party—the member for Lyne, Rob Oakeshott, to ask him a Dorothy Dixer. In the answer to the Dorothy Dixer he tabled a document. That document was correspondence from David Campbell to Anthony Albanese, dated 11 December 2009. I will read the penultimate and the last paragraph.

The Hon. Penny Sharpe: Very selectively quoted.

The Hon. DUNCAN GAY: No, I will read the second and third last paragraphs of that document. No, I will read—

The Hon. Eric Roozendaal: Table it.

The Hon. DUNCAN GAY: It was already tabled in the Federal Parliament by Albo. I quote:

> If the commitments detailed above are not made within the timetable outlined, the opportunity to complete the upgrade in 2016 will quickly become unachievable. Subject to your agreement to the above course of action, I will undertake to seek confirmation of a 20 per cent New South Wales …commitment to the additional funding required.

The Hon. Dr Peter Phelps: How much?

The Hon. DUNCAN GAY: I repeat: 20 per cent. It continues:

> This would be consistent with the funding arrangements on many other national land transport network projects in New South Wales and our recent agreement for funding preconstruction for Frederickton to Eungai.

There we have it. The friend of those opposite—the former Labor member; the one they work closely with day and night—said that unless it is 80:20 we cannot do 2016. It cannot be any clearer than that. This document was tabled by Albo himself. [*Time expired*.]

WORKERS COMPENSATION SCHEME

Mr DAVID SHOEBRIDGE: I direct my question to the Minister for Police and Emergency Services. When will the Minister meet with firefighters, and if possible paramedics, to discuss their very real concerns about being excluded from protections in the workers compensation changes that the Government is providing to police, the Rural Fire Service and the State Emergency Service. Or will the Minister not answer the question?

The Hon. Rick Colless: Point of order: I submit that the question is out of order because it is seeking information about a bill that is before the House.

The Hon. Steve Whan: To the point of order: The question related to industrial action that is underway at the moment. It did not mention the bill specifically.

The Hon. Michael Gallacher: It is predicated on the outcomes of the bill.

The Hon. Steve Whan: Are you going to run away from this question?

Mr David Shoebridge: To the point of order: The question is about meeting with firefighters. We know that industrial action is on and that there has been a request from the firefighters. It is a very simple question. Will the Minister answer it? When will the Minister meet with firefighters about the industrial action?

The Hon. Michael Gallacher: There is a question before the Chair first.

Mr David Shoebridge: Further to the point of order: The question by no means asks the Minister to anticipate debate on the bill. The question is not about the content of the bill; it is not about the specifics of the bill. The question is simply about meeting with firefighters to deal with their very real concerns, which has led to industrial action on the streets of Sydney today.

The PRESIDENT: Order! If the Minister wishes to answer the question without anticipating debate on the bill the Minister may do so; a fine line can be drawn. However, the question would be out of order if it anticipated discussion. Therefore, to the extent that the Minister feels able to answer it without anticipating debate, I will allow the question.

The Hon. MICHAEL GALLACHER: There is no doubt that debate about aspects of any piece of legislation in and outside this House is an important part of the democratic process. The Government will always be involved and participate in that debate, but it is predicated on one thing. When one participates in a discussion to try to resolve issues, one does so in good faith. One does it with a degree of hope that both sides will bargain fairly, put their cases fairly, to ensure that both cases are heard. But when you put community safety at risk, you do away with your right to sit at that table at that time. Those who listened to the Premier earlier heard him say that, and now they are hearing it from me. As a Government, we will continue in good faith to talk to people about their issues. But while those negotiations were underway—they have not been finalised—the community has been put at risk. That is completely and totally unacceptable.

The Hon. Luke Foley: Point of order: I say to the Leader of the Government that when he puts workers' safety at risk he loses all moral authority to govern this State.

The Hon. Duncan Gay: To the point of order: The Leader of the Opposition is making a debating point.

The PRESIDENT: Order! There is no point of order.

Mr DAVID SHOEBRIDGE: I ask a supplementary question. Will the Minister elucidate his answer by describing why he meets with police when they take industrial reaction but he refuses to meet with the firefighters when they take industrial action? Or is there a new rule for firefighters?

The Hon. MICHAEL GALLACHER: The police did not put public safety at risk. At the end of the day, during the negotiations they did not put public safety at risk. I make one observation, as we continue to watch the machinations of the fight between the Labor Party and The Greens to control the unions. We have been in question time for 20 minutes now and not one of you fools has asked me a question—only The Greens. You gutless fools! We have been in question time for 20 minutes and you have not asked a question.

The PRESIDENT: Order!

The Hon. MICHAEL GALLACHER: Take your pillow and go to sleep.

The Hon. Peter Primrose: You're the gutless wonder.

The PRESIDENT: Order! I call the Minister for Police and Emergency Services to order for the first time. I call the Hon. Peter Primrose to order for the first time.

The Hon. Peter Primrose: He's still a gutless wonder. He's prepared to use—

The PRESIDENT: Order! I understand that this is a matter of considerable passion and, indeed, controversy. However, there is no excuse for disorderly behaviour. I ask members to try, as far as possible, to engage in civil and orderly debate in this Chamber.

THE SPIT BRIDGE UPGRADE

The Hon. JOHN AJAKA: My question is directed to the Minister for Roads and Ports. Will the Minister update the House on The Spit Bridge upgrade works?

The Hon. DUNCAN GAY: I take this opportunity to remind the motorists and boaters of Sydney of the changed traffic conditions on and under The Spit Bridge during work on the bridge span lift system. This is important work. Frankly, the work should have been done years ago. In June 2008, when the Hon. Eric

Roozendaal was the Minister for Roads, there was a major problem with The Spit Bridge. Members will remember that the bridge got wedged open one night, leaving commuters fuming. I quote a *Sydney Morning Herald* article at the time:

> Commuters left spitting chips right back to the beaches
>
> THOUSANDS of commuters were left fuming last night when Spit Bridge—the narrow road linking the northern beaches to the rest of Sydney—was wedged open by an electrical fault at 7.30 p.m.
>
> An electrician arrived about 9pm to repair the electrical fault, after being delayed by the gridlock. Shortly after 10pm, the bridge re-opened to traffic.

The PRESIDENT: Order! I call the Hon. Greg Donnelly to order for the first time.

The Hon. DUNCAN GAY: The article continued:

> At 10pm traffic was still delayed along Military Road, Mosman, and in surrounding streets.
>
> The NSW Government, under pressure to fix the State's ageing transport infrastructure, broke election promises to widen the bridge and upgrade its electrical opening mechanism last year.

I could go on, but this snippet—and it is only a snippet—highlights the point: The former State Labor Government and its Minister neglected our State's infrastructure and broke election promises.

The Hon. Peter Primrose: It's not a convention that you have to follow.

The PRESIDENT: Order! I call the Hon. Peter Primrose to order for the second time.

The Hon. DUNCAN GAY: It has taken a New South Wales Liberal-Nationals Government to deliver the upgrades needed to get this State moving again. Roads and Maritime Services engaged a contractor to upgrade the Spit Bridge drive system, which opens and closes the bridge. Between 1.00 a.m. and 4.00 a.m. on 18 June the work was carried out to remove the existing drive system and install a new gearbox and drive system. While the work was completed on 18 June, the system will need to be tested, and that will be done on Monday 2 July.

The PRESIDENT: Order! I call the Hon. Steve Whan to order for the first time.

The Hon. DUNCAN GAY: As a result, the road and pedestrian path will be closed to motorists, pedestrians and cyclists for up to three hours between 1.00 a.m. and 4.00 a.m. on Monday 2 July. The bridge will remain closed to maritime traffic until the testing is completed. Partial road closures will be in place for up to three hours before and two hours after the full closure. Road users can still access the bridge during partial closures. Motorists should be aware that traffic controls and a 40 kilometres an hour speed limit will be in place. During the closure heavy vehicles will be diverted via the Pacific Highway and Mona Vale Road, and light vehicles will be able to use the Pacific Highway and Boundary Road as alternative routes. [*Time expired.*]

PACIFIC HIGHWAY UPGRADE

The Hon. PENNY SHARPE: My question is addressed to Minister for Roads and Ports. I refer to comments made by the member for Coffs Harbour in the *Sydney Morning Herald* on 21 October 2005, where he said:

> What I care about is the Pacific Highway being used cynically as a political tool while people are dying.

Will the Minister support the call by the member for Coffs Harbour, start working constructively with the Federal Government and put community safety first by getting on with the job of completing the Pacific Highway upgrade?

The Hon. DUNCAN GAY: Instead of trying to give away the hard-earned money from the western suburbs of Sydney, if the Hon. Penny Sharpe had read the local North Coast papers and the *Hansard* for the other place she would know that the member for Coffs Harbour and I are on exactly the same page. We are working hand in hand; we are as one on this issue. It is all good news from the Government. The member for Coffs Harbour was pleased when he saw the New South Wales roads budget. After members opposite left us with a $5.2-billion deficit—the black hole—we shook every tree to come up with $5 billion for projects on roads across the State where people are losing their lives—

The Hon. Lynda Voltz: Point of order—

The Hon. DUNCAN GAY: Members opposite do not like good news.

The Hon. Lynda Voltz: It is impossible to hear the Minister's response because of the level of noise in the Chamber and the fact that the Minister is not facing towards the microphones.

The Hon. DUNCAN GAY: To the point of order: Every day when I am answering questions members opposite take political points of order simply to stop the answer. Members opposite do not like the answers. The noise was coming from the Opposition benches.

The Hon. Lynda Voltz: Further to the point of order: My main point of order was the amount of noise in the Chamber.

The PRESIDENT: Order! I took that to be the main thrust of the member's point of order. Question time has been particularly noisy today, mainly from one side of the House but also to some extent from the other. I ask members to respect question time, the purpose of which is to obtain information.

The Hon. DUNCAN GAY: Members opposite have been getting good information—information that is important to the people of New South Wales—about the Government's record spending on roads. A road spend of $5 billion instead of $1 billion for the second consecutive budget is outstanding, considering where the Hon. Eric Roozendaal left us. Evil Eric made a mess of New South Wales.

The Hon. Eric Roozendaal: Point of order—

The PRESIDENT: Order! I anticipate the point of order of the Hon. Eric Roozendaal. I remind the Minister to refer to members by their correct titles.

The Hon. Michael Gallacher: The Hon. Evil Eric Roozendaal.

The Hon. DUNCAN GAY: The Hon. Eric Roozendaal never got within a bull's roar of doing anything good for New South Wales. We thank Eric every day for the change in government. We have provided money and common sense. The people of New South Wales must forgive me for standing up for them against the Federal Labor Party and their lackeys in New South Wales. The suckhole opposite wants to remove money from New South Wales.

The Hon. Luke Foley: Point of order: I would ask the gutless Minister for Roads and Ports—a man who can only ever dish it out but never take it—to withdraw that comment.

The Hon. DUNCAN GAY: I counter sue—I am offended as well.

The PRESIDENT: Order! I would be grateful if the Minister and the Hon. Luke Foley both withdrew their comments.

The Hon. DUNCAN GAY: I withdraw.

The Hon. Luke Foley: I withdraw.

The Hon. PENNY SHARPE: I ask a supplementary question. Given that the Minister has confirmed that both he and the member for Coffs Harbour are breaking their commitment to funding on the Pacific Highway, can he please elucidate his answer as to how the duplication is going to be completed by 2016?

The Hon. DUNCAN GAY: Normally I would ask to have such a question ruled out of order, but because of the slur and the deliberate distortion within it I will respond. At no time did we accept that we have broken our word. In fact, the only people who have broken their word are members of the Federal Government—they moved from 18:20 to 50:50. The Government has shaken the trees; we have $1.5 billion going forward and the works will happen to 2014. I am having trouble speaking above this noise—the union mates of the Labor Party and The Greens are using fire tenders to drive around Parliament House when they should be used to protect the community.

The PRESIDENT: Order! I would be grateful if members who are seated on both sides of the central table would remember that the middle of the three microphones does not amplify; it is only for the purposes of Hansard. The only microphones that amplify are those at the lecterns.

NATIONAL SCHOOL CHAPLAINCY PROGRAM

Reverend the Hon. FRED NILE: I address my question to the Minister for Finance and Services, and Minister for the Illawarra. Is the Government aware of the recent High Court ruling on the School Chaplaincy program and the potential problems the Federal Government may now face in directly funding that and other schemes? Is the New South Wales Government willing to administer the School Chaplaincy program, given the Federal Government's commitment to continue providing the funding needed? Will the New South Wales Government raise the issue with the Federal Government? What other implications does the High Court ruling have for Federal funding in New South Wales, as the Federal Government is now to do funding through State Governments?

The Hon. GREG PEARCE: I thank the honourable member for this important question. It goes to significant issues of constitutional law and the rights of States and the Commonwealth to control their own expenditure and to meet their responsibilities. On 20 June 2012 the High Court of Australia ruled that the National School Chaplaincy program is constitutionally invalid because it exceeds the Commonwealth's funding powers. This decision may have a widespread effect on other Commonwealth programs, the School Chaplaincy program being just one vehicle for a widespread constitutional principle. I am seeking advice on the ramifications of the High Court's decision. In light of that decision, the Government is willing to work with the Commonwealth Government to ensure that our students do not miss out.

The National School Chaplaincy program is administered by the Australian Government's Department of Education, Employment and Workplace Relations. Schools were able to seek funding, through the program, for school chaplains or student welfare workers. During 2010-11 the Commonwealth Government undertook a national consultation process regarding the chaplaincy program. The best thing I can do is to seek advice as to the ramifications and bring further information to the House at a later date.

GOVERNMENT PROCUREMENT

The Hon. SCOT MacDONALD: My question is addressed to the hard-working Minister for Finance and Services.

The Hon. Luke Foley: Point of order: The question is out of order because it contains an ironical expression.

The PRESIDENT: Order! I do not uphold the point of order.

The Hon. SCOT MacDONALD: Will the Minister advise the House on the future procurement arrangements for Contract 2020 ICT Services?

The Hon. GREG PEARCE: Over the past two months I have been keeping honourable members informed of the Government's procurement reforms. I noted, at the outset, our commitment to overhauling the system for purchasing goods and services. The Government is moving to a more risk-based approach to procurement, focused on outcomes. We specifically aim to open up procurement to small and medium enterprises and service providers in regional areas by making the process of doing business with government simple and seamless. We are doing this through a range of different actions. We have already announced the removal of the 2.5 per cent management fee and we have introduced a new low-risk category to streamline the prequalification process. We have removed the mandatory requirement for professional indemnity insurance when that is not necessary and we are simplifying contracts and tender documents.

I am pleased to inform the House that the Department of Finance and Services is developing a procurement model for Contract 2020 ICT Services that puts these new arrangements into action. The proposed new model for the 2020 contract will streamline many of the supplier appointment and assessment processes. These have been developed in consultation with the Australian Information Industry Association and suppliers and are based on a prequalification structure, instead of the current panel arrangement and tender requirements. Businesses will see the changes with a new, simplified, online registration and application process, reducing the time and effort taken for small to medium enterprises to become eligible to provide their services to Government.

The Hon. Peter Primrose: Point of order: I am having difficulty hearing the Minister. I presume it is both as a consequence of his speaking lightly but also because of the industrial action being taken in relation to the Government's workers compensation legislation outside this building.

The Hon. Dr Peter Phelps: To the point of order: Does this, in fact, constitute a contempt of Parliament? It appears to be a deliberate attempt to try to interrupt the proceedings of the House.

The PRESIDENT: Order! I thank both members for their contributions. I can hear the Minister clearly.

The Hon. GREG PEARCE: I might, as an aside, suggest that that level of noise outside is partly because of the Government's excellent procurement reforms, which have allowed us to provide such good equipment for the House. New suppliers will be able to apply for business and enter the market at any time. This will not only help small and medium businesses gain access to Government work but also in the ever-changing information, communications and technology environment it will ensure the Government has access to the best and most innovative products available on the market. A two-tiered accreditation approach will be adopted, based on contract value and client assessment of contract risk, whereby suppliers may register to conduct low-value, low-risk contracts or high-value, high-risk contracts.

Existing information, communications and technology 2020 suppliers will be automatically accredited under both tiers. Simplified contract terms and conditions will be introduced to reduce the complexity of procurement arrangements between industry and the Government. This represents a significant improvement on the existing Contract 2020 panel arrangement, which has been fixed for more than three years without a supplier refresh. The future procurement arrangements for Contract 2020 will support the Government's procurement reform agenda by delivering on its commitment to open up more opportunities for small to medium enterprises and to make a simpler, easier and more effective procurement system.

SNOWY SCIENTIFIC COMMITTEE

Dr JOHN KAYE: My question without notice is directed to the Minister for Finance and Services and it relates to the Snowy Scientific Committee. Can the Minister clarify for the House which Minister is responsible for appointing a new committee and whether that new committee has been appointed? If not, what is the delay?

The Hon. GREG PEARCE: I am advised that the information the honourable member is seeking is online. If he looks up the Snowy Hydro Corporatisation Act 1995 on *www.legislation.nsw.gov.au* I am sure he will be very satisfied.

PACIFIC HIGHWAY UPGRADE

The Hon. HELEN WESTWOOD: My question without notice is directed to the Minister for Roads and Ports. I refer to comments made by NRMA President Wendy Machin in a press release dated 27 February 2012 in which she said:

> While in Opposition, the current NSW Government frequently called on the NSW Labor Government to match federal funding for the Pacific Highway dollar-for-dollar and we supported this call too.
>
> To now suggest that funding should suddenly be reverted to an 80/20 model would ensure further long delays in finally upgrading this dangerous highway."

Why will the Minister not listen to the NRMA?

The Hon. DUNCAN GAY: As I have said in this House before, on that occasion—it does not happen very often, mind you—I consider she was wrong.

PREPARE.ACT.SURVIVE CAMPAIGN

The Hon. NIALL BLAIR: My question without notice is directed to the Minister for Police and Emergency Services. Can the Minister update the House on the results of the Prepare.Act.Survive bushfire awareness campaign? What is the Government doing to ensure that improved public awareness is maintained into the future?

The Hon. MICHAEL GALLACHER: I thank the honourable member for his question. The recent heavy and persistent rain and the resulting flooding across many areas of New South Wales are still fresh in our minds. Indeed, many people and communities are still suffering from the devastating effects of the floods. We need only cast our minds back three years to a very different situation when, in February 2009, Australia experienced its worst ever disaster, the Black Saturday bushfires in Victoria. In those fires 173 people tragically lost their lives and thousands of homes and businesses were destroyed.

Following this horrific event, fire agencies across New South Wales and Australia, including the NSW Rural Fire Service, introduced extensive national reforms to better educate the community about the dangers of bushfires and how to prepare ourselves to survive them. These important reforms included the new bushfire danger ratings, with a new level of catastrophic, as well as new alert levels and the introduction of the Bush Fire Survival Plan. To support the reforms and ensure our community is well prepared, the Rural Fire Service launched its initial three-year Prepare.Act.Survive public awareness campaign.

As members are aware, those fire seasons proved to be difficult, not because of fire activity but because of the extensive rainfall experienced statewide. Comprehensive research conducted before and after the initial three-year campaign to measure its effectiveness showed that it had delivered improvements in awareness and understanding. These were positive results given the atypical seasonal conditions. However, the research also revealed one very important factor: that, unfortunately, is complacency. Because of the wetter seasonal conditions it appears that the public's perceived risk of bushfire is now at its lowest level since tracking began in 2009. Put simply, there is no room for such complacency. Rain leads to increased vegetation growth, which is already noticeable across much of the State particularly in the west. It need take only a few days of hot, dry or windy weather for fire conditions to return, as history shows they will.

To counter the risk of complacency the Government has committed $2.3 million in the 2012-13 budget to ensure that community awareness continues to be raised, with a clear understanding of the potential danger posed by bushfires. The Rural Fire Service is establishing a new three-year campaign to build on the success of the previous campaign and to encourage more people to have a bushfire survival plan covering the action they need to take to improve their own level of bushfire protection.

Like many members of the House, I am looking forward to the continuation of this important initiative aimed at improving our level of preparation and awareness, and keeping New South Wales communities safe. This is in line with goal 28 in the Government's NSW 2021 State Plan—that is, to increase community resilience to the impact of fires through prevention and preparation activities. The Government and the Rural Fire Service are serious about protecting life and property against fire and, in addition to the public awareness campaign, the men and women of the Rural Fire Service each day work with their local communities to help them prepare against fire risk. Again, there is no room for complacency and we all need to play a role in helping to prepare New South Wales now ahead of the next fire season.

HUNTING IN NATIONAL PARKS

The Hon. JAN BARHAM: My question without notice is directed to the Minister for Police and Emergency Services, representing the Minister for Tourism, Major Events, Hospitality and Racing. Was the Minister consulted on the introduction of shooting in national parks, nature reserves and State conservation areas? Has there been an assessment of the impact on tourism? What precautions will be in place to protect the safety of visitors to New South Wales protected areas?

The Hon. MICHAEL GALLACHER: I remember a question very similar to that being asked yesterday. Be that as it may, I will get an answer for the honourable member from the Minister responsible as soon as possible.

PACIFIC HIGHWAY UPGRADE

The Hon. STEVE WHAN: My question is directed to the Minister for Roads and Ports. On ABC *News* on 10 October 2007 the Minister talked about matching Federal funding on the Pacific Highway and urged the then Minister to say, "Yes I will match that money and save the lives of people in New South Wales that use this highway." Why has the Minister not matched the Federal Government funding to get this road completed and lived up to his own comments in October 2007?

The Hon. DUNCAN GAY: Matching what we had to do. We have matched the commitment of 80:20 funding and, in fact, we have exceeded it. Members opposite asked me earlier about my friend and former colleague Wendy Machin and whether she had seen—

The Hon. Walt Secord: Get her mentoring.

The Hon. DUNCAN GAY: I would like her to be a mentor because I find her outstanding. Had she seen the David Campbell letter and had she been better briefed she might well have made a very different statement at the time.

The Hon. Steve Whan: Point of order: It is relevance. The question was specifically about comments that this Minister, the Hon. Duncan Gay, made on the ABC in October 2007 and he is now talking about Wendy Machin again. I ask you to bring him back to the comments he made.

The PRESIDENT: Order! The Minister was being generally relevant.

The Hon. DUNCAN GAY: I indicated earlier that my comments then were entirely appropriate as have been my actions as Minister. Frankly, not putting too fine a point on it, I have been an outstanding Minister. Testimony to the fact is that I have outlasted five of their Ministers in just 18 months. I am now the second-longest serving roads Minister in the past 16 years. It is about continuity, confidence and getting on with the job. We are delivering in this area, unlike the Federal Minister. We were talking about tales of Anthony Albanese as he wandered. One day he said he was going to take the money away; the next day he said he was going to leave it there.

Today on the ABC, in a very weird diatribe, once again he indicated that he is going to steal the money from regional New South Wales. How do you deal with a bloke who covers the whole parameter within a week, from one side to the other and then back again? He starts off saying he is going to take the money away, then says he is going to leave the money; now he says he is going to take it away. Wish me luck, guys. I have to deal with this bloke. One thing is for sure: I will, because it is important for the people of the North Coast to get this highway finished.

ROSE BAY MARINA

The Hon. DAVID CLARKE: My question is addressed to the Minister for Roads and Ports. Will the Minister update the House on the Rose Bay Marina?

The Hon. DUNCAN GAY: I thank the Hon. David Clarke for his very good question about the Rose Bay Marina. For the benefit of members who are not familiar with the issue, a proposal has been submitted to Woollahra Municipal Council to expand the Rose Bay Marina. Roads and Maritime Services gave landowners permission on 14 November 2011 for a development application to be lodged with Woollahra council to further expand Rose Bay Marina.

The PRESIDENT: Order! I call the Leader of the Opposition to order for the first time.

The Hon. DUNCAN GAY: The granting of landowner's permission is often misconstrued as actual development approval. However, Roads and Maritime Services only granted the proponent permission to lodge a development application with the relevant consent authority and has not endorsed the proposal. Permission to lodge is based on two simple criteria. On 2 April 2012 Rose Bay Marina Pty Ltd lodged a development application with Woollahra Municipal Council. The development application was placed on public exhibition between 3 May 2012 and 1 June 2012.

The PRESIDENT: Order! The level of conversation is far too high.

The Hon. DUNCAN GAY: The application will be assessed by Woollahra Municipal Council and then referred to Sydney East Joint Regional Planning Panel to be determined. I must admit that I expected to be asked this question by Mr David Shoebridge, who is a local councillor in the area and has been running around the community spreading mistruths on the issue but has failed to ever ask me a question in Parliament. On the other hand, the very good local member for Vaucluse, Gabrielle Upton, has talked to me about this issue on a number of occasions. She has also written to me expressing the community's concerns about the proposal. She is a very wise woman, unlike Woollahra Councillor Mr David Shoebridge.

Ms Upton understands that the consent authority is not the Minister, it is the Joint Regional Planning Panel. Following Ms Upton bringing her community's concerns to my attention I agreed to write to the Chief Executive Officer of Roads and Maritime Services, Mr Peter Duncan, so that, should it be asked to make a

submission to the Joint Regional Planning Panel, the views of her constituents are known by the agency. Our Government has been elected on the back of a promise to return planning powers to the community, something that The Greens supported, or so we thought. However, Mr David Shoebridge has shown himself to be an absolute hypocrite.

Dr John Kaye: Point of order: My point of order is that reflections of that nature are disorderly.

The PRESIDENT: Order! Indeed they are, but the Minister has the call.

Dr John Kaye: The Minister could retract.

The PRESIDENT: Order! I have ruled them to be disorderly.

The Hon. DUNCAN GAY: I withdraw the word "hypocrite". Mr David Shoebridge has been running around telling people that I should call in the development and withdraw landowner's consent. He has, in essence, been telling local residents, "Forget what I said about returning planning to the community, forget about all the times I squealed like a little girl about Ministers making decisions— [*Time expired.*]

The Hon. DAVID CLARKE: I ask a supplementary question. Will the Minister elucidate his answer?

The Hon. DUNCAN GAY: "Forget about making decisions on developments because it did not suit me, forget about everything I have said in the past on this issue and believe me now when I say the Minister can call in this proposal; he can withdraw landowner's consent and make it all go away." Mr David Shoebridge is wrong. I will give him the benefit of the doubt as his own sense of self-importance often makes him believe he is right when, in fact, he is wrong. I would hate to accuse the member of deliberately spreading mistruths for political convenience, so I will not. Mr David Shoebridge would be wise to follow the sensible approach of the member for Vaucluse, Gabrielle Upton, who is lobbying the consent authority on behalf of her community. She understands the planning process.

I again reiterate to the local councillor, who is also a member of this House—he should write this down—the application will be assessed by Woollahra Municipal Council and referred to the Sydney East Joint Regional Planning Panel to be determined. The Government is doing what the community asked it to do: we are handing planning back to the local community. We have handed it back to the local community and Mr David Shoebridge now wants to go back to the bad old days of Labor and is telling me to call in the proposal. I have no power to call it in, and Ministers will not because the Coalition gave planning back to the community to make these decisions. This bloke is a hypocrite because he is saying one thing and doing another.

Dr John Kaye: Point of order—

The Hon. DUNCAN GAY: I withdraw the word "hypocrite". [*Time expired.*]

Dr John Kaye: I have two points of order. The member is flouting your ruling by repeating something that was ruled disorderly, and also his statement was disorderly.

The PRESIDENT: Order! The Minister withdrew his comments.

DHARAWAL NATIONAL PARK

The Hon. ROBERT BORSAK: My question is directed to the Minister for Finance and Services, representing the Minister for the Environment. The recently tabled Budget Papers show that $686,000 has been allocated towards the creation of Dharawal National Park at Appin between 2011 and 2015. Will the Minister provide a detailed breakdown of how that money will be spent?

The Hon. GREG PEARCE: I will obtain a detailed answer for the Hon. Robert Borsak as requested.

PACIFIC HIGHWAY UPGRADE

The Hon. PETER PRIMROSE: My question is directed to the Minister for Roads and Ports. In light of his answers today, will the Minister advise whether the Government now intends to break its promise and not complete the Pacific Highway by 2016?

The Hon. DUNCAN GAY: I should really play the game. Their good friend David Campbell—

The Hon. Michael Gallacher: He is a great singer.

The Hon. DUNCAN GAY: Yes. David Campbell said that if funding is not 80:20 the 2016 date is at risk. He did not say that this year or last year but years and years ago. We want to work towards 2016 for the completion of the highway upgrade. The only way it can happen is for the Federal Government to keep to its agreement.

NSW PUBLIC WORKS PROJECT MANAGEMENT

The Hon. MATTHEW MASON-COX: My question is addressed to the Minister for Finance and Services. Will the Minister update the House on its most recent NSW Public Works success in the field of project management?

The Hon. GREG PEARCE: I thank the Hon. Matthew Mason-Cox for his continuing interest in this part of my portfolio. Members will recall that last year in response to a question on this subject I had the pleasure of detailing a number of awards presented in the course of the year to officers of NSW Public Works in recognition of their achievements in project managing some of the State's important and significant capital works projects. I informed the House that NSW Public Works has been a part of government and serving the community for well over 150 years, and in that time it has delivered an extensive range of projects on behalf of government and its agencies throughout the State. In that time NSW Public Works has received many accolades for its work, including recognition from professional bodies in the field of architecture, urban design, dams and civil engineering, heritage and conservation and water cycle management. One standout field of expertise is in the provision of project management services that help the Government to deliver millions of dollars worth of public infrastructure each year to the community.

Late last year NSW Public Works won major prizes in three categories in the New South Wales chapter of the Australian Institute of Project Management awards. All winners of these awards were automatically eligible to participate in the national awards. NSW Public Works enjoyed further success in the national awards, with Lindsay Charles being named project manager of the year for her key role with the $155-million South Coast Correctional Centre in Nowra and Kevin Plummer being given the highly commended award for program and project director of the year for the Integrated Cancer Care Centre in Lismore. Following on from those awards, Ms Charles was eligible to enter the Asia Pacific Federation of Project Management awards held earlier this year in Hong Kong. She was successful in winning the project manager of the year award—the highest recognition for an individual project manager—against a very strong international field. Membership of the federation includes Australia, the United States of America, Canada, Japan, Hong Kong, China, India and Indonesia, and nominees are drawn from both the private and the public sector.

To be chosen from such a broad and diverse field is a tremendous honour for Ms Charles and testament to a very capable, professional manager. She has been consistently recognised for the work she has done in advancing employment opportunities for Aboriginals in the construction of the South Coast Correctional Centre. Ms Charles is a great example of the expertise, professionalism and dedication of the New South Wales public sector and she has a fantastic track record of positive change. As I said, to be chosen from such an international field is a tremendous honour and a testament to her dedication and skills. I understand that she is no stranger to awards and high achievements, having previously won a Premier's Award in 2010 and, earlier in her career, being appointed the first female construction supervisor in the then Department of Public Works and Services. In her university days Ms Charles was the first female student to complete the bachelor of building course at the University of Western Sydney, where she graduated at the top of her class with first class honours.

The Hon. MICHAEL GALLACHER: Sadly, the time for questions has expired. If members have any further questions I suggest they place them on notice.

COAL SEAM GAS EXPLORATION

The Hon. DUNCAN GAY: On 22 May 2012 the Hon. Jeremy Buckingham asked me a question about the status of the fracking moratorium in New South Wales that was due to expire at the end of April. The Minister for Resources and Energy has provided the following response:

> Consistent with the Government's public comments, the moratorium on fracking remains in place pending the completion of an independent review process into fracking and well design standards.

PACIFIC HIGHWAY UPGRADE

The Hon. DUNCAN GAY: I have a further response to a question asked by the Hon. Peter Primrose about funding for the Pacific Highway. This Government's additional funding means that in the six years between 2011-12 and 2016-17 the Liberal-Nationals Government will spend approximately $2.4 billion on the Pacific Highway duplication, which is roughly the same amount that the Labor Government spent on the duplication of the highway during its 16 years in government. In two years this Government's spending has surpassed what the former Government spent in 16 years. On current projections, the Liberal-Nationals Government is committed to spending on average approximately $400 million a year on the Pacific Highway. That is more than twice what was spent by the former Government.

Questions without notice concluded.

Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.

The House continued to sit.

Pursuant to sessional orders Government business proceeded with.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2012

SAFETY, RETURN TO WORK AND SUPPORT BOARD BILL 2012

Second Reading

Debate resumed from an earlier hour.

The Hon. JAN BARHAM [3.33 p.m.]: I oppose the Workers Compensation Legislation Amendment Bill 2012 and the Safety, Return to Work and Support Board Bill 2012. It is with some sadness I record my opposition to these bills. This is a sad day for New South Wales and the workers who will be disadvantaged by this legislation. I am particularly concerned about the changes to the provisions dealing with journey claims. I have some experience in this regard. I was injured while travelling to work about 30 years ago and that has given me an understanding of the enormous disruption that can occur as a result of such an injury. I could not function as a professional after having spent many years in training and it was distressing to find that I was unable to work in my chosen field.

I was fortunate that my employer provided assistance and allowed me to undertake other duties. However, it took me many years to come to terms with the pain, suffering and turmoil that I endured. My whiplash injury affected every minute of my life; it was not something that I experienced only in the workplace. I was in constant pain and received a great deal of support and extensive treatment. Given my experience, I fully understand the impact of the Government removing journey claims from the legislation. People who are injured through no fault of their own—that is, they have displayed no professional negligence—can have their entire life turned upside down. That amendment to the legislation is callous. It is outrageous that people's lives will be affected in this way. I feel great sympathy for people who will now be afraid as they travel to and from work because they know that if they are injured they will no longer be protected.

Members have had lengthy discussions about this legislation and I understand that we will be here for many more hours while my colleagues and members of the Opposition seek to amend it. We will appeal to members to reconsider some of these harsh amendments, which will remove workers' rights and privileges. We are talking about people on whom we rely and who deserve to be protected. None of us is alone in this world; we all depend on a huge variety of workers who perform tasks that are vital in our daily lives. We heard very loudly during the lunch break from some of the most respected members of our society—our firefighters. They sent a clear message about what they think of this legislation.

I am also concerned about the lump sum measures, the introduction of the 10 per cent whole person impairment threshold and the removal of the pain and suffering provisions. It is shameful that the Government is removing people's rights and that their pain and suffering will be disregarded. We are no longer a caring State that acknowledges the serious impact of workplace injuries. This Government does not care that the lives of workers and their families will be affected. I wholeheartedly oppose what is being done in this legislation.

I regret that the House will have to sit for many hours in the hope that Government or crossbench members will have a change of heart and support the reasonable amendments that have been proposed by The Greens and the Opposition to this disgusting legislation.

Reverend the Hon. FRED NILE [3.39 p.m.]: On behalf of the Christian Democratic Party I support the Safety, Return to Work and Support Board Bill 2012 and the Workers Compensation Legislation Amendment Bill 2012. As members know, we are debating this legislation because of the deficit in the Workers Compensation Scheme in excess of $4 billion. If nothing is done, the scheme is unsustainable. We do not want to see the scheme collapse. Workplaces in New South Wales are no more hazardous than in Queensland or Victoria yet workers compensation premiums in New South Wales are, on average, 20 to 60 per cent higher. This is a discouragement for companies to employ workers and it places additional pressure on a company's bottom line and financial profitability. Increasing premiums to address the scheme's poor claims experience would only create further problems and be a detriment to jobs growth.

Why are we here? We are here because the Labor Government failed to administer the scheme. The Government in power is responsible for implementing a successful WorkCover scheme. I know that in previous years the Hon. John Della Bosca was able to supervise the scheme and have it run so that it was in the black, but for some reason the Labor Government took its eye off the ball and did not respond to what was clearly happening—an increasing deficit year by year. I also believe we are here because of the neglect of the WorkCover board, which was appointed to supervise the WorkCover scheme, make sure it is financially viable and provides the support that workers need when they are injured. Who makes up the WorkCover board? Greg McCarthy was appointed as chair of the board from 2005 until 2012. Mark Lennon was first appointed to the WorkCover board in May 2007. As members know, he is the secretary of Unions NSW and was appointed to that position in October 2008. He is an experienced union leader in touch with workers. Why did we not hear his voice earlier on this matter?

Carolyn Walsh was appointed to the WorkCover board in May 2010. Nicholas Whitlam—we all know the Whitlam name—was appointed deputy chair of the WorkCover board in May 2010. He obviously has a great amount of ability. Why was he silent as the fund went into this great deficit? Lisa Hunt was appointed chief executive officer of WorkCover in 2010. Sue Clark was appointed as a member of the WorkCover board in 2004 and was a director until February 2012. Finally, Cass O'Connor was on the WorkCover board from August 2010 to May 2012. The point I am making is that experienced and knowledgeable people were appointed to the board and, whether it is a Labor or Coalition Government, those people have a responsibility to carry out their duties to ensure that WorkCover is able to operate in an efficient and stable manner without going into deficit.

We are not talking about a minor deficit but in excess of $4 billion. There should have been red lights flashing at every board meeting and discussion of how to ensure that WorkCover was financially viable. Those are the reasons we are here. The Coalition Government, as it is doing in many other areas for which it is responsible, has to make hard decisions that sometimes are not popular with everyone to try to improve the scheme. Hopefully, the bills will return WorkCover to financial viability, increase return to work outcomes, increase compensation for seriously injured workers and reduce the annual cost of the scheme by 25 per cent.

Main aspects of the scheme are that changes to weekly benefits provide a simplification in definition of pre-injury earnings, changes in benefit levels in the first 13 weeks after injury, a revised step down at 13 weeks, a significant increase in the amount payable to totally incapacitated workers from week 14 onwards, work capacity assessments to encourage injured workers to return to work and a cap on weekly benefits at five years with exceptions for seriously injured claimants. As members know, the scheme should encourage injured workers to return to work so that they can have a sense of achievement and stability for themselves and their families. We do not want them feeling that they are a failure and that they can no longer contribute to society.

The bill introduces a maximum period of one year for the payment of medical services from the date that a claim is made to when the incapacity to work ceases, with an exception for seriously injured workers. It also introduces a 10 per cent whole person impairment threshold to access payments and removes pain and suffering as a separate category of lump sum compensation. The bill excludes from compensation injuries that occur between home and work, or journey claims, and provides that cover for strokes and heart attacks can only apply where work significantly increased the risk of occurrence. The bill also clarifies the obligations of employers to provide injured workers with suitable duties. It has stronger penalties for employers who fail to carry out their duty. The bill will permit the entry of new insurers into the New South Wales market, which is very important to ensure competition between insurers and, hopefully, to reduce the cost of the scheme. The bill

also consolidates the boards and associated investment functions. I hope that will be done with skill so that there will not be any economic loss. Great changes are affecting the income from investments so we need to ensure that we have people with expertise to provide an adequate return to the scheme through interest payments.

Claims lodged after passage of the legislation will be subject to the amendments. Changes to weekly benefits, medical costs, duration caps and lump sum compensation will apply from the date of the legislation's introduction. We have had many discussions regarding the legislation with the Hon. Greg Pearce and other members of the Government, including the Premier, and we are pleased that we have made some progress, although perhaps not as many victories as we would like to see. I believe we will make some very important improvements to the legislation through our amendments. We have had a number of contacts, even in the minutes before I stood to speak, concerning the Civil Liability Act amendments proposed by the Government. They have caused a lot of concern to Unions NSW and individuals.

We have had discussions in this regard with the Minister and I understand the amendments will be withdrawn in the Committee stage. I thank the Minister for his cooperation. I know that some union leaders have also been very concerned. We were endeavouring to amend new section 25, which contains the exemption for police officers. We have been lobbied very strongly by Fire and Rescue NSW employees, as well as other emergency service employees, that a simple amendment to new section 25 to include other emergency workers, paramedics et cetera would be helpful. On further investigation we found that this would reduce the benefits that individuals in those areas would receive under this legislation.

After a full examination of the proposal I was going to present on behalf of the emergency bodies, it became clear that they would not have access to some of the considerable benefits provided in this legislation if they were exempted. In fact, in some circumstances firefighters will be better off as a result of changes to benefits and other features of the new scheme. For example, those who are more than 30 per cent impaired will have access to 80 per cent of their pre-injury earnings until retirement. This is a considerable advantage over the current scheme. Also, in the calculation of weekly benefits the amount of money paid to firefighters may increase. If firefighters have alternative proposals that they wish to explore in respect of potential future opportunities to enter into dedicated statutory arrangements—perhaps something similar to police—where they will not suffer disadvantage, the Christian Democratic Party will encourage the Government to refer the matter to the Standing Committee on Law and Justice for further consideration. That may be a way of achieving what the emergency bodies want without diminishing what they are already getting, because we do not want to go backwards.

The issue of retrospectivity was discussed. The Christian Democratic Party was concerned whether those applications that have been submitted some months ago would be treated under the law being repealed or under the new law. However, advice received is that if these reforms are applied only to future claims and not to existing claims then the deficit will not be reduced—which is the purpose of this legislation—and the current outstanding claims liability will not decrease. The changes proposed by the bill to weekly benefits, including the conduct of work capacity tests, medical costs and duration of benefits, are to apply to existing claims. This approach is proposed to avoid the creation of a dual workers compensation system—two levels—based purely on the date on which the claim was made. Such arrangements would be very difficult to administer and would need to continue for many years given the current lack of a cap on claim duration.

Changes to weekly benefits, including the conduct of work capacity assessments, medical costs and duration of benefits, are to apply as soon as possible to existing claims. There are some exceptions: workers who currently receive weekly benefits and whose claims are less than 26 weeks old during the 26-week period, and workers who have been assessed as having more than 30 per cent whole person impairment will not have to undergo any further work capacity assessments. New claims made from the date of commencement of the bill will be subject to the new benefit arrangements in the bill. This will allow the bill to deliver urgently needed reforms to the scheme. It will address the deficit that is currently in excess of $4 billion and the prospect of a 28 per cent increase in premiums for New South Wales businesses. That would be in addition to the other heavy costs they bear, including the carbon tax that will shortly commence.

Many claimants will be better off under the new provisions in the bill. For example, the bill will deliver improved benefits for seriously injured workers, who will receive improved financial support and necessary medical care until they reach retirement age. The $4.1 billion deficit cannot be ignored, and according to the most recent reports it is getting worse at a rate of $9 million per day. The Christian Democratic Party considers this legislation to be urgent and necessary in view of the problems caused by this cost blowout, and its likely worsening over the next few years. However, whilst supporting the legislation I foreshadow that we will move

amendments in Committee to ensure that the legislation protects workers in their journeys to and from their workplace where there is a real and substantial connection between the worker's employment and an accident or incident causing the injury. We will speak to those amendments in more detail at that time. They are based on the current South Australian legislation, which protects workers in their journeys to and from the workplace where there is a real and substantial connection between the worker's employment and an accident or incident causing the injury.

Journey claims have been the subject of detailed debate. This issue was also considered at the recent upper House inquiry at which the Hon. Paul Green represented the Christian Democratic Party. In the 2008-09 injury year there were around 7,000 journey claims. Some 4,000 of those claims involved a motor vehicle and around 2,000 of them were able to access the Motor Accidents Scheme—assuming around 50 per cent of injuries involved another at-fault driver. Of those 2,000, around 1,880 will be able to claim up to $4,129 in economic loss and the other 120 will meet the severity criteria required to access non-economic loss benefits, capped at $450,000. So in the journey claims debate the Motor Accidents Scheme must be taken into account. Under that scheme a claimant must have been injured in a motor vehicle accident and must be able to show that a driver or owner of the vehicle other than a claimant was partially or completely at fault. Compensation available through the scheme depends on the types of injuries sustained and a claimant's circumstances at the time of the accident. Claims can also be made for economic loss and non-economic loss.

The Christian Democratic Party suggested to the Government that if there is an increase in claims to the Motor Accident Authority—we do not want that scheme to face the financial authorities—in due course, with some of the savings the Government has, it may be possible to subsidise the Motor Accidents Scheme to cope with any increased claims resulting from this legislation relating to journey claims. The Christian Democratic Party would have preferred a blanket exemption to allow journey claims to continue at this stage. We also suggest that the Standing Committee on Law and Justice make the review of the scheme and the making of recommendations as to what improvements should occur to the legislation a high priority.

The Christian Democratic Party will also move amendments in Committee to remove deeming provisions to ensure that incapacity will be deemed to exist in certain cases—reflecting current section 47 of the Workers Compensation Act 1987. We will also move an amendment to remove those provisions in the bill with regard to legal costs. Under that amendment parties will be required to pay their own legal costs and no legal costs will follow the event. This will prevent workers from having to pay potentially massive legal bills incurred by insurance companies. We will also move amendments to allow a regulation-making power, which will require that before a worker agrees to a commutation they must get financial advice. In that regard, we are talking about advice from financial advisers rather than from expensive lawyers. We believe this will adequately protect workers to ensure that they do not squander settlement moneys that were intended to settle long-term claims.

People who have had a family member killed as a result of a workplace accident have made representations to us. They expressed concern as to how the legislation will affect them. They are also concerned that the legislation will remove a family's existing right to make claims for nervous shock and pain and suffering after a worker has been killed. They are also concerned about the removal of a family's existing right to make claims for a death benefit if a loved one is killed on the way to or from work—I have already discussed journey claims. Finally, they are concerned about the removal of the right to claim death benefits by non-dependent family members. The Christian Democratic Party supports the legislation. [*Time expired*.]

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [3.59 p.m.], in reply: I thank members for their contributions to this important debate. The Workers Compensation Legislation Amendment Bill 2012 contains a package of reforms that are intended to make the workers compensation system in this State sustainable. The reforms are focused on promoting better health and return-to-work outcomes for workers. The reforms implement most of the recommendations of the Joint Select Committee on the NSW Workers Compensation Scheme. They are measured, fair and reasonable so that the scheme will remain viable and able to provide a safety net for injured workers.

The legislative amendments contained in the bill are not unique. They have been modelled on provisions that operate in Victoria and which have enabled the workers compensation scheme in that State to achieve good outcomes for participants in the scheme. The WorkCover scheme is in crisis. It had a $4.1 billion deficit as at 31 December 2011, which is growing by millions of dollars every day. In evidence before the parliamentary inquiry there was no serious challenge to the actuarial evidence, the calculations or the

methodology of PricewaterhouseCoopers. The calculations and methodology were reviewed by Ernst and Young. The methodology has the support of the New South Wales Auditor-General and it was assessed by another actuarial firm, Cumpston Sarjeant.

The administrative and claims management cost of running the WorkCover scheme is broadly comparable to the costs in other jurisdictions. The average underwriting cost for workers in compensation schemes across Australia is about 18 per cent and in New South Wales it is about 17 per cent. The whole cost of running the scheme in New South Wales is less than the equivalent cost in other States such as Victoria and Western Australia. This contrasts with the story being propagated by Mr David Shoebridge, who keeps repeating his misguided assertions about administrative and claims management costs and payments to insurers.

What are the alternatives to the reforms in the bill? One alternative is to increase premiums. To achieve full funding within five years, premiums would need to be increased by 28 per cent; if we want to do it in 10 years premiums would have to be increased by 10 per cent. Any increase in premiums would result in thousands of job losses across New South Wales. The NSW Business Chamber estimates that 12,600 jobs would be lost in New South Wales if premiums increased by 28 per cent and 8,000 jobs would be lost in New South Wales if premiums increased by 10 per cent. Raising premiums and the consequent loss of jobs across New South Wales is not something that can be contemplated in the current economic environment. In the current economic climate it is important to rein in the deteriorating financial position of the New South Wales scheme and ensure that premiums in this State can be kept at levels that are competitive with those in other States.

Premiums paid by New South Wales employers are already higher than those in Victoria and Queensland. Reform of the scheme to enable lower premiums is essential for New South Wales to retain its competitive position and to ensure that jobs and businesses are not driven interstate. The only way to address this crisis is to take immediate action to restructure benefits paid under the scheme. The Government is restructuring benefits in a way that is fair and reasonable, provides appropriate incentives for people to return to work and provides support to those who need it the most. It is clear from the evidence before the parliamentary committee that the longer people stay out of work, the less likely it is that they will return to work. This is supported by research. It is not in the interests of workers to keep them on workers compensation benefits instead of providing appropriate incentives and assistance to get them back to work. That is what these reforms do.

The Opposition has criticised the capping of benefits and the introduction of a 13-week step down. Step down percentages apply in Victoria and have done so for years under a Labor government. A five-year time cap has applied in Queensland for years under a Labor government. The alternative is to let the deficit grow by millions of dollars every day. The Opposition has criticised the caps that will apply. Caps are not new; they already exist in other jurisdictions. In Queensland there is a five-year cap and a quantitative cap of $200,000. In Western Australia there is a cap of $190,000 for weekly benefits. In Victoria and Tasmania the liability of costs for medical and related treatment is capped at one year after the cessation of weekly benefits. In Queensland there is a cap of five years. In Western Australia there are monetary caps, which could be as little as $57,319, and in some cases $250,000.

The point is that other jurisdictions time cap or dollar cap weekly benefits and medical benefits. There is nothing unprecedented or unusual about what is happening in New South Wales. The Government is reallocating resources to those most in need. It is increasing the benefits for seriously injured workers. Workers who are seriously injured will now receive 80 per cent of their pre-injury earnings, rather than the current statutory of $432.50, which kicks in after the first 26 weeks under the current scheme. These are the workers most in need of support from the scheme and who are currently suffering under the scheme. The amendments in the bill will achieve better rehabilitation outcomes, better rates of return to work and better management of the scheme. This will ensure its survival as a vital protection for employers and workers in this State.

As Reverend the Hon. Fred Nile indicated, the Government will not be proceeding with the amendment to the Civil Liability Act. We have considered the amendments circulated by Reverend the Hon. Fred Nile, and the Government will be supporting them. In relation to journey claims, the Government accepts the South Australian model, which allows journey claims for workers who are injured in their journeys to and from their workplace where there is a real and substantial connection between the worker's employment and an accident or incident causing the injury. On changes for firefighters and paramedics, we have considered Reverend the Hon. Fred Nile's representations on behalf of firefighters to exempt firefighters and paramedics from the effect of the changes to the workers compensation legislation.

We are advised that after a full examination of the proposal it is clear that firefighters and paramedics would not have access to the considerable benefits of the legislation if they were exempted. There are circumstances where firefighters would be better off as a result of changes to benefits and other features of the new scheme. As Reverend the Hon. Fred Nile indicated in his contribution to the second reading debate, we have discussed our commitment that if there are alternative proposals that firefighters wish to explore in respect of potential future opportunities to enter into dedicated statutory arrangements, perhaps similar to those recently entered into by police, the Government will support a referral to the parliamentary committee for such consideration. I can further confirm that the committee envisaged under the draft legislation that continuous oversight of the workers compensation scheme will be by the Standing Committee on Law and Justice, and it will be asked to consider the issues I have mentioned, as well as journey claims.

On removing deeming provisions, I understand that the Christian Democratic Party will move an amendment in Committee to ensure that incapacity will be deemed to exist in certain cases, reflecting current section 47 of the Workers Compensation Act 1987. The Government will support the amendment. On the amendments to costs, again the Christian Democratic Party will move amendments to remove the provisions relating to legal costs. Under the amendments, parties will be required to pay their own legal costs and no legal costs will follow the event. The Government will support those amendments. On commutations, again the Christian Democratic Party will move amendments to provide a regulation-making power that requires that a worker must get financial advice before agreeing to any commutation. Again, that makes sense and will be supported by the Government. The Christian Democratic Party may move one or two other amendments in Committee.

I particularly thank a number of members for their contributions. The Hon. Paul Green was compelling in his discussion of the impacts of premiums on small businesses and the importance of the use of incentives to get people back to work. He made a telling point: The identity and confidence of many people in the community, particularly men, is closely identified by their capacity to work and the work they do. As members know, the Hon. Robert Borsak chaired the joint select committee. I thank the other committee members for the important work they did in a very short time. I note that the Hon. Robert Borsak was concerned about the matter of costs, which will be addressed in the Christian Democratic Party amendments.

He noted in relation to one of the important features of the legislation that the Government is bringing forward—the step down in relation to workplace injuries—that the 20 per cent to 30 per cent definition of "for serious injury" seemed to be more generous than the committee had asked for. That brings me to Mr. David Shoebridge, who was wrong in his comments in a number of respects— particularly when he referred to a 28 per cent workplace injury receiving no benefits. He clearly has not looked at new section 39 of the legislation. I thank Rachel Callinan and the other staff, Hansard and everyone who made it possible to get the committee report completed in such a competent and efficient manner. I look forward to proceeding to consider the amendments. I commend the bill to the House.

Question—That these bills be now read a second time—put.

The House divided.

Ayes, 19

Mr Ajaka	Miss Gardiner	Mr Mason-Cox
Mr Blair	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mr Pearce
Mr Brown	Mr Khan	
Mr Clarke	Mr Lynn	*Tellers,*
Ms Cusack	Mr MacDonald	Mr Colless
Ms Ficarra	Mrs Maclaren-Jones	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Gallacher	Ms Fazio
Mr Harwin	Mr Roozendaal
Mrs Pavey	Mr Veitch

Question resolved in the affirmative.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIR (The Hon. Jennifer Gardiner): Order! The Committee will deal first with the Workers Compensation Legislation Amendment Bill 2012. I advise the Committee that if any schedules are omitted from the Workers Compensation Legislation Amendment Bill there will not be a consequential flow-on to clause 2, which relates to the commencement of the legislation. Those consequential matters will be dealt with in the Legislative Assembly if need be.

Clauses 1 and 2 agreed to.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.23 p.m.]: I move Opposition amendment No. 1 on sheet C2012-100I:

No. 1 Page 3, schedule 1.1 [2], proposed definitions of ***base rate of pay*** and ***base rate of pay exclusion***, lines 12 and 13. Omit all words on those lines.

I will not speak to the amendment other than to say that there are a number of other consequential amendments that seek to amend the substance of the provisions to which they relate, that is proposed section 44G. This amendment is necessary should those other amendments be carried. It probably could have been grouped if we had had more time.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [4.23 p.m.]: The Government will oppose each of the amendments. The single defined term was explored in the committee report and supported by the Government.

Mr DAVID SHOEBRIDGE [4.24 p.m.]: The Greens support the Opposition's amendment.

Question—That Opposition amendment No. 1 [C2012-101I] be agreed to—put and resolved in the negative.

Opposition amendment No. 1 [C2012-101I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.25 p.m.], by leave: I move Opposition amendments Nos 2, 4, 10 and 13 on sheet C2012-100I in globo:

No. 2 Page 3, schedule 1.1 [2], proposed definition of ***first entitlement period***, line 28. Omit "13 weeks". Insert instead "26 weeks".

No. 4 Page 4, schedule 1.1 [2], proposed definition of ***second entitlement period***, line 8. Omit "117 weeks". Insert instead "104 weeks".

No. 10 Page 6, schedule 1.1 [3], proposed section 36, line 14. Omit "**13 weeks**". Insert instead "**26 weeks**".

No. 13 Page 6, schedule 1.1 [3], proposed section 37, line 27. Omit "**weeks 14–130**". Insert instead "**weeks 27–130**".

These amendments relate to the proposed step-down provisions of weekly benefits proposed in the bill. We are seeking to remove the proposed step-downs and return to the current step-downs that are well known and understood in workers compensation: that is, the first 26 weeks should be at actual pay and after 26 weeks it should be at a different level. The amendments are self-explanatory and as we have many amendments to deal with I will not labour the point.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [4.26 p.m.]: The Government opposes these amendments. The combination of the calculation of average salary and the new step-down provisions mean that in many cases injured workers will receive greater benefits, particularly given that the current statutory rate cuts in at 26 weeks and it is only $435-odd. One of the key objectives of this legislation is to incentivise workers to get back to work where they are fit and can do so.

Mr DAVID SHOEBRIDGE [4.27 p.m.]: The Greens support the Opposition's amendments. Far and away the most common period for which compensation is paid is the first six months after injury. For the first six months workers are entitled to their 40-hour week standard wages, not the discount rate that the Government wants to give workers basically from day one.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.27 p.m.]: It is curious that the Government seems to be obsessed with the idea of incentivising injured workers to get back to work by saying, "We will start taking money off you." As Mr David Shoebridge indicated, something like 70 per cent of injured workers return to work within the five-day period, a further 20 per cent return to work between five and 30 days and only 10 per cent to 15 per cent are more seriously injured. We say the first step-down should be the status quo step-down at 26 weeks. There is already an incentive in the system, if one was needed. At the moment injured workers receive 100 per cent of their award or enterprise bargaining agreement [EBA] rate if it is a paid rate award or an actual EBA wage level but in many cases, particularly in the private sector, people are paid over the award. So immediately from their first day on workers compensation they are already losing money. At present, after the first 26 weeks they go down to the statutory rate. If injured workers need an incentive to get back to work and back to their full pre-injury earnings it is already there. This is just another attempt by the Government to attack the vulnerable who are in need of support.

The Hon. Luke Foley: Put them in abject poverty. That is the incentive they need, isn't it?

The Hon. ADAM SEARLE: I acknowledge that interjection. The fact is this Government seems hell-bent on attacking injured workers at a time when they need money the most—the first 26 weeks. We press our amendments.

Question—That Opposition amendments Nos 2, 4, 10 and 13 [C2012-100I] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mr Pearce
Mr Brown	Mr Lynn	
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Gallacher
Mr Roozendaal	Mr Harwin
Mr Veitch	Mrs Pavey

Question resolved in the negative.

Opposition amendments Nos 2, 4, 10 and 13 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.38 p.m.]: I move Opposition amendment No. 3 on sheet C2012-100I:

No. 3 Page 4, schedule 1.1 [2], proposed definition of ***non-pecuniary benefit***, line 1. Omit all words on that line.

I move this amendment because of its connection to other amendments that will be moved during the Committee stage.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [4.38 p.m.]: The Government opposes this amendment.

Question—That Opposition amendment No. 3 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 3 [C2012-100I] negatived.

Mr DAVID SHOEBRIDGE [4.39 p.m.], by leave: I move The Greens amendments Nos 1 to 3 on sheet C2012-114 in globo:

No. 1 Page 4, schedule 1.1 [2], proposed definition of ***seriously injured worker***, line 15. Omit "more than 30%". Insert instead "15% or more".

No. 2 Page 4, schedule 1.1 [2], proposed definition of ***seriously injured worker***, line 22. Omit "more than 30%". Insert instead "15% or more".

No. 3 Pages 8 and 9, schedule 1.1 [3], proposed section 39 (2) and (3), line 35 on page 8 to line 4 on page 9. Omit all words on those lines. Insert instead:

(2) This section does not apply to a seriously injured worker.

Note. For seriously injured workers entitlement to compensation may continue after 260 weeks but entitlement after 260 weeks is still subject to section 38.

The most astounding thing about this Government's workers compensation amendments is the definition of "seriously injured worker" in O'Farrell World.

The Hon. Dr Peter Phelps: Point of order: If the honourable member wants to refer to the Premier he should use his correct title, otherwise he should desist.

Mr DAVID SHOEBRIDGE: To the point of order: I was not referring to the Hon. Barry O'Farrell, the Premier; I was referring to a concept, which is the State of New South Wales under the unfortunate rule of Premier Barry O'Farrell.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order.

Mr DAVID SHOEBRIDGE: In O'Farrell World, being a seriously injured worker means one must have more than 30 per cent whole person impairment. The Premier does not think that a worker who has had his foot amputated has been seriously injured. He and the Minister for Finance and Services believe that if the worker is fortunate to have a stump extending more than three inches below his knee he has not been seriously injured. In O'Farrell World and under this legislation, which is supported by the Shooters and Fishers Party and the Christian Democratic Party, that is not a serious injury because it constitutes only 28 per cent whole person impairment. A worker could lose half his foot or his leg below the knee and the Premier would not think that that was a serious injury. Welcome to New South Wales 2012 and a workers compensation scheme that has been gutted, decimated, attacked and brutalised by the O'Farrell Government. Workers had better rights in 1926 than we have in 2012, when we are far richer.

How can this Parliament possibly be considering legislation that defines someone who has had their entire foot amputated as not being seriously injured? It is beyond disgraceful; it is obscene. The Greens amendment changes the definition of "seriously injured worker" to a worker who suffers from a whole person impairment of 15 per cent or more. That would constitute a serious injury. It would also refer to a person with a

significant back injury and two vertebrae fused as a result. That person would have ongoing referred pain and he would not be able to bend or lift anything. That is a serious injury as far as The Greens are concerned. However, the Hon. Barry O'Farrell does not believe it is serious enough for the worker to be defined as being seriously injured. It is utterly obscene.

The Greens second amendment also deals with the definition of "seriously injured worker". It amends subparagraphs (a) and (b) in proposed section 32A. The third amendment would have flow-on effects by changing the threshold in proposed section 39 to enable a worker to have an ongoing entitlement to weekly compensation after five years and an ongoing entitlement to medical benefits after six years. It also changes the threshold from 20 per cent whole person impairment, which would exclude a worker with a twin-level back fusion and a worker who had half of his foot amputated from having ongoing workers compensation after five years. Barry O'Farrell wants to prevent workers who have had half of their foot amputated from getting weekly workers compensation payments after five years. As I said, it is utterly obscene. I am not suggesting that a 15 per cent whole person impairment threshold is in any way an appropriate test of whether someone is eligible for workers compensation after five years. The real test should be an ongoing incapacity to work because of a work-related injury. Any such person should be entitled to workers compensation for the rest of their working life.

The Greens amendment goes some way towards accepting this arbitrary chop off after five years. However, it should not be set at the utterly unrealistic and unfair level of 20 per cent whole person impairment. It should be set, but at 15 per cent or more. That threshold has been applied for the past decade for access to common law entitlements. Workers know what the 15 per cent whole person impairment threshold does. It is a brutal enough threshold. It will still give the Government the cuts it wants; it will still prevent thousands and thousands of legitimate claims from workers with serious injuries. The Premier will still get his pound of flesh from the workers of New South Wales. However, he will not get the same swingeing cuts that he would get if the threshold were 20 per cent. If the Government will not consider this, surely members of the Shooters and Fishers Party and the Christian Democratic Party, who say they have been dealing with the Government, will have a moment of conscience and support these amendments. We must make this obscene law slightly less obscene.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [4.46 p.m.]: Mr David Shoebridge is more interested in rhetoric than reading the legislation and the joint select committee's report. The legislation contains the tiered approach that was referred to at length in the report and in the submissions and supporting material provided to the committee. One of the objectives of the scheme is to get people back to work and to make savings. However, Mr David Shoebridge persists in using the argument of the worker with the 28 per cent whole person impairment. He has admitted that he knows the Government proposition is to have a tiered arrangement and that someone with that level of impairment would continue to receive benefits and be work tested. The Government opposes these amendments.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.47 p.m.]: The Opposition supports The Greens amendments, which reflect Opposition amendments Nos 5 and 6. In respect of The Greens amendment No. 3, I foreshadow that Opposition amendment No. 19 will have the effect of removing proposed section 39. I accept that The Greens proposal would significantly improve that proposed section. A decade or more ago there was a debate about workers compensation and what threshold should be reached before people are able to access what was left of common law and what is now called "common damages".

The Hon. Greg Pearce: It is the common law.

The Hon. ADAM SEARLE: I understand that. However, in that context there was a serious debate about the appropriate level of impairment. The argument was that only the most seriously injured people should have those common law rights, such as they were modified. After much debate and discussion with medical professionals, lawyers and other stakeholders, the whole person impairment threshold of 15 per cent was accepted. It was well understood and accepted that workers with a 15 per cent whole person impairment were very seriously injured. That debate has been reignited by the Government in this context. In order to continue to receive weekly compensation benefits beyond the five-year point and, more importantly, to continue to receive the necessary medical and related benefits and treatment, a worker must establish a whole person impairment of 20 per cent or more.

I understand that is using the fifth edition of the American Medical Association guidelines. That is a very serious change in terms of who is the most seriously injured. As stated elsewhere in this debate, a complete

loss of taste and smell constitutes only a 10 per cent level of impairment. A complete ankle fusion involves less than 10 per cent. A woman who loses both breasts in an accident might be rated at 10 per cent. In order to be rated at 20 per cent or over you need to have something like a total foot amputation, which I think gets you to about 28 per cent, or a multiple spinal fusion, which I think would get you to 25 per cent. That is an indication of the very serious level of injury—the hideous level of injury—that a person would need to have sustained in order to remain on benefits for more than five years.

These are the most seriously injured persons, who need the workers compensation system more than any others. If these people have any capacity for work it is extremely residual and, in reality, even if there is some capacity they would not be able to obtain meaningful employment. These are the people who absolutely need the ongoing financial support of weekly benefits. Even more than needing the financial support of weekly benefits, because these are the most seriously injured or very seriously injured persons, they need ongoing medical care and attention. This provision of the bill will take that off them. What happens then? They either have to pay for it themselves, if they can cobble together the financial resources from family and friends if they do not have it, or they go without. In the twenty-first century in New South Wales, Australia, that should not be an acceptable proposition for a civilised society.

The other possibility that Mr David Shoebridge has indicated is a fallback on the taxpayer, on the publicly funded health system. That is just an exercise in cost-shifting from the workers compensation system, which is not on the budget sector, to the public health system for those procedures that they need that are available there. But it is not only the publicly available hospital system facilities and resources that injured people need. They may well need to consult private doctors and their facilities and services in order to have injuries treated and managed. Of course, for seriously injured people it is not simply a case of getting better or having one operation; sometimes they need to have a number of operations. Sometimes the first or second operation fails to achieve what it was intended to achieve and there needs to be follow-up. This provision would deprive them of that necessary medical care and attention. It is just not a civilised proposition to say that people who have this level of impairment should miss out or should have the support and care they need, and which the system currently provides, simply taken away from them. The Labor Opposition cannot conceivably support this proposition because it is just inhumane and not civilised.

Mr DAVID SHOEBRIDGE [4.53 p.m.]: I listened very carefully to the Minister's response. It was basically that the bill puts a tiered system in place and that should satisfy the millions of workers here in New South Wales who will be covered by the new system. Let us be clear on what this tiered system does. Let us picture a 40-year-old scaffolder who has a serious accident, a crush injury to his foot, and has half of his foot amputated. English is his second language. He spends five years having various operations but still cannot get around—he is missing half a foot and has a prosthesis from workers compensation. He has only ever done manual work. After five years of workers compensation he has 18 per cent whole-person impairment. That is what you get for having half your foot amputated—18 per cent whole-person impairment. He cannot do any other manual work because he effectively has only one leg, and he has only ever done manual work: he was a scaffolder.

After five years of workers compensation that worker gets put on the tier where he has his weekly compensation benefits cut off—no money at all, nothing from the workers compensation scheme. A year after the scheme would cut weekly payments this injured worker's medical expenses would be cut off. When he wants to get a new prosthesis to fit the stump of half of his foot he has to go to the back of the queue at Medicare at best or, as the Hon. Adam Searle said, scrape around with his mates and family hoping to pay the thousands and thousands of dollars for the prosthesis, for crutches, for medication and for any further treatment to the stump that might be required over the rest of his working life—in fact the rest of his natural life. That is the tier that this Government would put that worker on. The Greens amendment proposes that the rate of 15 per cent whole person impairment be substituted to put some basic fairness back into the system, to keep that worker on weekly benefits for the rest of his working life and provide him with medical expenses for the rest of his working life. Have some decency.

The Hon. TREVOR KHAN [4.56 p.m.]: Let us be quite plain about this. The Hon. David Shoebridge has referred to O'Farrell world. The committee did not pluck recommendations from thin air; we looked at what has occurred in other States and how other States have developed their workers compensation systems—Queensland, a Labor state, and Victoria, for many years a Labor state. Those States have applied monetary caps, irrespective of the level of impairment or, alternatively, time caps. This is not O'Farrell world; this is Australia. We live in a world that has seen the creation of the workers compensation systems. We have seen wide safety nets created; we have seen compulsory third party systems created; we have seen extensive social welfare

systems created; and we have seen extensive networks in the nature of Medicare created. The question becomes how there is to be an interrelationship between a workers compensation system and these other schemes that exist.

What is proposed in New South Wales is to create a scheme consistent with what is occurring in other States of Australia—nothing more; certainly nothing less. Indeed, the scheme that is proposed, as recommended by the committee, is in excess of the scheme that exists in Victoria. The proposals relieve a worker with in excess of 30 per cent whole-person impairment from the necessity, for instance, of work capacity testing. They allow that worker to go forward into the future without the imposition of work capacity testing. With whole person impairment between 20 per cent and 30 per cent there is ongoing benefit subject to work capacity testing. This is a scheme, as I say, consistent with that in other States. It is a scheme that provides a better level of benefits than in many of the other States. It is not a creation simply of the committee and is not a creation that is in any way inferior to what exists in other States.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.00 p.m.]: We need to be very mindful of what is being debated here. Currently the definition of a "most seriously injured" worker is one who is 30 per cent whole person impaired. The committee, which was referred to by Hon. Trevor Khan and on which I also served, heard evidence from the Australian Medical Association. The association's evidence was quite plain: it said that an impairment level assessed at more than 30 per cent involves catastrophic injury. One doctor suggested one in a hundred injured workers would satisfy this definition. Some of the lawyers who gave evidence said that of the thousands of clients they have seen over a number of years there might be a handful of such people. One person ventured an assessment that of the approximate 42,000 claimants currently in the system 120 or 130 might qualify for an assessment of 30 per cent impairment.

The Hon. Greg Pearce: Is that a year?

The Hon. ADAM SEARLE: No, in total. When we were given a short briefing by the Minister's staff on the bill we asked how many of those currently in the system had such an impairment level. No doubt the Minister will provide those figures in due course. On any analysis, we are talking about a very serious level of injury to get into this category. Returning to the committee process, the provisions we are currently debating form part of recommendation No. 7 of that committee. I quote:

> That the NSW Government seek to amend the *Workers Compensation Act 1987* to impose a time cap on weekly income benefits of no less than five years for less seriously injured workers, with a more generous time cap—

unspecified—

> for an intermediate category of injured worker and ultimately no time cap … for the most seriously injured workers.

The 30 per cent and up equates to the definition of "most seriously injured worker" currently in the bill. We say that is too high.

The Hon. Trevor Khan: The intermediate category.

The Hon. ADAM SEARLE: According to the committee, people in the intermediate category are meant to have benefits beyond five years.

The Hon. Trevor Khan: That is right. They do.

The Hon. ADAM SEARLE: In this legislation they do not. In framing this legislation the Government has not faced up to the language of the committee; it is not describing the category as "intermediately injured worker". Nor will members find in the bill any definition of a "less seriously injured worker". Such a term is a terrible insult to those workers who have very serious levels of injury. We are really talking about shades of damaging injuries for people here. This legislation is not quite congruent with that recommendation of the committee. The Government has squibbed the language and it is not facing up to what it is trying to do. A threshold of 30 per cent for the upper level of benefits provided for in the bill is simply too high and will exclude too many people. It needs to be lower.

If there is to be any threshold it should be a 15 per cent threshold. A 15 per cent threshold is widely recognised and accepted as being an accepted dividing line between those who have suffered very serious injuries and those whose injuries are less serious—I will not insult those people by calling them less seriously

injured workers. Those workers also have serious levels of injuries but just not as serious as 15 per cent or above. As I have said, we should be mindful of what we are speaking about here. The 30 per cent threshold is far too high. The Government has made a lot of saying that people who achieve this assessed level of impairment or worse will have enhanced benefits. That is somewhat illusory, because the vast majority of workers under this package of proposed changes will suffer very serious reductions, not only financially but in terms of their medical care and support.

This 30 per cent threshold is a sleight of hand by the Government. That high level of impairment has been chosen because the Government knows that the vast majority of people will fall well below it, just as the vast majority of people will still fall below the 20 per cent threshold for benefits. From the examples that Mr David Shoebridge and I have read out—others may have referred to them in the second reading debate—it can be shown that even at a level of 20 per cent and above we are talking about extremely damaged individuals. If this House does nothing else, there must be some reining in of the proposals in this bill because they are too extreme and will do so much damage. As a house of review we must try to ameliorate some of the damage this bill seeks to inflict on injured workers.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [5.05 p.m.]: The Deputy Leader of the Opposition does not do much to assist us in this debate by muddying the waters with his reference to a 15 per cent whole person impairment, which was used for an entirely different purpose—for access to common law. He is trying to grey this debate and change it. The reality is that for the intermediate group the Government has been more generous than was anticipated by the committee, in that no time cap at all has been placed on those in the 20 per cent to 30 per cent whole person impairment range who are unfit to work. The Government has been as generous as it can in the context of having a sustainable and affordable scheme so there is compensation available to get those who are injured back to work and there is a capacity to maintain the scheme into the future.

Mr DAVID SHOEBRIDGE [5.06 p.m.]: I wish to address one of the major fallacies in the presentation by the Hon. Trevor Khan in his reference to other schemes across the country that are meaner than the New South Wales scheme. For example, he gave the example of the Victorian scheme. One thing he failed to address is that the Victorian scheme has far more generous access to common law benefits. The Victorian scheme has a narrative test. If a worker in Victoria loses one-third of his or her earning capacity as assessed by a judge—not by some trumped-up bureaucrat who will be doing the whole person impairment assessments under this Government's proposal—then that worker will have access to common law damages. That means full wage loss for the rest of that worker's life, full medical expenses for the rest of that worker's life, full treatment care for the rest of that worker's life, gratuitous care for the rest of that worker's life—a vastly superior package of benefits for seriously injured workers in Victoria.

In New South Wales the threshold is set at 15 percent whole person impairment. If a worker manages to get common law benefits in New South Wales they do not get their future medical expenses or any future gratuitous care. They do not get anything other than their basic wage loss. Under the miserly common law scheme in New South Wales they have to pay for their medical expenses, nursing care, any changes required to their homes to get around in wheelchairs and so on, out of their economic loss damages. It is not a generous scheme; it is not a Rolls-Royce scheme. It is not even of the standard of the scheme in Victoria.

The CHAIR (The Hon. Jennifer Gardiner): Mr David Shoebridge has moved The Greens amendments Nos 1 to 3 [C2012-114]. I suggest that Opposition amendment No. 19 on sheet C2012-100I be moved now.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.09 p.m.]: I am happy to do so. I move Opposition amendment No. 19 on sheet C2012-100I:

> No. 19 Pages 8 and 9, schedule 1.1 [3], proposed section 39, line 28 on page 8 to line 4 on page 9. Omit all words on those lines.

This amendment proposes the entire deletion of proposed section 39 from the bill, which can be found on pages 8 and 9. In short, Opposition amendment No. 19 would have the effect of removing from the proposed legislative regime any five-year cap on weekly benefits. Of course, that would have the consequent effect on continuing medical benefits because of the nexus in the bill. If the Opposition is unsuccessful in persuading the Committee about the justice of this proposition we will support The Greens amendment No. 3 moved by Mr David Shoebridge. To get to the position provided in the bill a worker must have been assessed as having no

current work capacity and as being likely to continue indefinitely to have no current work capacity. A second test, that is, whether a person worked 15 hours a week or was earning $155 a week, is an alternative proposition to having no current work capacity.

An injured worker must have a serious level of impairment to satisfy an insurer that they have no current work capacity. Indeed, to get past the first cap of 2½ years an injured worker must have a very serious level of impairment. We do not agree with or concede that a cap on medical costs or compensation payments is appropriate in the scheme, certainly not at the earlier mark and not at the five-year mark. An injured worker who manages to get to the 2½ year mark should be able to continue receiving workers compensation without looking over their shoulder in terms of whether they will have relatively small financial support on a weekly basis and the all-important medical support and attention they require. I earnestly ask the Committee to consider removing the five-year cap provided in the bill.

Mr DAVID SHOEBRIDGE [5.12 p.m.]: As I indicated earlier, The Greens support the Opposition's amendment. The Greens amendment No. 3 on sheet C201-114 gives the Government its pound of flesh on weekly payments. We would obviously prefer a system whereby an injured worker is entitled to compensation whilst ever they are incapacitated. That is what the Opposition amendment does, and we fully endorse it.

Question—That The Greens amendments Nos 1 and 2 [C2012-114] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mr Pearce
Mr Brown	Mr Lynn	
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Gallacher
Mr Roozendaal	Mr Harwin
Mr Veitch	Mrs Pavey

Question resolved in the negative.

The Greens amendments Nos 1 and 2 [C2012-114] negatived.

Question—That Opposition amendment No. 19 [C2012-100I] be agreed to—put.

Division called for and Standing Order 114 (4) applied.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mr Pearce
Mr Brown	Mr Lynn	
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Gallacher
Mr Roozendaal	Mr Harwin
Mr Veitch	Mrs Pavey

Question resolved in the negative.

Opposition amendment No. 19 [C2012-100I] negatived.

Question—That The Greens amendment No. 3 [2012-114] be agreed to—put.

Division called for and Standing Order 114 (4) applied.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mr Pearce
Mr Brown	Mr Lynn	
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Gallacher
Mr Roozendaal	Mr Harwin
Mr Veitch	Mr Pavey

Question resolved in the negative.

The Greens amendment No. 3 [2012-114] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.27 p.m.], by leave: I move Opposition amendments Nos 7 and 8 on sheet C2012-100I in globo:

No. 7 Page 4, schedule 1.1 [2], proposed definition of ***suitable employment***, line 40. Omit "specify, and". Insert instead "specify.".

No. 8 Pages 4 and 5, schedule 1.1 [2], proposed definition of ***suitable employment***, line 41 on page 4 to line 8 on page 5. Omit all words on those lines.

Both amendments relate to the definition of "suitable employment" on pages 4 and 5 of the bill. The definition of "suitable employment" in the bill in relation to a worker means employment in a form to which the worker is suited having regard to five factors: the nature of the worker's incapacity; detail of the medical information and the worker's age, skills and work experience; and any document prepared as part of the return to work process including, under the Act, any occupational rehabilitation services that are being or have been provided to and for the worker; and any other matters specified in the WorkCover guidelines. So far, so good. These are the factors that one might assume would inform what may constitute suitable employment for an injured person seeking to return to work so that they are not reliant upon a scheme for their financial wellbeing, at least in part, and may be able to again support themselves economically. However, the good work of the definition in paragraph (a) on page 4 is completely and utterly undercut by paragraph (b).

The CHAIR (The Hon. Jennifer Gardiner): Order! I am having difficulty hearing the Hon. Adam Searle. If members wish to have conversations they should do so outside the Chamber.

The Hon. ADAM SEARLE: An ungodly hubbub, Madam Chair. Paragraph (b) says that, regardless of all that is contained in paragraph (a), you do not have regard to whether the work or employment is actually available and whether it is of a type or nature generally available in the employment market. You disregard the nature of the worker's pre-injury employment and effectively you disregard the worker's place of residence. The effect of paragraph (b) not only undercuts what may constitute suitable work but lends an air of complete unreality or an abstract quality to working out what may be suitable for an injured worker. Of course, this has consequences elsewhere in the bill because this forms part of or underpins, as I understand it, the work capacity testing regime provided for in the legislation.

Later we will be debating provisions under which workers will be able to be tested for their work capacity and it may be that the definition of suitable employment has a role to play in suggesting that injured workers can do some things that may lead to their benefits being reduced or cut off entirely. The work capacity relates to the definition of suitable employment on page 4. Workers' pre-injury work, where they live and those other factors referred to in paragraph (b) are relevant and should not be ruled out. But any assessment of suitable employment should be informed by the provisions in paragraph (a) and they should not be detracted from in any way. If the Government's intention is to promote workers going back to suitable employment—and there are some provisions in the bill, however anaemic, that purport to approach that subject matter—in our view paragraph (b) does more harm than good and should be removed from the bill so that it does not undercut the positives in the first part of the definition.

The Hon. JAN BARHAM [5.33 p.m.]: The Greens support Opposition amendments Nos 7 and 8.

Question—That Opposition amendments Nos 7 and 8 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendments Nos 7 and 8 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.33 p.m.], by leave: I move Opposition amendments Nos 9, 11, 12 and 14 to 18 on sheet C2012-100I in globo:

No. 9 Pages 5 and 6, schedule 1.1 [3], proposed section 35 (1) (definitions of ***D***, ***E*** and ***MAX***) and proposed section 35 (2), line 33 on page 5 to line 13 on page 6. Omit all words on those lines.

No. 11 Page 6, schedule 1.1 [3], proposed section 36 (1), lines 17–20. Omit all words on those lines. Insert instead "entitlement period is to be at the rate of AWE.".

No. 12 Page 6, schedule 1.1 [3], proposed section 36 (2), lines 23–26. Omit all words on those lines. Insert instead "entitlement period is to be at the rate of AWE.".

No. 14 Page 6, schedule 1.1 [3], proposed section 37 (1), lines 30–33. Omit all words on those lines. Insert instead "entitlement period is to be at the rate of AWE x 90%.".

No. 15 Pages 6 and 7, schedule 1.1 [3], proposed section 37 (2), line 37 on page 6 to line 3 on page 7. Omit all words on those lines. Insert instead "entitlement period is to be at the rate of AWE.".

No. 16 Page 7, schedule 1.1 [3], proposed section 37 (3), lines 7–11. Omit all words on those lines. Insert instead "entitled during the second entitlement period is to be at the rate of AWE x 90%.".

No. 17 Page 8, schedule 1.1 [3], proposed section 38 (6), lines 16–19. Omit all words on those lines. Insert instead "the second entitlement period is to be at the rate of AWE x 90%.".

No. 18 Page 8, schedule 1.1 [3], proposed section 38 (7), lines 22–25. Omit all words on those lines. Insert instead "after the second entitlement period is to be at the rate of AWE x 90%.".

These amendments relate to the wage calculations provided for in the bill and seek to remove certain parts of those definitions, in particular the deductible amount and the maximum weekly compensation amount. Each of the amendments is interlinked and it would not make sense if some were carried and others were not. In effect, they are all of a piece. The step-downs provided for in the bill are 95 per cent of average weekly earnings for a certain period and then 80 per cent for another period, and we are seeking to insert rates of 100 per cent and 90 per cent. That is consistent with our other amendments. It would significantly ameliorate the harshness of this proposal and take some small steps towards making the bill fairer for workers by way of an improved calculation of their weekly earnings for the purposes of calculating weekly benefits. We urge the Committee to give careful consideration to these amendments so that injured workers have some measure of justice.

The Hon. TREVOR KHAN [5.36 p.m.]: The Government does not support the amendments. If one does not take into account the deductible amount then there is, in a sense, double compensation. For example, if the employer provided a car and perhaps fuel and that continued to be supplied during the period of incapacity, if that was not deducted there would in substance be a double compensation. Plainly that is not the intention of the scheme in any shape or form, so in those circumstances the amendments are not supported.

Mr DAVID SHOEBRIDGE [5.37 p.m.]: The Greens support the Opposition amendments. The theoretical position put by the Hon. Trevor Khan does not come to grips with the reality of the Opposition's amendments, which are seeking to put in place a more decent and fairer sum for compensation.

Question—That Opposition amendments Nos 9, 11, 12 and 14 to 18 [C2012-100I] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mr Pearce
Mr Brown	Mr Lynn	
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Gallacher
Mr Roozendaal	Mr Harwin
Mr Veitch	Mrs Pavey

Question resolved in the negative.

Opposition amendments Nos 9, 11, 12 and 14 to 18 [C2012-100I] negatived.

Mr DAVID SHOEBRIDGE [5.44 p.m.], by leave: I move The Greens amendments Nos 1 and 10 on sheet C2012-107B in globo:

No. 1 Page 8, schedule 1.1 [3], proposed section 38 (5), lines 11–13. Omit "An insurer can make a work capacity decision about a seriously injured worker without conducting a work capacity assessment.".

No. 10 Page 13, schedule 1.1 [3], proposed section 44A (3), lines 21 and 22. Omit all words on those lines.

Amendment No. 1 will amend new section 38 (5), which currently reads:

> (5) An insurer is not to conduct a work capacity assessment of a seriously injured worker unless the insurer thinks it appropriate to do so and the worker requests it. An insurer can make a work capacity decision about a seriously injured worker without conducting a work capacity assessment.

The Greens amendment No. 1 deletes the second sentence, or clause (5). It is remarkable that the Government proposes to allow a serious decision to be made by an insurer about the work capacity of a seriously injured worker without requiring the insurer to assess the work capacity of that injured worker. If the legislation were drafted to say, "An insurer can accept that a seriously injured worker has no capacity to work" without requiring them to carry out an assessment, then The Greens would be comfortable with the Government's amendment. But this allows the insurer not only to find that the seriously injured worker has no capacity to work without any evidence but also to find, without any evidence at all, that the seriously injured worker has a capacity to work.

It does not require the insurer to undertake a work capacity assessment. If it was designed for the beneficial purpose of allowing an insurer not to require a seriously injured worker—we know the definition of "seriously injured worker" is a whole person impairment of 30 per cent of more—to undergo a work capacity assessment because the insurer accepts straight off that a person who has no feet has no work capacity, that would be fine. But that is not what this legislation proposes to do. This legislation proposes, in limited circumstances, to accept without requiring the assessment that there is no work capacity. But it also says that the insurer can assess a seriously injured worker as being fit for work without ever undertaking a work capacity assessment. It is extraordinary that such a provision is in a piece of legislation that has received wonderful scrutiny in the lower House, has been through the fine-tooth comb of the Minister for Finance and Services, and is now in this Chamber. This decision can be made by an insurance clerk—and we know from the committee inquiry that clerks turn over about every six months on most case files. An insurance clerk can decide without a shred of evidence that a seriously injured worker—and I mean a catastrophically injured worker, because that is effectively what the test is—is fit to go to work.

In doing so, that clerk can effectively make a determination that will terminate the worker's right to compensation. The Government is saying, "Don't you worry. Some other insurance clerk will do an internal review." If injured workers are offended by that, they can appeal to a bureaucrat at WorkCover. They will have no right to be heard or to legal representation and they will have no access to financial support to pursue this process. An internal review will be undertaken by yet another insurance clerk and then an administrative review will be undertaken by a bureaucrat in WorkCover—that wonderful bureaucracy that has created the mess we are dealing with today.

If workers are not satisfied with the administrative review, the Government has established another wonderful process. Workers will now have the right to pursue a procedural review by yet another bureaucrat. Of course, even if that bureaucrat finds that the procedure has not been followed correctly, that finding will not be binding on the insurer—it can be ignored. There will be no evidence and workers will have no right to be properly heard or to be represented. Seriously injured workers will be thrown on the scrap heap. This amendment goes some way to ensuring that before seriously injured workers are thrown on the scrap heap someone has presented some evidence to justify doing it.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.51 p.m.]: The Opposition supports The Greens amendment No. 1. It is an extraordinary and retrograde step that an insurer can make a work capacity decision about a seriously injured worker. The words should be omitted because it is extraordinary that an assessment will be made without regard to any information. That is a very strange approach. It would be different if the bill ensured that the insurer is fully cognisant of a worker being seriously injured within the meaning of the bill. As we have previously discussed, that involves a very high level of impairment. It is strange that insurers would make such an assessment about capacity without conducting any assessment or even without legislators in this House knowing how and in what way they would inform themselves in order to make a decision. Such decisions must be based on evidence and they must be rational and informed. If no assessment is undertaken, how will they reach that decision? It is a very strange proposition. The Opposition cannot support that aspect of the bill and, therefore, will support The Greens amendment No. 1.

Mr DAVID SHOEBRIDGE [5.53 p.m.]: The Greens amendment No. 10 removes the capacity of an insurer to make a work capacity decision in the absence of a work capacity assessment. I have made my position clear with regard to this issue.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.53 p.m.]: The Opposition also supports The Greens amendment No. 10.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [5.54 p.m.]: The Government opposes these amendments. I am not sure whether Mr Shoebridge has misread the clause. Unfortunately there will always be some workers who are so seriously injured that there is no doubt about their incapacity to work. This provision of the bill is consistent with the committee's first recommendation, which states that there should be an ability to waive the requirement for a severely injured worker to undergo a work capacity test. The clause clearly prevents an insurer insisting on a work capacity assessment unless the worker requests it. It is up to the worker to decide. It is unfortunate that Mr David Shoebridge thinks it is helpful to attack the bureaucrats who will administer this scheme. One of the Government's key aims is to make significant reforms to WorkCover itself. It is also taking measures to ensure that the insurers are far more effective and efficient than they are now. In relation to the independent review, I indicated that the Government will accept Reverend the Hon. Fred Nile's amendment to ensure that decisions are binding.

Mr DAVID SHOEBRIDGE [5.56 p.m.]: Amendment No. 10 does not apply only to seriously injured workers and it does not contain the election provision to which the Minister referred. In any event, the Minister has misread proposed section 38 (5). A worker can request a work capacity assessment. However, if he does not, the insurer can make a determination about capacity in the absence of an assessment. This was beneficial legislation designed to help workers. However, no judge could possibly read this array of provisions in a beneficial light.

There will be nothing to restrict an insurance clerk from determining that a seriously injured worker is fit for work without a shred of evidence or requiring a work capacity assessment to be undertaken. If the Government genuinely intended to relieve seriously injured workers of the need to go through a work capacity assessment when everyone can tell that they cannot work, the legislation should say that, but it does not. This legislation is a nasty piece of work from beginning to end. There is no pretence from the Government that it is trying to help injured workers. This clearly leaves open the capacity for insurance clerks to chop off seriously injured workers under proposed section 38 and any other workers under proposed section 44A without a shred of evidence. We are meant to be happy with an appeal to a bureaucrat and no right to legal representation or to be heard.

Dr JOHN KAYE [5.58 p.m.]: I support The Greens amendments Nos 1 and 10 in respect of capacity to make a work capacity decision without conducting a work capacity assessment. The sentences proposed to be deleted write a licence for any insurance clerk to make a determination without gathering any evidence or making any attempt to assess the real capacity of the worker to return to work. We must also consider the incentive that might be offered to an insurance clerk. Each insurance clerk will clearly be under pressure to return injured workers to their workplace as soon as possible to reduce insurance company payouts. That creates a terrible perverse incentive. Insurance clerks will be making decisions knowing that their performance is being assessed based on how many people they get back to work.

The real victims of those two clauses are injured workers—the people who, without the benefit of a proper assessment, can be told, "Sorry, you have to go back to work." In the case of proposed section 38, catastrophically injured, and proposed section 44A (3), any other injury, regardless of how incapacitating that injury is in reality, they will be forced to return to work. Those two clauses and the Government's defence of them underline what this legislation is about. It is about taking away the rights of injured workers, getting them off compensation as quickly as possible and dumping them back into the workplace, regardless of whether they are fit for the job, regardless of whether it is in their best interests and regardless of whether it looks after their long-term health. The two clauses should be deleted. The Government should support the deletion of those clauses unless its real incentive is simply to maximise the profits of insurers and minimise the payouts by employers, regardless of the impact on injured workers.

Question—That The Greens amendments Nos 1 and 10 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 14

Ms Barham	Mr Moselmane	Mr Shoebridge
Mr Buckingham	Mr Primrose	Ms Westwood
Ms Cotsis	Mr Searle	*Tellers,*
Ms Faehrmann	Mr Secord	Mr Donnelly
Dr Kaye	Ms Sharpe	Ms Voltz

Noes, 17

Mr Borsak	Mr Green	Mr Mason-Cox
Mr Brown	Mr Harwin	Reverend Nile
Ms Cusack	Mr Khan	Mr Pearce
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Mr MacDonald	Mr Colless
Mr Gay	Mrs Maclaren-Jones	Dr Phelps

Pairs

Ms Fazio	Mr Ajaka
Mr Foley	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell
Mr Whan	Mrs Pavey

Question resolved in the negative.

The Greens amendments Nos 1 and 10 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [6.09 p.m.]: I move The Greens amendment No. 2 on sheet C2012-107B:

No. 2 Page 10, schedule 1.1 [3], proposed section 41 (5) (a), lines 12–15. Omit all words on those lines.

This amendment will have the effect of deleting the provision in proposed section 41 (5) (a) and provides one of the requirements to be satisfied for a worker to be eligible for this "special" compensation, which the Government has been so munificent in granting to workers who are incapacitated after surgery related to his or her injury. In proposed section 41 the Government is saying that in almost every circumstance any ongoing incapacitated worker will be cut off after 2½ years, others will be cut off after five years and a raft of others will be cut off at a much earlier date after a work capacity assessment is done or—as the Government has now got it through the House—a work capacity decision is made by an insurer who will say if a worker is fit to return to work.

Workers chopped off from workers compensation in one way or another may later require further surgery. Perhaps they will require a further laminectomy on their back because of a particularly severe back injury sustained at work or perhaps they will require an ankle fusion. But the Government in its munificence has said that even if they have been chopped off because of other mean provisions in this bill they can get a little more in weekly compensation. That compensation is said, in the name of the Government, to be "special" compensation. How it is special I do not know.

The Hon. Adam Searle: Perhaps because it is paid.

Mr DAVID SHOEBRIDGE: As the Hon. Adam Searle said it is "special" because it is an actual payment—that is pretty special from this Government. But the Government has included the additional requirement that workers are not entitled to this special compensation after surgery unless a worker has received weekly payments of compensation in respect of the initial injury and had current work capacity prior to suffering incapacity from the injury-related surgery. The Greens amendment proposes to strip that proviso out. I will give a straightforward example of that. Take a worker who suffers a lifting injury at work, feels pain in his or her back but struggles on and continues at work. Maybe that worker puts a claim in and maybe goes to a general practitioner. Maybe for a period that worker is having his or her painkillers paid for by the WorkCover scheme, the worker continues to see a general practitioner and a physiotherapist, but continues to work with a bit of a bung back. Then, perhaps 18 months down the track, the worker can no longer work. That worker, who never received any weekly compensation, is cut off from his or her medical expenses after 12 months.

Under the Government's grand scheme, after the 12 months that worker would have to pay for the painkillers and physiotherapy. Perhaps after a while that worker could no longer pay for his or her painkillers or physiotherapy and, finally, the worker requires back surgery for that work-related injury. Under this legislation, even if that worker had a spinal fusion, which required him or her to have a period of time away from work, that worker would not qualify for special compensation because of the limitations put in place that to qualify for this wonderful special compensation the worker must before the surgery have received weekly payments of compensation. But that would not happen because that worker made the mistake of sticking it out at work. Why should it be that once a worker has had surgery related to an injury, and he is off because of that surgery, we have this mean and unnecessary restriction on the receipt of weekly benefits? The Greens amendment will

remove that restriction. This amendment will mean that if a worker has had work-related surgery then that worker can get the miserly compensation being proposed by the Government and crafted as "special" compensation. I commend this amendment to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.14 p.m.]: The Labor Opposition supports The Greens amendment. We see no reason for this restriction on access to so-called "special" compensation. It is just another element of the injustice wrought by the bill. It is a very complicated regime.

The Hon. Sophie Cotsis: It is a regime.

The Hon. ADAM SEARLE: I acknowledge that interjection. The Labor Opposition supports this measure which, if carried, in some small way will make it a little better.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [6.14 p.m.]: The Government opposes The Greens amendment. The amendment would have the effect of creating another qualification. Special compensation is limited compensation, which is available to injured workers who previously have suffered work incapacity from an injury which resulted in weekly benefits compensation and who subsequently required surgery related to that injury.

Mr DAVID SHOEBRIDGE [6.15 p.m.]: No justification at all from the Government.

The Hon. Greg Pearce: It is a benefit.

Mr DAVID SHOEBRIDGE: It is a benefit that the Government is taking away from workers in the circumstances that I gave an example of. If a worker has had surgery because of a work-related injury and they cannot work because of that surgery then surely the O'Farrell Government should accept that at least in those circumstances the worker has been under the knife because of that injury. How miserable could the Government be to not pay a worker some compensation while he or she was recovering from surgery? Why would the Government not pay a worker recovering from surgery because of work-related injury compensation? Mr Finance Minister, what is the reason for not paying that worker compensation, other than the Government wants to save a dollar at the expense of these vulnerable people?

Dr JOHN KAYE [6.16 p.m.]: I am confused as to the Government's opposition to this amendment. The Government has said that it wants to create incentives to get people back to work. An injured worker who, as Mr David Shoebridge put it, toughs it out and goes back to work, decides not to go on benefits and returns to work but later discovers that he or she needs an operation and goes off work again, will not be eligible for this special compensation, whereas an injured worker who goes onto benefits will be eligible. So the incentive in proposed section 41 (5) (a), which this amendment proposes to remove, is to stay on benefits. The incentive is exactly the opposite of what the Government claims. As Mr David Shoebridge said, this clearly shows that this legislation is full of mean and nasty attacks on injured workers. Here is one opportunity to take away one of those attacks. This is an opportunity to give access to this benefit to those workers who are doing what the Government is saying they should do—namely, go back to work and not take benefits.

Mr David Shoebridge: And stay at work.

Dr JOHN KAYE: And stay at work until the point where they realise that they cannot hack it any longer and they need an operation. Those people are being punished by proposed section 41 (5) (a). This proposed section should not be in this legislation.

Question—That The Greens amendment No. 2 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 14

Ms Barham	Mr Primrose	Ms Westwood
Mr Buckingham	Mr Searle	Mr Whan
Ms Cotsis	Mr Secord	*Tellers,*
Ms Faehrmann	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 17

Mr Borsak	Mr Harwin	Reverend Nile
Mr Brown	Mr Khan	Mrs Pavey
Ms Ficarra	Mr Lynn	Mr Pearce
Mr Gallacher	Mr MacDonald	*Tellers,*
Mr Gay	Mrs Maclaren-Jones	Mr Colless
Mr Green	Mr Mason-Cox	Ms Cusack

Pairs

Ms Fazio	Mr Ajaka
Mr Foley	Mr Blair
Mr Moselmane	Mr Clarke
Mr Roozendaal	Mrs Mitchell
Mr Veitch	Dr Phelps

Question resolved in the negative.

The Greens amendment No. 2 [C2012-107B] negatived.

Reverend the Hon. FRED NILE [6.26 p.m.]: I move Christian Democratic Party amendment No. 1 on sheet C2012-115B:

No. 1 Page 11, schedule 1.1 [3], proposed section 43 (1). Insert after line 10:

(e) a decision about whether a worker is, as a result of injury, unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment,

This amendment puts back in the legislation the intent of section 47 of the Workers Compensation Act 1987, that is, the nature of a worker's injury means that there is a substantial risk of further injury to the worker if they return to a particular type of employment, for example, an amputee returning to manual labour. This will help make the legislation more effective for injured workers.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [6.27 p.m.]: As I indicated in my reply to the second reading debate, the Government has been through the Christian Democratic Party amendments and it supports the amendments for the reasons I outlined in that speech. Therefore, I will not take up the time of the Committee except to reiterate the Government's support for the Christian Democratic Party amendments.

Mr DAVID SHOEBRIDGE [6.27 p.m.]: This amendment will do next to nothing. When a decision is made about work capacity under section 43, which includes a decision about a worker's current work capacity, it simply makes a further particularisation about that injured worker. The provision also includes a decision about whether an injured worker is unable to engage in a certain kind of employment without substantial risk of further injury. That is already picked up in the decision about the injured worker's current work capacity. One difficulty is that this amendment will further complicate an already complicated section of the legislation. Indeed, it is envisaged that injured workers will go through the process without any legal advice or assistance. It is already complicated: this amendment is yet another complication.

The Hon. Trevor Khan: Grumble, grumble.

Mr DAVID SHOEBRIDGE: I heard the Hon. Trevor Khan say, "Grumble, grumble".

The Hon. Trevor Khan: Nothing I could say would make you happy.

Mr DAVID SHOEBRIDGE: I point out that this bill will not make me happy. Seriously injured workers, who might be on substantial pain medications, must interpret the additional gloss being inserted by the Christian Democrats amendment. I do not think they will be praising Reverend the Hon. Fred Nile.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.29 p.m.]: The Opposition will not oppose the Christian Democratic Party amendment moved by Reverend the Hon. Fred Nile. However, we point

out that it would add a further particular in section 43. That provides that work capacity decisions by insurers are effectively final and are not able to be queried or challenged in any way other than by the difficult procedure of judicial review in the Supreme Court or as provided for in section 44 proposed in the bill. That is really an internal review or a review by the WorkCover Authority or by the independent review officer, and these are quite cumbersome and bureaucratic procedures. The amendment is a marginal improvement on what is an austere and unfriendly legislative regime which effectively makes the insurer the arbiter of the degree of incapacity of the worker.

The Hon. Robert Brown: Other than the avenues of judicial review.

The Hon. ADAM SEARLE: Other than the avenues of review that I have mentioned. But I will say this about judicial review: judicial review is not an appeal; it is merely an ability to ask the superior court of record to ensure that the decision-maker has made the decision in a correct procedure legally. It does not enable any review of that decision on its merits. Although it is important in the right situation, it is technical and has a narrow capacity to query an administrative decision. The other avenues provided for in section 44 are cumbersome and difficult and the Opposition says that there is a better way, which I will come to in future amendments. We do not oppose the amendment.

The Hon. ROBERT BORSAK [6.31 p.m.]: The Shooters and Fishers Party supports the amendment moved by Reverend the Hon. Fred Nile. It is important that those who are already injured should not be required to engage in further employment where that injury may be worsened or may place them at further risk.

Dr JOHN KAYE [6.32 p.m.]: New section 431A refers to "a decision about a worker's current work capacity". I presume that everything that is in proposed (e) in the Christian Democratic Party amendment is already in there. I presume, therefore, that this paragraph is being put in there to run cover for the Christian Democratic Party for supporting this legislation. I know this legislation.

The Hon. Adam Searle: You make it look so.

Dr JOHN KAYE: It certainly looks like that is what is happening. I was at a public meeting in Macquarie Street earlier this afternoon and, as much as I could hear Reverend the Hon. Fred Nile addressing that meeting—I could not hear a lot of him because there was so much groaning going on around me.

The Hon. Greg Pearce: Because you were there?

Dr JOHN KAYE: Thank you for the interjection. No, the groaning was specific and directed at Reverend the Hon. Fred Nile. The reason for that is partly because many of those workers have been here before with Reverend the Hon. Fred Nile, going back to the 2000 changes to the legislation when all sorts of promises were made and none were delivered on. What we are seeing here is just a form of words to appease his conscience and maybe fool one or two workers. However, the majority of people I spoke to at the rally were not fooled by Reverend the Hon. Fred Nile; they knew that his vote for this legislation—

The Hon. Greg Pearce: Point of order: This sort of diatribe does no-one any good and it does not assist the debate. We have already had Mr David Shoebridge making grossly offensive comments such as the Government seeking "a pound of flesh". These comments are inappropriate and disrespectful of injured workers.

Dr JOHN KAYE: To the point of order: It would be helpful if we knew which particular standing order the Minister was seeking to limit my contribution under.

The Hon. Greg Pearce: Relevance.

Dr JOHN KAYE: He did not say that.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order.

Dr JOHN KAYE: Is Reverend the Hon. Fred Nile seeking a point of order? If he is seeking a point of order I am being polite in allowing him to do so.

The Hon. Adam Searle: Do not interrupt him when he is being polite.

Dr JOHN KAYE: Do not squander the rare opportunity. This is purely a conscience salve designed—as most of these amendments are—purely to give the Christian Democratic Party an out for voting for a piece of legislation that is not only profoundly anti-worker but also profoundly anti-family.

Reverend the Hon. FRED NILE [6.36 p.m.]: Dr John Kaye is consistent because every time the Christian Democratic Party has moved an amendment—over 30-odd years—that is the speech he has made. I know he is jealous because The Greens amendments are not being passed. I am sorry about that, John, but you need not take it out on me.

Question—That Christian Democratic Party amendment No. 1 [C2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 1 [C2012-115B] agreed to.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.36 p.m.]: I move Opposition amendment No. 20 on sheet C2012-100I:

No. 20 Page 11, schedule 1.1 [3], proposed section 43 (2), line 21. Omit "Act.". Insert instead:

Act,

(c) a decision as to whether an employer has at the request of an injured worker provided suitable employment for the worker.

New section 43 (2) says that the following decisions are not work capacity decisions and therefore do not fall into that austere and narrow regulatory regime provided for in section 44. Paragraph (a) refers to "a decision to dispute liability"; and paragraph (b) refers to "a decision that can be the subject of a medical dispute". The Opposition is proposing a further paragraph, (c), "a decision as to whether an employer has at the request of an injured worker provided suitable employment for the worker." We move this amendment to make clear that the general power reposed in the Workers Compensation Commission to hear and determine disputes arising under the Act would not be infringed by 43 (2) and to make sure that disputes about suitable employment can be heard and determined by the commission.

There was overwhelming evidence before the select committee that there was an inadequate provision of suitable employment or suitable work by employers. WorkCover provided some very interesting but also very disturbing statistics relating to the types of suitable duties provided by employers. I am attempting to find the more detailed information but the broad information was that, whether you took the measurement at six months, 12 months or 18 months after injury, somewhere between 33 per cent and 42 per cent only of employers were able to or did provide suitable work for injured workers so that they could return to work.

This is clearly not good enough. The committee—this is not putting words in its mouth—accepted that more needed to be done in this important area and that meaningful and decisive steps needed to be taken to improve the provision of work for injured workers. It has always been a key feature of the legislation to encourage workers to return to work. The medical evidence was overwhelming that returning to work was a healthy thing for injured workers, much better than remaining on benefits. Yet somehow the system was not providing sufficiently for that. It is the case that a number of employers, particularly small employers, are simply not able to provide suitable duties. However, we also heard evidence that in many cases employers were unwilling to provide suitable duties.

Sometimes there were fears of re-injury, and from my previous experience in practising industrial law I know employers had misgivings that they would not get their full value out of the employee and there was the risk of liability. In short, the much easier solution was to palm off the employee. Indeed, anyone who has practised workers compensation law to any degree will know—at least in the past when I did in a very small way—almost every settlement of a workers compensation claim with the insurer and/or employer had a clause in the settlement stating that the worker would resign their employment. It was an understandable cauterisation of the insurer's liability, but it threw a person out of employment. Once someone is out of work and injured it is much harder for them to get back into work. Of course, potential new employers ask, according to the evidence we received, whether people have workers compensation claims.

The view of the committee expressed in the body of the report was that a range of issues that would promote and enhance return to work should be pursued by the proposed standing committee envisaged by the

report. There are some provisions in the bill that move towards encouraging return to work. We say they are anaemic. There is a proposed return to work inspectorate for WorkCover and a regulatory regime imposing penalties on employers, which we will discuss in more detail. There needs to be another avenue of enforcement and we say it should be the Workers Compensation Commission. Our amendment makes clear that this independent tribunal will have the capacity to hear and determine matters where there is a dispute about suitable employment. Because it is so consistent with the Government's stated aims in the bill and those of all major stakeholders and probably right-thinking people everywhere there should be a range of new mechanisms to incentivise employers to take workers back, and also provide some method of enforcement.

The Government accepts the logic of this proposition because it is providing in its bill penalties for recalcitrant employers and the ability to impose penalty notices on employers who are infringing the duty that already exists in law. We say that would be suitably reinforced and supported by expansion or recognition of the existing jurisdiction of the Workers Compensation Commission. We ask the House to embrace this proposition in the spirit in which it is offered, which is to try to improve this aspect of the bill and enhance mechanisms to enable workers to go back to work.

The Hon. TREVOR KHAN [6.42 p.m.]: The bill for the first time achieves a significant advance with regard to the imposition of penalties. That has been deficient in the Act. During the inquiry the Hon. Adam Searle, to his credit, spent a considerable amount of time asking questions about this matter. Consistent with the committee report and the approach taken by the Hon. Adam Searle, the bill recognises the need for there to be penalties. It recognises the need for improvement notices to ensure that workers return to work. One would think that we should be receiving accolades from the other side. The Hon. Sophie Cotsis laughs. This is a significant step forward and it should be recognised. This is an issue where there needs to be an appropriate balance. The Government has considered the balance that should be attained, and it is to proceed by way of penalties and improvement notices. That is a consistent and logical scheme to adopt. The approach taken by the Hon. Adam Searle in this amendment is in a sense a bit of one-upmanship because the Government has responded to the needs of the inquiry. The Government does not support the amendment.

Mr DAVID SHOEBRIDGE [6.44 p.m.]: This amendment is not about penalty notices. Maybe the Hon. Trevor Khan is working from the wrong sheet or he got his numbers wrong. This is about whether a decision by an employer at the request of an injured worker to provide suitable employment for the worker can be decided by an insurance clerk with second-rate review by a bureaucrat or by an independent arbitrator in the Workers Compensation Commission before whom the worker can make out a case and be legally represented. It is not about penalty notices, for the benefit of the Hon. Trevor Khan; it is about whether a decision which can be fundamental to a worker's ongoing entitlement to workers compensation is decided by a clerk and a trumped-up bureaucrat or decided in a proper, open process before an arbitrator during which a worker is legally represented. I do not know what Act the Hon. Trevor Khan is reading and I do not know what sheet he was given but it is unfortunate that he put that on the record.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.45 p.m.]: I take some slight exception to the proposition that I am engaging in one-upmanship. I reject that utterly.

The Hon. Trevor Khan: But you will take the honour of having spent some considerable time—

The Hon. ADAM SEARLE: I acknowledge that some time was spent in the committee discussing these issues and the committee report at page 121 notes that a number of stakeholders had called for an increased focus on intervention and return to work and proposals to enhance that. There were submissions from Unions NSW and others about the need for strengthening employer obligations to provide suitable employment. I think I have quite fairly acknowledged the penalty provisions in the bill and the infringement notices capacity. Recommendation 25 on page 122 enjoins the Government to ensure that each of the ideas in that paragraph was fully explored by the standing committee. Some have been taken up and I acknowledge the role of the "stick" of the penalty notice and the potential for being prosecuted for a penalty. But there need to be a number of more nuanced approaches as well that reinforce that return to work possibility.

The idea of having an independent arbitrator hear a dispute about whether there is work that is suitable and available would be a useful adjunct to the regime proposed in the bill. It also is certainly consistent with the policy that the Government says the bill embodies. From what the Hon. Trevor Khan has said, there is no principled reason why the Government could not warmly embrace this sensible and practical idea in the spirit of cooperation that we would all like to see from time to time in this place. I urge all members to be open-minded about this proposition and to embrace it warmly.

Question—That Opposition amendment No. 20 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 20 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.48 p.m.]: With some foreboding I again enter the trenches. I move Opposition amendment No. 21 on sheet C2012-100I:

> No. 21 Page 11, schedule 1.1 [3], proposed section 43 (3), lines 22–25. Omit all words on those lines.

This amendment continues the theme of the previous amendment but in a slightly different way.

The Hon. Duncan Gay: You won't need to repeat it.

The Hon. ADAM SEARLE: I acknowledge that interjection but, with no disrespect intended, a number of my colleagues in this place obviously see the need for amendments relating to sensible return to work mechanisms. Proposed section 43 (3) on page 11 clearly carves out the jurisdiction of the Workers Compensation Commission. It says:

> The Commission does not have jurisdiction to determine any dispute about a work capacity decision of an insurer and is not to make a decision in respect of a dispute before the Commission that is inconsistent with a work capacity decision of an insurer.

We have moved many amendments in globo and there may be more to come. Clearly this provision in the bill recognises that, without it, there would be such jurisdiction in the commission to make this decision. I also acknowledge a briefing note from the Bar Association dated 20 June that outlines a number of concerns about the current regime provided for in the bill. I will freely adapt from part of that briefing note.

The Hon. Trevor Khan: We all have our constituencies to answer to.

The Hon. ADAM SEARLE: I would not describe the Bar Association as a constituency of mine particularly. In fact, the legislation proposed by the Government excludes any independent review of insurer decisions of work capacity, which makes the insurer the determiner of the degree of incapacity with only an internal review and the administrative review provided by in section 44. The suitable employment is assessed by a work capacity assessor appointed by the insurer. It is binding, and consideration cannot be given in the process to the availability of suitable work in each case. In the view of the Bar Association and others who came to the committee to give evidence, work in regional and rural New South Wales, or for people from non-English speaking backgrounds, is already difficult. We think it will be made significantly worse by not having any independent review of the insurer's decision.

It is the case that there should be a capacity for the independent tribunal to hear evidence from the worker, as well as from the insurer or the employer subrogating its rights to the insurer to have a discussion about what is the work capacity. I do not seek to impugn anyone but this provision discloses an alarmingly process-driven or bureaucratic approach to the determination of these issues. People in insurance companies who handle these claims have high volumes of work and are often rushed and overburdened. The evidence to the committee was that the scheme agents, the insurance companies participating in the scheme, did not appear to put their best and most skilled people into claims management. In fact, even PricewaterhouseCoopers, the actuaries, acknowledged that the performance and claims management of a number of the scheme agents had deteriorated and was thereby negatively impacting the financial performance of the scheme.

In that circumstance, and until that systemic issue is properly addressed, reposing such a serious part of this new regime—the work capacity—solely in the hands of the people shuffling the paper in the scheme agents we think runs the very significant risk of working a manifest injustice to injured workers who say, "There is something wrong with this assessment about my capacity". We want that decision to be independently reviewed by an impartial tribunal on the evidence. It is the cornerstone of our system of justice and it applies in the workers compensation field, but for subsection (3). We say it does not undermine or in any way impugn the integrity of the overall structure of the package but it would be another, albeit small, step towards ameliorating a number of the injustices that the bill works. That would be simply to enable this very important future, the work capacity testing, to be reviewed on its merits by an independent and impartial body. It is not an extraordinary proposition—I would have thought it was unexceptionable—and it should be embraced by this Chamber.

The Hon. TREVOR KHAN [6.55 p.m.]: It is worthwhile my spending a moment considering the dispute resolution regime anticipated by the bill. Essentially, the injured worker will first have an appeal through

an internal dispute process managed by the scheme agent. This internal review is designed to be independent of the initial decision-maker and will give the worker an opportunity to provide any new medical evidence demonstrating their incapacity to work. Should the worker still be unsatisfied with the decision of the scheme agent, they can apply for a merits review to WorkCover. WorkCover's recommendations are binding on the scheme agent.

If the worker remains dissatisfied, even after that step, a further right of appeal exists to the independent review officer, who will review the insurer's procedures in making the work capacity assessment. Should the worker wish to take the dispute yet further, they may pursue administrative law review in the Supreme Court. Of course this will expose the worker to the risk of paying costs. The scheme is comprehensive and designed to be rigorous in providing ample opportunities for reconsideration of the merits of the matter. It has the advantage of simplifying the procedure and, quite frankly, ignoring many of the considerable legal costs that have so crippled workers compensation over the years.

Mr DAVID SHOEBRIDGE [6.56 p.m.]: The Hon. Trevor Khan referred to legal costs that have crippled the scheme over the past few years. The committee did not find that legal costs had risen or were anything like a significant cause of any deficit. In fact, legal costs in the scheme have reduced greatly over the past decade. Legal costs are not the problem in the scheme. The Hon. Trevor Khan said that the new system is simpler. It is simpler: If you take away people's right to a fair hearing, where they can be legally represented and can argue their case before an independent arbiter, and give that task to a bureaucrat then I suppose at one level it is simpler. That is the idea. What was this Government's mantra—"simpler, faster, fairer"? But it does not even pretend to be fairer now; it just says "simpler and faster". "Simpler, faster, meaner" would probably be a good mantra—

The Hon. Sophie Cotsis: In O'Farrell world.

Mr DAVID SHOEBRIDGE: Yes, in O'Farrell world. In Barryland it is simpler, faster, meaner. Welcome to New South Wales: home of grand Barryland, where everything is simpler, faster and meaner. The Opposition's amendment seeks to allow for a decision on work capacity to be reviewed before the Workers Compensation Commission. It is not expensive proceedings in the Supreme Court; it is a little tribunal where there is an arbiter set aside. The proceedings are relatively informal but it is an open process, where everybody has a right to be heard and to be legally represented. That is all the amendment seeks to do: give workers that basic right in an open tribunal where they can be represented, and to argue their case in front of an independent arbiter.

But the Government wants something that it describes as "simpler". Workers do not get to have their day in the tribunal and to have legal representation. They have to work their way through this tortuous, complicated legislation—which has been made even more complicated by these amendments. It already fills an entire fat lever-arch folder, and now there will probably be two lever-arch folders of legislation. In Barry world an injured worker will probably have to pay for the two folders of legislation and get no legal representation. They will have to work their way through the legislation and make a submission to an insurance clerk. If the worker does not like the decision of the insurance clerk, a higher-level insurance clerk will review their case. Then it can be reviewed by a bureaucrat from WorkCover—all with no legal fees being paid. The failsafe is meant to be some new bureaucrat who has a review of process. Under the Government's original plan it was non-binding but I think it might make it a binding review of process.

That will merely send it back to another bureaucrat who will make the same decision. If a worker does not like that process, they can have judicial review in the Supreme Court. That sounds nice. You might think you would get a merit determination from the Supreme Court on judicial review, but all it does is make a decision again on process and jurisdiction to see whether a bureaucrat failed to take something into account, or a bureaucrat fell asleep in the middle of the assessment, or got the entirely wrong set of facts. If the Supreme Court makes that finding, does it make a merit review? No, the Supreme Court sends it back to the same bureaucrat to make another decision. That is simpler, faster, meaner 2012 in the world of the Hon. Barry O'Farrell. I seek leave to move The Greens amendments Nos 3 and 4 on sheet C2012-107B in globo.

Leave granted.

By leave, I move The Greens amendments 3 and 4 on sheet C2012-107B in globo:

No. 3 Page 11, schedule 1.1 [3], proposed section 43 (3), line 23. Insert "(other than a decision as to the quantum of weekly payments)" after "an insurer".

No. 4 Page 11, schedule 1.1 [3], proposed section 43 (3), line 24. Insert "(other than a dispute as to the quantum of weekly payments)" after "the Commission".

This is a more modest ask than the Opposition's amendment. It would preserve jurisdiction in the Workers Compensation Commission not for any dispute as to capacity but would allow the commission to determine a dispute as to quantum of weekly payments. So it will not leave the jurisdiction at large for the Workers Compensation Commission but will allow it to determine a dispute as to the quantum of weekly payments. That will take one of the most common disputes—and often one of the most complicated—away from this simpler, faster, meaner process and give it to the Workers Compensation Commission. Clearly, The Greens would prefer the commission to retain its current jurisdiction to determine all these matters, which is the intent of the Opposition's amendment. However, if the Opposition's amendment fails, these amendments are a compromise that would at least retain that aspect of the Workers Compensation Commission's jurisdiction.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.01 p.m.]: The Opposition will support The Greens amendments if the Opposition's amendments are not successful.

Question—That Opposition amendment No. 21 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 21 [C2012-100I] negatived.

Question—That The Greens amendments Nos 3 and 4 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendments Nos 3 and 4 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [7.02 p.m.], by leave: I move The Greens amendments Nos 5 to 9 on sheet C2012-107B in globo:

No. 5 Page 11, schedule 1.1 [3], proposed section 44 (1), line 40. Omit "Authority.". Insert instead:

Authority, or

(d) by the Commission, but only on the grounds that the recommendations of the Authority on its review of the decision would result in substantial injustice to the worker.

No. 6 Page 12, schedule 1.1 [3], proposed section 44 (2), line 5. Insert "the Commission," before "the Authority".

No. 7 Page 12, schedule 1.1 [3], proposed section 44. Insert after line 40:

(4) The following provisions apply to the review of a work capacity decision when the reviewer is the Commission:

(a) an application for review must be made within 30 days after the worker receives notice of the Authority's decision on a review,

(b) an application for review by the Commission may be made without a review by the Authority if the Authority has failed to conduct a review and notify the worker of the decision on the review within 30 days after the application for review is made,

(c) the Commission may decline to review a decision because the application for review is frivolous or vexatious or because the worker has failed to provide information requested by the Commission,

(d) the worker and the insurer must provide such information as the Commission may reasonably require and request for the purposes of the review,

(e) the Commission is to notify the insurer, the worker and the Authority of the findings of the review and may make recommendations to the insurer based on those findings (giving reasons for any such recommendation),

(f) recommendations made by the Commission are binding on the insurer and must be given effect to by the insurer.

No. 8 Page 13, schedule 1.1 [3], proposed section 44 (5), line 4. Omit "is not to". Insert instead "may".

No. 9 Page 13, schedule 1.1 [3], proposed section 44 (6), lines 9–12. Omit all words on those lines.

These amendments effectively stand together. They grant some additional jurisdiction to the Workers Compensation Commission. I will explain them by dealing with The Greens amendment No. 5. As the bill

stands, an application for a review of a work capacity decision must be made in the form approved by the WorkCover Authority and the grounds upon which the review is sought must be specified. The worker must notify the insurer in a form approved by the authority of an application made by a worker for a review by the authority. However, the review envisaged is only a review to the authority—that is, WorkCover. The Greens amendment No. 5 would allow a review by the Workers Compensation Commission, but in limited circumstances. For a review of a work capacity to get up in the commission it would have to be on the grounds only that the recommendation of the authority on its review of a decision would result in a substantial injustice to the worker.

If the worker had had an internal review undertaken by the insurer, then a review by a WorkCover Authority bureaucrat and then could prove that the recommendation from the authority would result in a substantial injustice, the worker could have his case reviewed by the Workers Compensation Commission. This amendment establishes the bar—that is, it will not permit every decision to be reviewed by the commission—because the worker would have to prove that a substantial injustice had occurred. If that were the case, the matter could be reviewed by the Workers Compensation Commission. Amendments Nos 6, 7, 8 and 9 are consequential upon that amendment. Amendment No. 7 establishes a process whereby that review would be undertaken by the commission. This is by no means a revolutionary improvement; it is a modest improvement in the process giving the commission greater jurisdiction. I commend the amendments to the Committee.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.05 p.m.]: The Greens amendments Nos 5, 6 and 7 are the same as Opposition amendments Nos 22, 23 and 25; amendment No. 8 is the same as Opposition amendment No. 27; and amendment No. 9 is the same as Opposition amendment No. 28. There is a certain amount of overlap. In short, the Opposition supports The Greens amendments because they reflect our goal of providing an avenue of review from the decision of the insurer about work capacity. There should not be a bureaucratic, cumbersome process involving reviews by the insurer, the WorkCover Authority and a new independent WorkCover officer. That would be very burdensome, cumbersome and bureaucratic. There should be a facility, once the insurer has had the opportunity to conduct its own review, for the injured worker to cut through this bureaucratic mumbo-jumbo and nonsense. The worker should be able to ask the Workers Compensation Commission—which we think would otherwise have the power—to review the worker's capacity to work in a fair and independent way, rationally informed by the evidence.

Again, the Opposition does not understand why it is such a hard proposition for the Government to accept. It would manifestly improve the nature of the scheme and provide injured workers with some measure of justice. The difficulty is that there is little distinction between the scheme agents—the insurers—and the WorkCover Authority. The scheme agents act for WorkCover. They perform a function that would otherwise be performed by WorkCover, which is the insurer. The insurer conducts its own functions as a scheme agent pursuant to guidelines issued by the WorkCover Authority. In a sense, we have the very real prospect of a nonsense. The insurer makes a decision pursuant to the WorkCover guidelines, and if a worker does not like that the insurer must second-guess its own decision. It should be a commonsense proposition that except in the case of a most egregious error—that is, not having regard to important material, using the wrong form or applying the wrong standards—any internal review by the insurer will not overturn that decision.

We then have the WorkCover Authority being required to second-guess by examining whether the insurer in making the decision has followed WorkCover's own guidelines. It is possible that WorkCover will pick up on some administrative difficulty. However, again, that is not very likely if the insurer has followed the process. The Opposition acknowledges that WorkCover has the ability to do a merit review, but it is hardly impartial because the scheme agents are WorkCover agents. There is a lack of appearance of impartiality and justice for the injured worker. If an application fails, I do not believe most injured workers would feel that they had been given a fair hearing.

This legislation will create a bureaucratic monolith within WorkCover. The WorkCover review officer is unnecessary. The Workers Compensation Commission, which is established and functional, should review these matters and make determinations on the facts. That would be cheaper and more effective than the creation of the new WorkCover review officer. It would also be better for injured workers and their families. The Opposition embraces The Greens amendments because they reflect our thinking and are consistent with our amendments about clarifying the jurisdiction of the Workers Compensation Commission to hear and determine these matters fairly and impartially.

The Hon. TREVOR KHAN [7.09 p.m.]: I will make three points. First, I think the Hon. Adam Searle said that it will manifestly improve the scheme. One has to ask: It will manifestly improve the scheme for whom?

The Hon. Adam Searle: Injured workers.

The Hon. TREVOR KHAN: One might be able to say for lawyers. WorkCover will be making statutory guidelines governing reviews. These will be transparent and available publicly. WorkCover is a regulator and will be accountable to the WorkCover independent review officer. Part of the regime that is being set up by this bill will also include oversight by a parliamentary committee to ensure that—

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! Mr David Shoebridge will come to order.

The Hon. TREVOR KHAN: That will provide an oversight of the performance by WorkCover itself.

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! Members will refrain from interjecting.

The Hon. TREVOR KHAN: Finally, I have set out the regime that will apply under the bill in response to Opposition amendment No. 20, and I simply repeat what I said in that regard.

The Hon. LYNDA VOLTZ [7.11 p.m.]: I want to raise a couple of points in relation to Trevor Khan's comments. Mr David Shoebridge, in his contribution, said that legal costs had gone down over the term of the scheme. What we did not get from Trevor Khan is an explanation—

The Hon. Trevor Khan: Call me by my appropriate title.

The Hon. LYNDA VOLTZ: Okay; I take your point. The Hon. Trevor Khan asserted that this would be great for lawyers. Is there any justification for that claim? It is easy to bandy things around, but it would be nice if at some stage during debate on the amendments Government members, when making assertions about lawyers or medical expenses, went into some detail and justified those claims.

The Hon. Matthew Mason-Cox: It is self-evident.

The Hon. LYNDA VOLTZ: It is one of those self-evident truths. Automatically, if lawyers are involved, that is the problem with the scheme. The reality of having oversight by a parliamentary committee is that it does not look at individual cases. It does not look at the problems that people may have. It may take a holistic view, as we would in the 15 minutes we might get in a budget estimates hearing or whatever. The reality is that this is taking away the right to independent review, as we have seen in this Chamber time and time again.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.13 p.m.]: As I have indicated, The Greens amendments are the same as some Labor amendments. I was proposing to move Labor amendments Nos 27 and 36 in globo. However, as Labor amendment No. 36 reflects a consequential change on page 33 of the bill that would be necessary if the other amendments are carried—as unlikely a proposition as that may seem—and for ease of administration of this process, while dealing with The Greens amendments I move Opposition amendment No. 36 on sheet C2012-100I:

No. 36 Page 33, schedule 1.2 [8], lines 10–16. Omit all words on those lines.

Question—That The Greens amendments Nos 5 to 9 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 15

Ms Barham	Mr Moselmane	Mr Whan
Mr Buckingham	Mr Primrose	
Ms Cotsis	Mr Secord	
Ms Faehrmann	Ms Sharpe	*Tellers,*
Mr Foley	Mr Shoebridge	Mr Donnelly
Dr Kaye	Ms Westwood	Ms Voltz

Noes, 18

Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	
Mr Gallacher	Mrs Maclaren-Jones	*Tellers,*
Mr Gay	Mr Mason-Cox	Mr Colless
Mr Green	Reverend Nile	Dr Phelps

Pairs

Ms Fazio	Mr Ajaka
Mr Roozendaal	Mr Blair
Mr Searle	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendments Nos 5 to 9 [C2012-107B] negatived.

Question—That Opposition amendment No. 36 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 36 [C2012-100I] negatived.

Reverend the Hon. FRED NILE [7.21 p.m.]: On behalf of the Christian Democratic Party I move amendment No. 2 on sheet C2012-115B:

No. 2 Page 12, schedule 1.1 [3], proposed section 44 (3) (h), lines 39 and 40. Omit all words on those lines. Insert instead:

(h) recommendations made by the Independent Review Officer are binding on the insurer and the Authority.

I was surprised that The Greens, who are usually very analytical about legislation, completely missed this important point. But as the Christian Democratic Party and the Shooters and Fishes Party went through this bill page by page, line by line, paragraph by paragraph, we noticed a very strange situation—namely, the recommendations of the independent review officer referred to in this bill, who is a very important person in this process, are not binding on the insurer and the authority. We said straightaway that that could not be right. What is the point of having an independent review officer if their recommendations are not binding on the insurer and the authority? Also, the independent review officer will not be an officer of WorkCover. Members have referred to a WorkCover independent officer but such an officer would not be independent. The review officer will be truly independent. We have asked that the review officer be an adjunct of the Office of the Ombudsman and operate under the same fearless independence as the Ombudsman.

Dr John Kaye: Is that another amendment?

Reverend the Hon. FRED NILE: No, I am explaining the importance of the position of the independent review officer.

Dr John Kaye: Did you do that by amendment?

Reverend the Hon. FRED NILE: That has been agreed to by the Government. The Government agreed to a number of things that do not require amendments.

Dr John Kaye: Are we going to find out what those things are, Fred?

Reverend the Hon. FRED NILE: All in due course.

Mr DAVID SHOEBRIDGE [7.24 p.m.]: The Greens support the Christian Democratic Party's amendment. If we are going to have a review by a bureaucrat I agree that it should not be a bureaucrat from WorkCover but a new bureaucrat should be put in place.

Reverend the Hon. Fred Nile: An independent bureaucrat.

Mr DAVID SHOEBRIDGE: Okay, a new independent bureaucrat. We are going to have a review by a new independent bureaucrat, for which there is no right of appearance, there is no right to legal representation, and there is no right for any kind of natural justice to be imposed at all. It is just a new bureaucrat doing a review. I accept what Reverend the Hon. Fred Nile said: if we are going to have a review by a fresh bureaucrat at least make it binding. I agree that we should at least make it binding. But I have got to say it is a second-rate option to having the decision made by the current Workers Compensation Commission: a genuinely independent tribunal before which you have legal representation and the right to be heard. If Reverend the Hon. Fred Nile asks why we did not try to tinker with this flawed Government model to make that review binding, it was because there is a far preferable option that, unfortunately, was closed by the failure of Reverend the Hon. Fred Nile to vote for it in earlier amendments—namely, having the matter determined by the Workers Compensation Commission. Given we are in this particular hole, The Greens support this amendment because it makes a tiny improvement to the process.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.25 p.m.]: I move Opposition amendment No. 24 on sheet C2012-100I:

No. 24 Page 12, schedule 1.1 [3], proposed section 44 (3) (h), line 40. Omit "are not binding on the insurer or the Authority". Insert instead "are binding on, and must be given effect to by, the insurer and the Authority".

Astonishingly, this amendment is almost exactly the same as the Christian Democratic Party's amendment, only we got ours in first. The Christian Democratic Party must have been physic.

The Hon. Paul Green: No, we went through it line by line.

The Hon. ADAM SEARLE: I acknowledge that interjection. Of course, the Christian Democratic Party's amendment, which is very carefully drafted, gets in one line ahead of ours. The Opposition supports this amendment but we say that our formulation is slightly better because it omits "not binding on the insurer or authority" and inserts instead "binding on, and must be given effect to". That makes it a little bit stronger. We invite members to consider supporting the slightly stronger formulation.

The Hon. Matthew Mason-Cox: The words are redundant.

The Hon. ADAM SEARLE: I acknowledge the interjection that the words are redundant. I do not think so. Even if they were not strictly speaking necessary—

The Hon. Greg Pearce: You are not being paid here by the word, Adam.

The Hon. ADAM SEARLE: I understand that. Again that discloses the mindset of this Government. It assumes that everyone has the same motivation as it has to grab every little penny available in every aspect of the scheme. The words in this amendment are not mere surplusage. We want to make sure that when this body is created—and we say it should not be created—that its determinations must be carried out by the insurers; otherwise there is simply no point.

Dr JOHN KAYE [7.28 p.m.]: I accept the wisdom of those around me and I will be voting for this amendment, but I raise some concerns about making the recommendations, which are now determinations because they are binding on the independent review officer. Does Reverend the Hon. Fred Nile have any concerns with the phenomenon where we have created a binding decision from an individual who has no obligation to take evidence or no obligation in any way whatsoever to obey any rules of natural justice?

The Hon. Paul Green: Yes, they do.

Dr JOHN KAYE: There is nothing in this. There is no requirement for this bureaucrat to write down the reasons for his or her decision, there is no requirement for any of those sorts of things, and suddenly we are making it a binding decision. We have upped the ante on this individual and given him or her much more power. Does this not create the possibility of the independent review officer making a determination that is more adverse for the injured worker than the original decision? So the review officer could come back and say, "No, we should provide fewer benefits to the worker." That could happen. A binding decision could make it worse for the injured worker.

Reverend the Hon. Fred Nile: It's protection for the worker.

Dr JOHN KAYE: That is my question: How is it protection for the worker? If Reverend the Hon. Fred Nile's amendment is passed, there is nothing to say that decisions of the independent review officer must be better for the injured workers. Indeed, the decisions could be worse for injured workers. However, the decisions will be made entirely behind closed doors, with no right of appearance.

Reverend the Hon. Fred Nile: There might be open doors.

Dr JOHN KAYE: There is no guarantee of that. Nothing in this legislation provides that at all. The second issue I would like Reverend the Hon. Fred Nile to address is this: When he moved this amendment he made the observation that he thought the independent review officer would be attached to the Ombudsman's office. I think that is correct.

Reverend the Hon. Fred Nile: No, it would be like an adjunct. They would be independent—

Dr JOHN KAYE: An adjunct—

Reverend the Hon. Fred Nile: —and separately funded.

Dr JOHN KAYE: Regardless of what they are, Reverend the Hon. Fred Nile indicated to the Committee that he had achieved some form of agreement with the Government about the nature of the independent review officer. He then indicated that he had other agreements with the Government. I then challenged him on those agreements, and he said that all will be revealed in due course. I am concerned that we are voting on legislation behind which there is a shadow process. Another set of agreements has been reached, presumably between the Shooters and Fishers Party, the Christian Democrats and the Government, that we know nothing about.

[*Interruption*]

I note that the Hon. Robert Borsak is laughing at the democratic process.

The Hon. Robert Borsak: That's rubbish, as usual.

Dr JOHN KAYE: Well, he is calling Reverend the Hon. Fred Nile a liar then.

The Hon. Robert Borsak: You're the liar.

Dr JOHN KAYE: The Hon. Robert Borsak is saying that I am a liar. That is fine. But Reverend the Hon. Fred Nile said that there were other agreements—

Reverend the Hon. Fred Nile: No, understandings.

Dr JOHN KAYE: I am sorry, understandings. He said there were understandings. Without knowing what those understandings are, we are voting on legislation—

Reverend the Hon. Fred Nile: You didn't ask questions.

Dr JOHN KAYE: I did ask questions and the member said he would not tell me. We are being asked to vote on legislation without knowing the real nature of it. That is not democracy as I understand it. The Greens understand that democracy is an open process in which members vote on legislation as drafted. If something is not included in the legislation it is fully revealed by members. But in this case we have secret agreements, secret understandings.

[*Interruption*]

They are secret because we do not know what they are. I invite the Minister to put on the table all the arrangements, understandings and deals. Surely whatever has been concluded between the Minister and the Christian Democratic Party should be on the table.

The Hon. Robert Borsak: They will be.

Dr JOHN KAYE: I note the interjection of the Hon. Robert Borsak.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [7.32 p.m.]: Dr John Kaye sees conspiracies at every point. He did not listen to my reply to the second reading debate in which I specifically said that the Christian Democratic Party had come to us with various amendments; I went through the amendments and I said the Government had agreed to support them because we thought they were good. After Reverend the Hon. Fred Nile moved his first amendment I repeated what I had said earlier. Dr John Kaye is trying to prove that paranoia is something that can give him 30 per cent whole person impairment and get him onto full-time workers compensation benefits for the rest of his life. I think that is what this is about.

Dr John Kaye: I find that offensive.

The CHAIR (The Hon. Jennifer Gardiner): Order!

Mr DAVID SHOEBRIDGE [7.33 p.m.]: As usual, the Minister for Finance and Services is making a goose of himself.

The Hon. Adam Searle: Flattery will get you nowhere.

Mr DAVID SHOEBRIDGE: I am sorry; I apologise to geese. Obviously the Minister did not listen to what Reverend the Hon. Fred Nile said. Reverend the Hon. Fred Nile said that he had amendments, which the finance Minister had mumbled his way through in his speech in reply. I did listen. I understood about 80 per cent of what the Minister said. I listened to the Minister's mumbles in reply.

The Hon. Greg Pearce: Point of order: I did not know that Mr David Shoebridge was incapable of understanding the English language. If he needs me to give him the speech in writing so that he can understand it, I am happy to do that.

Reverend the Hon. Fred Nile: He's reflecting on the Minister.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order.

Mr DAVID SHOEBRIDGE: So far as I comprehended the Minister's speech in reply, he spoke about amendments that would be moved by Reverend the Hon. Fred Nile. However, Reverend the Hon. Fred Nile clearly said, "In addition to the amendments that are to be circulated by the Christian Democratic Party, there is a series of understandings."

Reverend the Hon. Fred Nile: About how these things will work.

Mr DAVID SHOEBRIDGE: There is a series of understandings about how these things will work. Those understandings are not explained in the amendments. For the benefit of the finance Minister, Reverend the Hon. Fred Nile spoke in English. Dr John Kaye asked, and I am asking again: Will Reverend the Hon. Fred Nile explain the understandings that underpin these amendments? Without the full set of understandings on the record, the people of New South Wales, who this legislation is meant to benefit, will not understand the full scope of the amendments. I invite Reverend the Hon. Fred Nile to put the understandings on the record.

Reverend the Hon. Fred Nile: I've already stated them.

The Hon. ROBERT BORSAK [7.35 p.m.]: As usual, The Greens are seeing a red under every bed. The Shooters and Fishers Party and the Christian Democrats are not parties to any deals. As usual, they get out their fire hose of accusations and spray it around the Chamber without regard for where it lands or to whom it sticks. Usually it sticks back on The Greens and no-one else. The Shooters and Fishers Party supports this excellent amendment of Reverend the Hon. Fred Nile.

Mr DAVID SHOEBRIDGE [7.36 p.m.]: Maybe I missed something but yesterday members spent time which was apparently so precious that we had to sit late to deal with the workers compensation bill. Yesterday we spent six hours shoving through the Shooters and Fishers Party amendments to the Game and Feral Animal Control Act. Then the Hon. Robert Borsak has the audacity, the bald-faced effrontery, to say that there is no deal to get the legislation through. It is a disgrace.

Question—That Christian Democratic Party amendment No. 2 [C2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 2 [C2012-115B] agreed to.

The CHAIR (The Hon. Jennifer Gardiner): Order! Opposition amendment No. 24 now lapses.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.37 p.m.]: I move Opposition amendment No. 26 on sheet C20120-100I:

No. 26 Page 13, schedule 1.1 [3], proposed section 44 (4), lines 1–3. Omit all words on those lines. Insert instead:

(4) A review of a work capacity decision operates to stay the decision and prevents the taking of action based on the decision until the review is completed.

This forms part of the overview regime provided in proposed section 44, which is the fairly austere regime for the review of work capacity decisions. We are seeking to amend the bill in this respect because currently it provides that the undertaking of a review of a work capacity decision does not operate to stay the decision or prevent any action being taken. We think the regime should operate to stay the decision because decisions relating to work capacity and work capacity testing can be applied, with fairly drastic effects, such as a reduction or removal of benefits and the like.

At present an injured worker could go through the trauma of having benefits taken away, only to have the decision reviewed successfully—I interpolate that given that it will not be an independent tribunal undertaking reviews, the chances of a review being successful are reduced; I assume that at present at least some reviews may be successful. We do not want injured workers to go through the trauma of having sanctions applied or losing benefits and the like, having the decision reviewed successfully, then have their benefits reinstated, and then go through the difficulty of having moneys that should have been paid in fact paid or benefits that should have been conferred recouped.

That kind of trauma for injured workers is not only unnecessary, it is a feature of the injustices contained in the bill that such a setback could be visited upon injured workers. We say, at the end of the day, if the challenge of a work capacity decision is not upheld, the insurer or WorkCover has not lost anything. These things should be done in a fair and orderly way, with no disruption to the circumstance of the injured worker. It is not going to incommode WorkCover or a scheme agent if they have to wait a little longer to cut someone off, reduce their benefit or apply some sanction. But it will greatly incommode and upset injured workers if they have their benefits or support mechanisms interrupted by a work capacity decision. It would be fair and reasonable to stay the work capacity decision until such time as the review is undertaken and completed and everyone can then move on. Otherwise, there is potentially too much trauma for injured workers, which is unnecessary.

Question—That Opposition amendment No. 26 [C2012-100I] be agreed—put and resolved in the negative.

Opposition amendment No. 26 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.41 p.m.]: I move Opposition amendment No. 29 on sheet C2012-100I:

No. 29 Page 13, schedule 1.1 [3], proposed section 44A (6), lines 32–35. Omit all words on those lines.

This amendment amends proposed section 44A (6) by removing lines 32 to 35. Those lines, which comprise subsection (6), state:

If a worker refuses to attend an assessment under this section or the assessment does not take place because of the worker's failure to properly participate in it, the worker's right to weekly payments is suspended until the assessment has taken place.

The Opposition's objection to this provision is its self-executing nature and the fact that it hinges upon the insurer's determination or view that a worker has refused to attend an assessment or that the assessment did not take place because of the worker's failure to properly participate. The interruption of benefits can have a drastic effect on an injured worker and the decision should be made, not just by the insurer forming a view—

Mr David Shoebridge: It doesn't even say who makes the decision.

The Hon. ADAM SEARLE: I acknowledge that interjection. One of the many problems with this bill is that it does not state who makes the decision. One assumes, from the way it is formulated, that it is the insurer or the person undertaking the assessment. An injured worker may not attend for good, sound, valid reasons such as a family disaster, transport problems or ill health. If the insurer or a person managing the claim forms a negative view that this person is malingering or otherwise not cooperating, instantly there is the interruption of the benefit.

Mr David Shoebridge: They did not bring their gym shoes.

The Hon. ADAM SEARLE: They did not bring their gym shoes. We do not think that is reasonable or satisfactory and we seek to omit this subsection. There are already provisions in the legislation to deal with workers who do not properly cooperate with these processes. I think this is a blunt instrument. It is another aspect of the legislation where the Government is seeking to demonize injured workers, to disadvantage them further. Without any safeguards the Government is seeking to provide a mechanism which could seriously and unjustly lead to the suspension of the payments to injured workers, even though they may have good, sound and valid reasons for not being able to attend an assessment. There needs to be a more open and fairer process where, if an insurer forms the view that someone is not cooperating, they can approach a decision-maker with evidence for that view and seek to have the decision made in a fair, orderly and—dare I say it—impartial way.

The difficulty here is that the insurer is a representative of the scheme and will make decisions which may be in the scheme's best financial interests and not in the worker's best interests. The insurer is in a situation of conflict. The rationale behind the scheme is to assist and support injured workers, but there is also the financial obligation to maintain the integrity of the scheme. The Opposition does not think this is a satisfactory mechanism and it is certainly not executed in a satisfactory way. We urge the House to delete section 44A (6).

Mr DAVID SHOEBRIDGE [7.45 p.m.]: There are a number of questions I ask the Hon. Trevor Khan or the Minister to address. First, what does "properly participate" mean? What is envisaged by the Government when it puts forward the test of "properly participate"? What if the worker is physically incapacitated and cannot perform the task that is requested? Have they properly or not properly participated? As I read the provision, arguably once the assessment has concluded, even if they did not properly participate in it, there still can be no suspension because it is such an appallingly drafted provision. Once the assessment has taken place, the right to suspend ceases. So maybe it is a concern the Opposition should not have because, on a plain reading of it, once the assessment has taken place there is no right to suspend. It is on that basis that I understand the provision lies.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [7.46 p.m.]: I think the Opposition has raised this genuinely. One has to look at the whole section; the work capacity assessments are done in accordance with WorkCover guidelines. I am sure that the Opposition and The Greens can have an input into the review of those guidelines to ensure the process is right. But as the Deputy Leader of the Opposition pointed out, we are talking about benefits. At the end of the day, if a worker refuses or unreasonably does not participate, why would he or she expect to be paid benefits? The worker would not be paid his or her benefits, just as he or she would not expect to be paid wages if he or she did not turn up to work.

Question—That Opposition amendment No. 29 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 29 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [7.47 p.m.], by leave: I move Opposition amendments Nos. 30 to 33 on sheet C2012-100I in globo:

No. 30 Page 15, schedule 1.1 [3], proposed section 44C (1) (b), lines 10–12. Omit "(but only for the purposes of the calculation of weekly payments payable in the first 52 weeks for which weekly payments are payable)".

No. 31 Page 15, schedule 1.1 [3], proposed section 44C (2) (b), lines 23–25. Omit "(but only for the purposes of the calculation of weekly payments payable in the first 52 weeks for which weekly payments are payable)".

No. 32 Page 16, schedule 1.1 [3], proposed section 44C (3) (e), lines 4–6. Omit "(but only for the purposes of the calculation of weekly payments payable in the first 52 weeks for which weekly payments are payable)".

No. 33 Page 16, schedule 1.1 [3], proposed section 44C (5), lines 13–15. Omit "(but only for the purposes of the calculation of weekly payments payable in the first 52 weeks for which weekly payments are payable)".

The Opposition amendments are found on pages 15 and 16 and seek to delete from the definition of "pre-injury average weekly earnings" the exclusion after 12 months of overtime and shift allowances that comprise part of the pay of injured workers. One of the claims the Government makes about the bill is that it does not have the previous dichotomy between award or enterprise bargain—between workers whose wages are set by awards or other industrial instruments and those who are award-free. In the first case, one gets 100 per cent of one's base wage or award wage; in the other case, award-free people get 80 per cent of set actuals. The Government proposes a new way to calculate pre-injury average weekly earnings, which is based on a closer approximation of what people have been taking home. Proposed section 44 (c) includes in that concept overtime and shift allowance payments.

It does so only for the first 12 months, and of course this would apply only to 10 to 15 per cent of cases. People who are unlucky enough to be sufficiently impaired that they have not returned to work within 12 months obviously have serious injuries and need not only the medical attention the scheme can provide but also to put bread on the table and support their families and themselves. They need to lose as little of their income as possible. We support the idea of providing a closer approximation of people's pre-injury take-home pay while they are on workers compensation. We think it is a retrograde step that in four places in proposed section 44C these additional amounts are excluded after 12 months. That will be a further disadvantage for injured workers.

This does not detract from or otherwise undermine the integrity of the step-down regime that is provided for in the legislation. Notwithstanding that we vigorously disagreed with the Government's approach and tried our best to persuade our colleagues to an alternative view, we ask them to accept these amendments. On any analysis these people are seriously injured, although not the most seriously injured. We ask the Government to continue to include overtime and shift allowances so that the negative impacts occasioned by the step-downs in the bill are in some way ameliorated. Otherwise there will be a compounding effect: the percentages will go down and the baseline on which they are calculated will be undermined. We urge the Government to embrace Opposition amendments Nos 30 to 33.

Dr JOHN KAYE [7.51 p.m.]: The Greens support the Opposition's amendments for the reasons outlined by the Deputy Leader of the Opposition but also because they go to the very principle of what workers compensation is about. This is about compensating people for injuries in order to enable them to maintain a reasonable standard of living. That standard of living would have been established on their base pay and their overtime payments. There is no reason why the overtime and additional payments they receive should be taken out of the calculations after a set period. For that reason The Greens support the Opposition's amendments.

Question—That Opposition amendments Nos 30 to 33 [C2012-100I] be agreed to—put.

The Committee divided.

Ayes, 15

Ms Barham	Mr Moselmane	Mr Whan
Mr Buckingham	Mr Primrose	
Ms Cotsis	Mr Searle	
Ms Faehrmann	Ms Sharpe	*Tellers,*
Mr Foley	Mr Shoebridge	Mr Donnelly
Dr Kaye	Ms Westwood	Ms Voltz

Noes, 18

Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	
Mr Gallacher	Mrs Maclaren-Jones	*Tellers,*
Mr Gay	Mr Mason-Cox	Mr Colless
Mr Green	Reverend Nile	Dr Phelps

Pairs

Ms Fazio	Mr Ajaka
Mr Roozendaal	Mr Blair
Mr Secord	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

Opposition amendments Nos 30 to 33 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.00 p.m.]: I do not move Opposition amendment No. 34 on sheet C2012-100I, simply because it relates to the definition of non-pecuniary benefits and my earlier amendments in relation to this matter were defeated. However, I move Opposition amendment No. 35 on sheet C2012-100I:

No. 35 Page 19, schedule 1.1 [3], proposed section 44G, lines 27-34. Omit all words on those lines.

This amendment relates to the definition applying to pre-injury average weekly earnings and current weekly earnings—the base rate of pay. This is yet another example in this bill where the Government pretends to give with one hand but then if you do not count your fingers afterward you find that you have lost them. I draw the attention of members to subsection (2) which the Opposition proposes to be deleted.

Dr John Kaye: Fair work instrument?

The Hon. ADAM SEARLE: It is the fair work instrument. Opposition amendment No. 35 should refer to "lines 27-34" not "13-24". Essentially my concerns are with new section 44G (2), which states:

(2) In relation to pre-injury average weekly earnings and current weekly earnings, if, at the time of the injury:

(a) a worker's base rate of pay is prescribed by a fair work instrument that applies to the worker, and

(b) the worker's actual rate of pay for ordinary hours is higher than that rate of pay, the worker's actual rate of pay is to be taken to be the worker's base rate of pay.

I take that as what is in the fair work instrument. It seems to say if it is one or both then the lower of the two has to be taken. This paragraph is not very well drafted and I might have misunderstood it. I am interested in what the Minister has to say about it.

Mr David Shoebridge: It is capped at the award rate, basically.

The Hon. ADAM SEARLE: It appears to be capping it at the award rather than at the actual rate.

The Hon. Greg Pearce: Yes, but you are still lifting it from the current statutory rate.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members should direct their comments through the Chair.

The Hon. ADAM SEARLE: I acknowledge that is better than the current statutory rate but it is not as good as people's actual rate of pay. It seems to cap it at that lower rate as provided for in the instrument. When the Fair Work Act became operative and a series of modern awards were made that covered the whole of the country the New South Wales award system had award rates generally that were higher than in other jurisdictions. This was merely reflective of the higher cost of living in New South Wales, in Sydney in particular. In reaching many of those modern awards the new modern award rate, while higher than in some jurisdictions, in many cases is lower than what was the New South Wales award rate.

There may be some cases where people were not disadvantaged but in a number of industries, particularly in the private sector, the award rate now is less than it was under the New South Wales rates. My concern with this aspect of the provision is that the whole philosophy of this legislation seems to be moving closer to people's pre-injury take-home rates and this seems to be an unwarranted cap on that at the award rate. Hence, Opposition amendment No. 35, which should be limited to lines 27 to 24. I seek leave to amend Opposition amendment No. 35 to omit "lines 13-34" and insert instead "lines 27-34".

Leave granted.

The Hon. TREVOR KHAN [8.05 p.m.]: I think the Deputy Leader of the Opposition said that when we look at section 44G (2) there is some sleight of hand and he believes that instead of taking the higher actual

rate a lower base rate is taken. The bill states that the worker's actual rate of pay is to be taken to be the worker's base rate of pay. That means that the rate to be used as his base rate is the actual rate of pay for the purposes of the definition for inserting it in the definition. The higher of the rates is actually used.

Mr DAVID SHOEBRIDGE [8.06 p.m.]: The Hon. Trevor Khan is correct. It deems the actual rate of pay, if it is higher, to be the base rate of pay. On that basis The Greens would vote against the amendment because it is contrary to the intention of the Opposition in moving it. If the amendment is pressed The Greens will vote against it. I agree with the interpretation of the Hon. Trevor Khan.

Opposition amendment No. 35 [C2012-100I], by leave, withdrawn by the Hon. Adam Searle.

The Hon. ROBERT BROWN [8.08 p.m.], on behalf of Reverend the Hon. Fred Nile: I move Christian Democratic Party amendment No. 3 on sheet 2012-115B:

No. 3 Page 21, schedule 1.1 [4], lines 1 and 2. Omit all words on those lines.

Reverend the Hon. FRED NILE [8.08 p.m.]: I thank the Hon. Robert Brown for moving this amendment, which omits section 47, incapacity deemed to exist in cases. This amendment reflects amendment No. 1, which was agreed to, including incapacity for injured workers who have an injury that prevents them from undertaking certain types of work.

Question—That Christian Democratic Party amendment No. 3 [2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 3 [2012-115B] agreed to.

Mr DAVID SHOEBRIDGE [8.10 p.m.]: I move The Greens amendment No. 11 on sheet C2012-107B:

No. 11 Page 21, schedule 1.1 [7], proposed section 54 (2) (b), line 30. Omit "2 weeks". Insert instead "4 weeks".

The amendment would give people on workers compensation a little bit of security. New section 54 allows a worker who has been on workers compensation for a relatively modest period to have his payments cut off with only two weeks notice. That is not enough time for people to get their house in order in any way. Even with a monthly lease one must give four weeks notice and one would normally expect to give six weeks notice. People must pay utility bills and their mortgage and feed their kids. This amendment requires four weeks notice to be given when a worker's compensation payments are to cease. That is not an unreasonable proposition and it is consistent with what normally happens. It also inserts some humanity into the system. I commend the amendment.

Question—That The Greens amendment No. 11 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendment No. 11 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [8.12 p.m.]: I move The Greens amendment No. 12 [C2012-107B]:

No. 12 Page 30, schedule 1.2 [4], proposed section 48A (1), line 6. Omit "does not comply". Insert instead ", without reasonable excuse, fails to comply".

This is an essential amendment if we are to have a fair system. New section 48A provides that if a worker does not comply with an obligation of the worker imposed under section 48, which is a return to work obligation, the insurer may suspend, terminate and cease payments. An employer might impose a perfectly reasonable requirement on the worker to return to work to perform suitable duties or to undergo rehabilitation. However, the injured worker might have car trouble or there might have been death in the family and he may have to attend a funeral. He might be ill, but that illness might be unrelated to the workplace injury, or his kids might be ill. Many different things happen every day in people's lives that mean they cannot comply with an obligation imposed on them by an employer or a statutory obligation.

This amendment provides that if a worker does not comply with such an obligation without reasonable excuse then the insurer can suspend, terminate or cease payments. It gives the worker the capacity to present a

reasonable excuse if one of those ordinary circumstances arises. This amendment is necessary to ensure that the scheme is fair. I note that new section 48 (1) provides that a worker who has current work capacity must, in cooperation with the employer or the insurer, make reasonable efforts to return to work. That does not necessarily allow for the reasonable excuse argument to be run. If it does and if it is the Government's intention I would like the Minister to put that on the record. I will be interested to hear that.

The Hon. TREVOR KHAN [8.15 p.m.]: While I understand the point the member is making, I refer him to new section 48 (1), which sets out the requirement to make reasonable efforts to return to work. New section 48A (1) provides that the failure to comply must be read subject to new section 48 (1). Therefore, a reasonable excuse argument arises as a result of the obligation in that provision. For the reasons I have outlined, the Government opposes the amendment. The reasonableness arises under new section 48 (1) and should not be included in new section 48A (1).

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.16 p.m.]: The Opposition supports The Greens amendments for the reasons outlined by Mr David Shoebridge.

Question—That The Greens amendment No. 12 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendment No. 12 [C2012-107B] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.16 p.m.]: I move Opposition amendment No. 38 on sheet C2012-100I:

No. 38 Page 31, schedule 1.2 [7], lines 33–35. Omit all words on those lines. Insert instead:

inspector means:

(a) a member of staff who is an inspector for the purposes of section 238 (Powers of entry and inspection by officers of Authority), and

(b) a health and safety representative under the *Work Health and Safety Act 2011* who is authorised to issue provisional improvement notices under Part 5 of that Act.

The Work Health and Safety Act provides for the election of health and safety representatives at the workplace. The Government has outlined the process in the legislation. Of course, that provision is derivative of what was in the Occupational Health and Safety Act 2000. Part 5 of the Work Health and Safety Act sets out the mechanism for selecting these persons and their functions and powers. I refer in particular to sections 68 and 69, although this is generally found in the part. Section 68 sets out the many functions and powers of health and safety representatives. Again, while acknowledging that the Government has embraced part of the committee's recommendation about providing enhancements and encouragements for employers to adhere to their obligations to provide suitable duties and work, the Opposition also acknowledges that it has provided for penalties and improvement notices.

We are also aware that WorkCover is planning to establish a return to work inspectorate. Nevertheless, this would be a useful adjunct to those mechanisms and it would provide some support. Of course, WorkCover inspectors cannot be everywhere. Not every person in the workplace would have these functions or powers; only authorised health and safety representatives appointed under the Act. This would be a role and function entirely consistent with the Work Health and Safety Act and would promote the objectives of that legislation and also this legislation. It would be a significant step towards ensuring that all employers who have the capacity to do in fact provide suitable duties for injured workers in their employ so that they have a real and meaningful opportunity to move back to the world of work before it is too late. These objectives are entirely consistent with the Government's objectives. I ask all members to embrace the Opposition's amendment.

Dr JOHN KAYE [8.19 p.m.]: We think the amendment is sensible for the reasons outlined by the Deputy Leader of the Opposition, and we will be supporting it.

Question—That Opposition amendment No. 38 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 38 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.20 p.m.]: I request that separate questions be put on schedules 1.1 and 1.2. In relation to Opposition amendment No. 37, there is a technical defect in that the amendment seeks to, as it were, go back to parts of the bill that we have bypassed. Therefore, I ask that the two questions be put separately so that we can exercise our votes in accordance with the intention.

The CHAIR (The Hon. Jennifer Gardiner): I propose to put the schedules separately.

Schedule 1.1 as amended agreed to.

Schedule 1.2 agreed to.

Mr DAVID SHOEBRIDGE [8.22 p.m.], by leave: I move The Greens amendments Nos 13, 19, 20 and 22 on sheet C2012-107B in globo:

No. 13 Page 34, schedule 2.1 [1]–[4], lines 4–13. Omit all words on those lines.

No. 19 Pages 35 and 36, schedule 2.1 [10]–[17], line 16 on page 35 to line 4 on page 36. Omit all words on those lines.

No. 20 Page 36, schedule 2.2 [1]–[2], lines 7–11. Omit all words on those lines.

No. 22 Page 37, schedule 2.3, lines 8–16. Omit all words on those lines.

These amendments, if allowed, would reinstate the entitlement to lump sum compensation for pain and suffering. In 2001, and I think again in 2005, there were moves afoot to remove the entitlement to pain and suffering and to combine the entitlement that is paid for pain and suffering under section 67 with an improved entitlement to compensation under section 66, which is the compensation payable for an impairment or the extent of an impairment. At those times it was always said that the amount that would be paid under section 66 would be increased to make up for the deduction in section 67. It was opposed on each occasion by a reasonably unified voice that said section 67, the pain and suffering provision—which is capped at $50,000—is the only statutory mechanism that allows lump sum compensation to be tailored to the actual impact of an injury on a particular worker.

A classic example would be a very significant back injury that a young worker will carry for maybe 40, 50 or 60 years, including while that worker raises a family and wants to take kids to sport. That worker will have a great deal of pain and suffering throughout their life and there will be real impacts upon their ability to engage in recreational pursuits, raise a family and those sorts of matters. But the very same back injury in a worker who is maybe 65 or 67 will produce less pain and suffering for the reason that that worker will ordinarily live for significantly less time, will have already reduced recreational pursuits and will not experience the same impacts as when raising a family. Section 67 allowed for compensation to be tailored to the circumstances of the individual. Another example would be if a lawyer slammed a door at work and lost a finger. That would be a bad outcome for the lawyer, no doubt. They would get compensation under section 66, and previously they might have got some compensation under section 67. But if a concert pianist, whose life was built around being a concert pianist, lost a finger at work, they would both have the same physical impairment but the concert pianist would have the great love of their life torn from them, and their pain and suffering and the impact of their injury would be far greater for them.

Section 67 allows for a bit of humanity in the scheme. It allows for the compensation to be tailored to the real impact of the injury and it is the only part of the scheme that really does that because the impairment assessment is produced in a mechanical analysis of impairment tables under AMA 5. What is perhaps worse is that, in taking away the entitlement to pain and suffering, this Government has not increased the amount that is payable for impairment. It is a complete stripping away of pain and suffering entitlements—no quid pro quo at all; it is just gone. A whole class of historic entitlements is proposed to be removed. I commend the amendments to the Committee.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [8.26 p.m.]: The bill amends the Workers Compensation Act to remove separate entitlement for pain and suffering. The amendments proposed now would delete the provisions from the bill. Pain and suffering is not objectively assessed. The proportion of pain and suffering claims has significantly increased in recent years, as has the proportion of injured workers making claims for both types of lump sum permanent impairment payments. Neither Victoria nor South Australia, which have well-run schemes, provide for separate entitlements for pain and suffering compensation. The Government opposes the amendments.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.27 p.m.]: We support The Greens amendments as moved by Mr David Shoebridge. In fact, The Greens amendments Nos 19, 20 and 22 are reflective of Opposition amendments Nos 43, 44 and 47. We wholeheartedly support The Greens amendments. We had other amendments where we think they might have missed some things, because when you look at the schedule there are a number of interlocking provisions, which collectively have the effect of removing pain and suffering, and through a series of amendments we hope to maintain the current status quo. I note that the Minister has indicated concern about what is said to be an increase in the frequency or quantum of claims under sections 66 and 67, but the Minister in his contribution appears not to have recognised that the two different lump sums have entirely different functions.

Section 66 relates to permanent impairment for physical affliction. It used to be done according to the table of maims; it is now done on a whole person impairment method, which of course is a lot more austere than the previous table was. Section 67 relates to pain and suffering. It is not meant to compensate for the permanent impairment of your body but it is meant to compensate you for general suffering and trauma, not just for the loss of physical function but for a range of benefits lost and amenity of life that is not otherwise referable to mathematical decrease in your body function.

The Hon. Dr Peter Phelps: You mean like having to listen to The Greens all night?

The Hon. ADAM SEARLE: That is not to say it is not completely legitimate, but it has a different function in the scheme. I also draw the Committee's attention to the fact that these two lump sum amounts have essentially not been increased over the past 20 years, so the increase in claims—if that is what has happened—could be entirely referable to the fact that the benefit regime has not kept pace with people's actual needs. The Opposition supports The Greens amendments because we support maintaining this aspect of the prevailing status quo. Yet again, schedule 2 represents a great leap backwards for the rights of injured workers in New South Wales.

Mr DAVID SHOEBRIDGE [8.30 p.m.]: It should be noted for the record that the Government Whip and the Hon. Rick Colless have compared the minor discomfort they are experiencing in sitting and listening to debate on this outrageous bill with the pain and suffering of injured workers.

The Hon. Duncan Gay: You are a grub.

Mr DAVID SHOEBRIDGE: I now hear the Hon. Duncan Gay joining the chorus.

The Hon. Duncan Gay: Point of order: Mr David Shoebridge implied that I was commenting on the bill when my comment was about him. I described him as a "grub" because of the comments he made about my colleagues.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order.

Mr DAVID SHOEBRIDGE: Ordinarily I would take offence if that sort of insult were made by someone other than the gravy stain on democracy that is the Hon. Duncan Gay.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members will confine their remarks to The Greens amendments.

Mr DAVID SHOEBRIDGE: It goes to show the level of analysis that the Government has engaged in and the level of absolute contempt that it shows for the sufferings of injured workers that the Government Whip and the Hon. Rick Colless would compare their minor physical inconvenience in having to sit and listen to the opposition to this generational attack on workers compensation. Those members have compared their marginal inconvenience of having to sit in the Chamber and listen to this debate to the pain and suffering of injured workers who have suffered severe industrial accidents.

The Hon. Dr Peter Phelps: You are a pain in the gluteus maximus.

Mr DAVID SHOEBRIDGE: I note the further interjection by the Government Whip. If anything could display for the people of New South Wales the utter contempt that the Government shows for the millions of working people of this State, it is the contemptuous way in which Government members have engaged in this debate. I also note that not one of these sleeping backbenchers has come forward to try to defend this bill. They

have relied entirely upon the Minister and the Hon. Trevor Khan. Not one of them came forward to defend it during the second reading debate. No, I stand corrected—one of them did come forward to give their grubby benediction to this appalling piece of legislation.

The Hon. Duncan Gay: We have amendments before the Committee. This lawyer is indulging himself once again and wasting the time of the Committee. We are examining these amendments in detail. It is personal vilification. It is time the member was bought back to the leave of the bill.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members will address the amendments before the Committee. They should not respond to interjections.

Mr DAVID SHOEBRIDGE: It is an historical entitlement that gives a class of compensation for the kind of pain and suffering that is not compensated under the impairment tables and that is not compensated under section 67; it is simply being whipped out. Yet not one Government member has come forward to say why it is fair that this entire class of compensation should be whipped out. No-one from the Shooters and Fishers Party has come forward and said why it is fair to whip out this class of compensation. No-one from the Christian Democratic Party has come forward and said what is Christian about taking away this kind of compensation. They just simply say they are removing it. The Government is removing it because it does not want to pay anything like fair compensation to injured workers.

The Hon. TREVOR KHAN [8.34 p.m.]: I refer members to page 78 of the report of the Joint Select Committee on the NSW Workers Compensation Scheme. In that respect I note the committee in making its recommendation made a comparison with other States and also took into account the submission by the New South Wales Bar Association, which "did not oppose the incorporation of compensation for pain and suffering into lump sum payments, and acknowledged that the removal of this separate head of claim could result in administrative savings to the scheme." At least in that part of the submission one could agree wholeheartedly that there is a benefit to the entire scheme because of legal and administrative savings.

Mr DAVID SHOEBRIDGE [8.35 p.m.]: That submission might have had some merit if the Government had incorporated sections 66 and 67. But it did not incorporate them; it just abolished them.

Dr JOHN KAYE [8.35 p.m.]: Having listened to the debate it occurs to me there is a strong argument that members should not be allowed to vote on workers compensation legislation unless they have spent time with injured workers. For example, unless members have spoken to people who have had their legs crushed at work and suffered ongoing pain they should not be allowed to vote.

The Hon. Trevor Khan: I have.

Dr JOHN KAYE: I am sure the Hon. Trevor Khan has but other members in this Chamber have demonstrated by their words this evening that they have not done so. For example, those members have not spent time with people who had their legs amputated after a crash injury and who have ongoing phantom itching and phantom pain associated their amputated limbs. To even contemplate the idea that this Parliament would not provide some compensation to people who are facing a lifetime of pain, a lifetime of humiliation and a lifetime of suffering—all of which is not amenable to being compensated through the other mechanisms provided in this legislation—is completely unconscionable. It is unbelievable we are even thinking about the idea that some compensation would not be provided for the grotesque, ongoing mind-numbing pain that so many injured workers suffer.

Question—That The Greens amendments Nos 13, 19, 20 and 22 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 15

Ms Barham	Mr Primrose	Mr Whan
Mr Buckingham	Mr Searle	
Ms Cotsis	Mr Secord	
Ms Faehrmann	Ms Sharpe	*Tellers,*
Dr Kaye	Mr Shoebridge	Mr Donnelly
Mr Moselmane	Ms Westwood	Ms Voltz

Noes, 18

Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	
Mr Gallacher	Mrs Maclaren-Jones	*Tellers,*
Mr Gay	Mr Mason-Cox	Mr Colless
Mr Green	Reverend Nile	Dr Phelps

Pairs

Ms Fazio	Mr Ajaka
Mr Foley	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendments Nos 13, 19, 20 and 22 [C2012-107B] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.45 p.m.]: I move Opposition amendment No. 41 on sheet C2012-100I:

No. 41 Page 34, schedule 2.1 [5], lines 14–26. Omit all words on those lines.

The Opposition is seeking to delete the unwarranted increase for lump sum payments for permanent impairment of the body from what I understand to be currently 1 per cent whole of person impairment for physical impairment and I think 6 per cent for hearing loss. I think it is a dual twin track.

The Hon. Trevor Khan: Yes.

The Hon. ADAM SEARLE: In any case, the Government proposes replacing both with a single 10 per cent whole of person impairment assessment. I will not repeat the ghastly tragic examples of impairments and where that leaves injured workers. The Opposition is of the view that the 10 per cent threshold is far too harsh and that the current threshold of 1 per cent is more than adequate, particularly as the total that is available has not increased over the past two decades.

The CHAIR (The Hon. Jennifer Gardiner): Order! I ask members to lower the level of audible conversation so I can hear the member with the call.

The Hon. ADAM SEARLE: As the total amounts have not been increased over the past two decades, increasing the threshold to 10 per cent whole of person impairment is far too harsh and the current threshold of 1 per cent should remain. The effect of our amendment is simply to delete lines 14 to 26, thus maintaining the status quo for injured workers.

The Hon. TREVOR KHAN [8.47 p.m.]: The Government does not support the amendment, which follows a recommendation from the inquiry report. Specifically in that regard, I note that the recommendation arose at least in part from an examination of the approach taken in the other States. In that respect, the Commonwealth scheme provides for a general threshold of 10 per cent whole person impairment. Similarly, in Victoria there is a 10 per cent whole person impairment threshold for physical impairment and a 30 per cent whole person impairment threshold for psychiatric impairment. Plainly, these thresholds arise because of the need to make the scheme administratively effective to reduce the administrative and legal cost burden that flows particularly from payments for what could be described as relatively small claims that take up a lot of time and involve considerable administrative and legal effort. The proposal in the bill is entirely consistent with what are essentially the two largest schemes—that is, the Commonwealth scheme and the Victorian scheme.

Mr DAVID SHOEBRIDGE [8.49 p.m.], by leave: I move The Greens amendments Nos. 14, 15 and 17 on sheet C2012-107B in globo:

No. 14 Page 34, schedule 2.1 [5], line 17. Omit "greater than 10%". Insert instead "of 5% or more".

No. 15 Page 34, schedule 2.1 [5], line 23. Omit "10% or less". Insert instead "less than 5%".

No. 17 Pages 34 and 35, schedule 2.1 [6]–[8], line 27 on page 34 to line 8 on page 35. Omit all words on those lines.

These are an alternative set of amendments to the Opposition's amendments. I accept the Opposition's argument that retaining the 1 per cent threshold for whole person impairment for the entitlement to claim the now much-reduced lump sum compensation, which is only under section 66, is the fairest outcome. The Greens will support the Opposition's amendment to try to retain the existing entitlement. I note that the committee's recommendation was that the threshold be set at 10 per cent or greater. However, this bill says "greater than 10 per cent", so it is even harsher than the committee's recommendation that was signed off by the Christian Democratic Party and the Shooters and Fishers Party.

The bill goes beyond the position that was adopted by the Shooters and Fishers Party and the Christian Democratic Party in the committee, which recommended 10 per cent or greater. If people have a whole person impairment of 10 per cent, under the committee's recommendation they would have been entitled to compensation. However, under this bill they will be excluded. The bill says, in plainest terms, "greater than 10 per cent". There are many injuries, particularly back injuries, that provide a whole person impairment of 10 per cent. Under the Government's proposal—not the committee's—if a person has a whole person impairment of 10 per cent, he or she gets not a dollar in lump sum compensation. That is in the clearest terms in the Government's proposal.

Some significant injuries would not qualify for a single dollar of compensation. For example, if one had the ends of one's toes amputated, that would be a 9 per cent whole person impairment. Under the Government's plans, people would not get one dollar in lump sum compensation. We have heard the example of a woman who had the terrible misfortune of having both breasts removed as a result of an industrial accident. That is a 5 per cent whole person impairment, and that woman would not get one dollar in lump sum compensation. That woman's injury would not be considered serious enough by this Government to award lump sum compensation. The Government's proposal goes beyond the committee's radical recommendation.

I have not heard a justification from the Government for going beyond the committee's recommendation. I would be pleased to hear why it is that the Minister for Finance and Services or the Hon. Trevor Khan, who signed off on the committee's recommendation of 10 per cent, suddenly think that "greater than 10 per cent" should be the threshold. I would be interested to know what the rationale is for making it even harsher. I have explained why The Greens support the Opposition's amendments. Speaking to The Greens' amendments, they put the threshold at 5 per cent whole person impairment. We have heard the Hon. Trevor Khan talking about the Victorian system and others that have a 5 per cent whole person impairment, which tends to be the threshold set in some other States. Whilst it is nowhere near as fair as a 1 per cent whole person impairment, particularly for things such as industrial deafness, it is significantly fairer than the "greater than 10 per cent" sought to be imposed by this Government in its bill.

I will speak briefly about industrial deafness. For the better part of 80 years people who worked in noisy environments—exposed to industrial noise and other very loud noise—were compensated for hearing loss. It has been proven that over time industrial noise has an impact upon a worker's hearing. Under the current scheme, once there is a modest degree of binaural hearing loss a worker can make an initial claim for lump sum compensation for that hearing loss. If the worker has further exposure to industrial noise, he can claim again for the further loss of hearing and so on, throughout his life, as progressive hearing loss occurs. Under the Government's proposal, almost no worker will get compensation for industrial deafness. The Government is abolishing the entire head of damage of industrial deafness. This head of damages that has been around for the better part of 80 years will be effectively abolished.

With the abolition of that head of damage, workers who suffer industrial deafness will no longer be entitled to be provided with hearing aids or to have their hearing aids and hearing aid batteries replaced. Under the Government's proposal, if one develops deafness as a result of one's work, tough luck. No medical expenses; no lump sum expenses—just tough luck. That cannot be fair. The Greens support the Opposition's amendment that would retain the 1 per cent threshold but, if that fails for some reason, then we would press The Greens amendment which puts the threshold at 5 per cent. I would be interested to hear how the Government justifies the higher threshold. I see the Minister for Finance and Services shaking his head. He is not going to justify why the Government has put the threshold at a level even higher than the committee recommended, because it is not able to be justified.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.56 p.m.]: I understand where The Greens are coming from—that some changes are better than no change.

Mr David Shoebridge: That is not my position at all.

The Hon. ADAM SEARLE: I acknowledge that interjection. Nevertheless, the Opposition will not be supporting The Greens' alternative amendments. We press our amendments because ultimately, if ours do not succeed, we do not believe The Greens will succeed simply because of the configuration of support. We will be voting against the schedule and the bill in any case if we are unable to make substantial changes, as appears to be almost certain.

Dr JOHN KAYE [8.57 p.m.]: We are talking about a large range of injuries that will no longer qualify an injured worker for lump sum compensation under section 66. The more than 10 per cent whole person impairment at first does not sound too harsh. However, when one looks at the tables one sees that it is quite significant and it guarantees almost 90 per cent of all deafness claims will fail. Only injured workers who undergo a back or neck operation will succeed and most, if not all, of unilateral shoulder injuries will fail, irrespective of whether they require an operation. All hand injuries will fail. Up to 80 per cent of leg injuries will not succeed. A whole range of injuries is being shut out of lump sum compensation. Injured workers, who will lose their capacity to earn a living because of these debilitating injuries, will be shut out by this "more than 10 per cent" threshold.

Question—That Opposition amendment No. 41 [C2012-100I] be agreed to—put.

The Committee divided.

Ayes, 15

Ms Barham	Mr Primrose	Mr Whan
Mr Buckingham	Mr Searle	
Ms Cotsis	Mr Secord	
Ms Faehrmann	Ms Sharpe	*Tellers,*
Dr Kaye	Mr Shoebridge	Mr Donnelly
Mr Moselmane	Ms Westwood	Ms Voltz

Noes, 18

Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	
Mr Gallacher	Mrs Maclaren-Jones	*Tellers,*
Mr Gay	Mr Mason-Cox	Mr Colless
Mr Green	Reverend Nile	Dr Phelps

Pairs

Ms Fazio	Mr Ajaka
Mr Foley	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

Opposition amendment No. 41 [C2012-100I] negatived.

Question—That The Greens amendments Nos 14, 15 and 17 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 5

Mr Buckingham
Dr Kaye
Mr Shoebridge

Tellers,
Ms Barham
Ms Faehrmann

Noes, 28

Mr Borsak	Mr Khan	Mr Searle
Mr Brown	Mr Lynn	Mr Secord
Ms Cotsis	Mr MacDonald	Ms Sharpe
Ms Cusack	Mrs Maclaren-Jones	Ms Voltz
Mr Donnelly	Mr Mason-Cox	Ms Westwood
Ms Ficarra	Mr Moselmane	Mr Whan
Mr Gallacher	Reverend Nile	
Mr Gay	Mrs Pavey	*Tellers,*
Mr Green	Mr Pearce	Mr Colless
Mr Harwin	Mr Primrose	Dr Phelps

Question resolved in the negative.

The Greens amendments Nos 14, 15 and 17 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [9.09 p.m.], by leave: I move The Greens amendments Nos 16 and 21 on sheet C2012-107B in globo:

No. 16 Page 34, schedule 2.1 [5]. Insert at the end of line 26:

> This subsection does not prevent a further claim for permanent impairment compensation where the worker's degree of permanent impairment has increased as a result of surgery that the worker undergoes in the course of medical treatment provided to the worker as a result of the worker's injury.

No. 21 Page 37, schedule 2.2 [4]. Insert after line 7:

> (5) This section does not prevent a further assessment of the degree of permanent impairment of an injured worker where the worker's degree of permanent impairment has increased as a result of surgery that the worker undergoes in the course of medical treatment provided to the worker as a result of the worker's injury.

If these amendments are adopted they will allow an injured worker to have a supplementary claim for impairment after their initial claim for lump sum impairment. For example, an extreme example is a person with an injury to his knee—it would have to be a significant injury to get greater than 10 per cent whole person impairment. After some time, he may have to have a knee replacement. He may have got an initial claim for section 66 impairment entitlements of 11 per cent, made a claim and received the money. If at a later time he had to have radical surgery because his knee replacement went wrong, or he got an infection and had to have an amputation, he is only ever entitled to claim once for impairment in respect of an accident under the Government's proposal. He would have no additional entitlement to impairment. The Greens proposal is simply that if a person's impairment increases as a result of surgery he is entitled to make an additional claim for the supplementary impairment. The Greens amendment allows for the supplementary impairment claim that occurs as a result of necessary surgery to the initial work-related injury. I do not pretend in any way that it fixes this legislation, but it provides a modicum of fairness. I commend the amendment to the Committee.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.11 p.m.]: The Government opposes the amendment on the basis that it would undermine the new limitations on lump sum payments, which have been implemented to address numerous small claims for lump sum compensation that are an administrative and financial cost to the scheme.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.11 p.m.]: The Labor Opposition supports The Greens amendments Nos. 16 and 21. Yes, they seek to undermine the policy of the bill that restricts the assessment to once only. The committee considered this issue and formed the view, based on the evidence, that a once-only assessment was too outrageous, harsh, unjust, unwarranted, not in accordance with the evidence before the committee and an unwarranted trampling on the rights of injured people. It is an utter failure to recognise that with injuries there is the likelihood, not just a possibility, over time of further deterioration. The committee found that there should be the possibility for up to two additional claims—

The Hon. Trevor Khan: You didn't back it in.

The Hon. ADAM SEARLE: The member is quite right; I did not back it in because I thought any set number of restrictions was an unwarranted interference with the rights of people who are already quite seriously injured. The committee in its wisdom found once-only was too harsh; there should be the opportunity of two further assessments.

The Hon. Trevor Khan: That was wise.

The Hon. ADAM SEARLE: I acknowledge the interjection that it was wise.

The Hon. Trevor Khan: In a more general sense.

The Hon. ADAM SEARLE: Not in a more general sense, but three further assessments is certainly wiser than once-only where there is able to be demonstrated certain measurements of additional deterioration. This is another example of the Government going harsher on an injured worker than even the committee was prepared to put its name to. I think that says that this Government is really just out to squeeze every penny it can out of injured workers to prevent as much benefit flowing to them as possible. Rather than spreading the burden of repairing the scheme finances amongst all stakeholders, the entire burden is being placed on the backs of injured workers. This is harsh, unfair and another example of this Government trampling on the most vulnerable people in our community. The Opposition rejects that policy. On this occasion we embrace The Greens amendments which seek to unpick this aspect of the bill to make it more congruous with the committee's recommendations.

Question—That The Greens amendments Nos 16 and 21 [C2012-107B] be agreed to—put.

The Greens amendments Nos 16 and 21 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [9.15 p.m.]: I move The Greens amendment No. 18 on sheet C2012-107B:

No. 18 Page 35, schedule 2.1 [9], lines 9–15. Omit all words on those lines.

This amendment allows insurers to sign up workers to agreements without requiring them to get independent legal advice about complicated matters. This law makes the scheme even more complicated, yet the Government proposes to allow workers to waive the right to legal advice before they sign away their rights. Let us think about the power relationships. On one side we have a well-resourced, one assumes, vaguely competent insurance company—we do not assume that the insurance company is ethical, but it is always well resourced—on the other side we have the injured worker. The scheme has always had a safeguard: before an insurance company can sign up a worker to a settlement he or she has to get independent legal advice. They cannot tick a box and say, "I waive my right to legal advice and I am glad for the crumbs you are going to throw at me."

Yet that is what the Government is putting in place. It will allow, via a tick-a-box process, workers to waive their rights to legal advice. I do not understand the Government's thinking about putting in place any entitlement to reimburse lawyers. Maybe this is the Government's way to save on legal costs. It will save on legal costs just by getting rid of lawyers and just have an unrepresented worker on one side and a big fat insurance company on the other. Earlier the Minister for Finance and Services said it is a simpler and streamlined process. It is no doubt simpler to just go away, bamboozle workers and get them to give up their rights without legal advice, but it is by no means fair. The requirement to have legal advice should remain in the Act, particularly when one considers just how unbalanced and unfair those power relationships are.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.17 p.m.]: It is important to note that lump sum entitlements are assessed objectively using well-established publicly available criteria. The amendment proposed in the bill is to reduce legal and administrative costs on the scheme, thus helping to reduce the deficit. It remains open to workers to seek legal advice on accepting lump sum payments if they wish to do so. The Government opposes the amendment.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.17 p.m.]: The Opposition supports The Greens amendment No. 18. The power imbalance referred to by Mr David Shoebridge is well known. In the past where settlements of any kind required court approval, courts would always make sure that they were satisfied that the worker had obtained independent legal advice. Although those provisions have now morphed and changed over time, we can see the echo of them in what is currently section 61 A (1) (b) of the Workers Compensation Act in its current formulation. It requires that the insurance company be satisfied that the worker has obtained independent legal advice before signing to any agreement. It is simply not good enough—the Opposition thinks it is contrary to public policy and certainly to public interest—to have a facility for a worker to waive the right to obtain independent legal advice when they are signing away their legal rights to statutory compensation benefits.

We think that the potential and opportunity for duress or an imbalance of power and learning to cause a worker to sign up to an agreement that is not in that person's interest, is simply overwhelming. Many workers, of course, in many industries are not as educated as lawyers or insurance agents or they may have difficulties with the English language, and in those situations—which is what these provisions were designed for—the provisions ensure that people cannot be induced or pressured into giving up their hard-won legal rights. These provisions have been in the legislation from time immemorial to make sure that there is no injustice caused by people being coerced or induced to give up their rights. It is simply not good enough for the Government, which ought to know better, to have a facility where that potential for injustice is not just made possible but positively facilitated by a provision such as we see on page 35. We reject it and we support The Greens' amendment.

Mr DAVID SHOEBRIDGE [9.20 p.m.]: In support of the Government's legislation the Minister for Finance and Services said that this is about having a simple approach for the objective assessment of impairment under section 66. Anyone who has had any experience with the way these kinds of impairment assessments are done by insurance company doctors, applicant doctors and then third parties knows that it is not a genuinely objective test; there is an array of subjective elements in the assessments. Assessments can vary greatly. The same worker, telling exactly the same story to one doctor, can have an impairment assessment of 7 per cent, and then go to another doctor and have an impairment assessment of 12 per cent and then go on to another doctor and have an impairment assessment of 15 or 16 per cent. It is not a genuinely objective set of criteria and opinions do vary.

Workers need to know that they have entitlements to challenge some of these assessments. But, of course, if the insurance company does not tell them they need independent legal advice they could sign away their rights, and it is not just about the lump sum rights. If a worker is assessed at less than 15 per cent whole person impairment and that person agrees to it and signs up to it, that person has not only determined his or her statutory lump sum rights; in doing that he or she has also forever removed the entitlement to common law damages, because that person only gets one shot at impairment assessment under this Government's bill. If a clever insurance company signs a worker up for 12 or 13 per cent when the worker, if he or she had had a fair shake under the assessment process and some good legal advice, might have got 16 or 17 per cent whole person impairment, that insurance company has just robbed that worker of the entitlement ever to run a common law claim.

Without legal advice almost no worker would know that and the worker will just be signed up for whatever the insurance company offers. The worker will waive his or her rights to legal advice and take the crumbs that have been thrown, unless that person has that obligation to get legal advice about what he or she is agreeing to. Why does the Government want to have vulnerable workers exposed to that kind of injustice? What is the rationale about exposing workers to sign away their common law rights without getting legal advice? What possible defence is there for getting rid of an obligation that has assisted people to enter into agreements with their eyes open and properly advised?

As I read this bill it seems to me that WorkCover and the Government pulled out an amazing wish list, which was gutting entitlements and removing protections willy-nilly—never thinking that they would be able to convince the Shooters and Fishers Party and the Christian Democratic Party and the majority in this House to give them everything. Yet they have and from what we are seeing tonight it looks increasingly clear that almost no concessions at all will be granted to workers, and this entire wish list, which I am sure the Government thought would only ever come at Christmas, is going to be given to this anti-worker Government, this grossly unfair O'Farrell administration, six months short of Christmas. Getting rid of the entitlement advice is one example. I am sure the Government never thought it would get through, but it looks as though it will.

The Hon. LYNDA VOLTZ [9.23 p.m.]: One other point that has not been raised: We are talking about workers waiving their rights. In fact, that is not what this section says. The section says, "in which there is a provision in which the employer or insurer certifies that it is satisfied the worker has obtained it"—not that the worker is satisfied but that the insurer or the employer is satisfied the worker has obtained it. Some members will have defended people in the court system and I am sure that they would not take a statement that was signed by someone else other than their client as a statement of their client. That is a real problem with this section: this is not even asking the worker to waive his or her rights; this is allowing the insurance company or the worker's employer to waive the worker's rights. The Minister says, "This is assessed by publicly available criteria". How would we know that when we know nothing about the worker's views? All we are getting here is what the insurance company or the worker's employer thinks.

The Hon. GREG DONNELLY [9.24 p.m.]: I find it extraordinary that in what has been a detailed negotiation to bring this bill before the House over the course of yesterday and today where the Government,

from its point of view, has secured so much of its clearly thought-out and determined agenda, that on a matter like this, which is not going to cost the Government anything like the significant amounts of money that concerns the Government now because of the issues with the Worker's Compensation Scheme, that the Government could deny the reasonableness of workers being able to get legal advice so they could be settled in their minds that what they are signing up to, what they and their family and dependents will be bound to, is a fair and reasonable proposition.

People in this Chamber have dealt with individuals who have not had the opportunity to go to university and study and have an education, and who cannot read and understand documents. There are many people who are very, very vulnerable. The power imbalance is significant. Not only do some people struggle because they may not have literacy skills or comprehension skills, but we need to also understand that they have been through the grinder of their workers compensation claim, and that their vulnerability and their anxiety are compounded by the fact that they have been through all of this and they are now having to make a decision about some very important matters that will bind them and their families into the future.

It is perfectly reasonable for people to be able to obtain some independent legal advice. None of us in this Chamber who have had the opportunity to have an education would think otherwise. If we had to make an important decision about a significant matter that would be binding on us we would get legal advice. Of course, we are wily enough and we have been through enough of life's experiences to know that we would not permit anyone to pull the wool over our eyes and we would be able to, essentially, defend our position and ensure that we got that advice and that we were able to then, on that advice, make a decision. In my work as a union official over many years when I dealt with workers compensation claims I sat down and dealt with people who just did not understand and they struggled to comprehend the nature of the legal reality they found themselves in; they really did need some advice.

The last thing they needed at that time was someone who was perhaps a little too smart by far having the opportunity to put before them a proposition that, "The cheque can be sent to you within the next seven days or put it into your bank account tomorrow. If you are prepared to waive the need to get legal advice, we can resolve the matter here and now". Those are very real scenarios that emerge when one sets up the temptation—and that is what this provision in the Act does—for the construction of a situation whereby workers will be encouraged to waive their legal rights so the matter can be settled expeditiously and the payment made. Many people who are naive or ignorant or who lack education and find themselves in a vulnerable position will find the temptation too strong to resist, or they will stumble in a situation whereby they sign away their legal rights and enter into an arrangement that they would not have entered into if it had been subjected to proper legal scrutiny. A legal adviser might have advised them not to agree to a proposition and to continue discussions with the organisation they were dealing with and ultimately obtain a better proposal.

I made this reflection last night with the greatest respect and I do it again: I do not understand why the Shooters and Fishers Party and the Christian Democratic Party, who have skin in the game in this matter and who are capable of intervening in matters such as this—which will not cause a great cost impost but which will create a fairer arrangement for vulnerable people—will not support this amendment. It is not a big ask. I cannot understand why these two minor parties will not intervene, given that they are in a fundamentally powerful position with the passage of this legislation. The Opposition is not trying to ramp up any threshold or anything like that. These are relatively small changes, but they will make a huge difference to people now and in the future who will be profoundly impacted by this legislation.

For the life of me I do not understand why these minor parties are not prepared to re-examine these minor issues and support some of these amendments. Almost every amendment moved by The Greens and Opposition has been knocked on the head. In many instances that has been done in a most perfunctory way, which I find appalling. At the end of the day business is business in politics and the Government has the numbers. I beg the Shooters and Fishers Party and the Christian Democratic Party that while we continue this debate—which it would appear will extend until tomorrow morning—to reconsider these amendments. They will not impose a huge cost but they will make a significant difference to the workers of this State and their families now and in the future.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.33 p.m.]: I am not sure what has been happening in the past 20 minutes, but I assume from the Hon. Greg Donnelly's comment that this matter might be resolved tonight or more likely in the morning. The Hon. Linda Voltz may have been making a contribution to the debate simply to keep it going, but she appears to have misunderstood the legislation. She raised the issue of certification by the insurer or employer. I point out that under the existing legislation—

The Hon. Robert Brown: Is that the Labor legislation?

The Hon. GREG PEARCE: Yes, it is Labor legislation. Section 66A of the Workers Compensation Act 1987 sets up exactly the same process. It provides:

> (1) In this section, ***complying agreement*** means a written agreement:
>
> (a) under which a worker who has received an injury, and an employer or insurer, agree as to either or both of the following:
>
> (i) the degree of permanent impairment that has resulted from the injury,
>
> (ii) the amount of pain and suffering compensation to which the worker is entitled in respect of the injury, and
>
> (b) in which there is a provision in which the employer or insurer certifies that it is satisfied that the worker has obtained independent legal advice before entering into the agreement.

That is exactly the same as the provision in the legislation we are debating tonight. Then we had the intervention for nearly 17 minutes by the Hon. Greg Donnelly—

The Hon. Greg Donnelly: Point of order: The Minister is making imputations about my contribution and my bona fides. I take offence at that. I ask that the Minister withdraw.

The Hon. Duncan Gay: What is the imputation? What do you want him to withdraw? You were wrong.

The Hon. Greg Donnelly: I was not wrong.

The CHAIR (The Hon. Jennifer Gardiner): What is the imputation?

The Hon. Greg Donnelly: The Minister implied that I was wasting the Committee's time by speaking for 17 minutes.

The Hon. Duncan Gay: Well, you were.

The Hon. Greg Donnelly: Why don't you just get fucked and leave the Chamber!

The CHAIR (The Hon. Jennifer Gardiner): Order!

The Hon. Duncan Gay: Point of order: I take offence at that language in the Chamber.

The Hon. Greg Donnelly: I withdraw.

The CHAIR (The Hon. Jennifer Gardiner): The Hon. Greg Donnelly has taken offence at the imputation—

The Hon. Greg Donnelly: That I am wasting members' time by making a contribution to a debate about an amendment before the Committee. I am perfectly entitled to do that. The Minister implied that I am wasting the time of the Committee by talking about an important matter that I have judged should be discussed. It is just too bad that it takes 17 minutes to go through the issues. It is too hard for the Minister to sit there and bear it.

The Hon. Catherine Cusack: Point of order—

The CHAIR (The Hon. Jennifer Gardiner): The Hon. Greg Donnelly has the call and he is explaining the offence.

The Hon. Greg Donnelly: The imputation is that I am wasting the time of the Committee. I reject that.

The Hon. GREG PEARCE: Madam Chair, if you are ruling that you consider the comment to be offensive—

The Hon. Greg Donnelly: I don't want it with a qualification.

The Hon. GREG PEARCE: —make the ruling and I will act accordingly.

The CHAIR (The Hon. Jennifer Gardiner): It is not I who has taken offence. The Hon. Greg Donnelly has taken offence at the imputation. Does the Minister withdraw?

The Hon. GREG PEARCE: I am happy to withdraw.

The Hon. Luke Foley: Stop there!

The CHAIR (The Hon. Jennifer Gardiner): The Minister has the call.

The Hon. GREG PEARCE: I have withdrawn. As I was saying, the reason I was concerned about the 17 minutes is that the issue goes fundamentally to the way in which costs are borne in the scheme and the need to make savings. As I said in a short intervention myself, of course injured workers are free to get legal advice before they make a decision. The issue is who pays for it. When we need to get legal advice about our home, a rental property or anything else we can do so. However, of course, we must pay for it. The Government has chosen to amend the scheme so that it does not have to pay for legal advice in these circumstances. Workers can still get legal advice, and I encourage them to do so.

The Hon. LYNDA VOLTZ [9.39 p.m.]: I am surprised by the Minister's response and I am particularly surprised by his assertion about the Hon. Greg Donnelly's motives. When the Minister read out what was in our legislation he missed out a sentence that has been inserted in this bill. He did not read it out so I will. That line says "or has waived the right to obtain independent legal advice". That was never a part of our legislation. How do we know the worker has waived their right? The insurance company says so. How do we know the worker has waived their right? They did not ask for it. There are no criteria. The Government has inserted a line that allows the insurance company to waive the rights of these people. If they do not ask for it have they waived their right? How do we know? We have only the insurance company's or the employer's word for it. The Minister should not say that we are wasting the time of the Committee when he did not tell the full story. Next time he stands up he should tell the full story. He should point out the difference between what he read out and what is in his legislation, rather than what he always does in response to any question asked of him—

The Hon. Greg Pearce: I was responding to the one point that you made—

The Hon. LYNDA VOLTZ: You did not respond.

The Hon. Greg Pearce: —by reading it out.

The Hon. LYNDA VOLTZ: You did not read it out.

The Hon. Greg Pearce: That was the point you raised.

The Hon. LYNDA VOLTZ: You did not read out "or has waived the right to obtain independent legal advice".

Mr DAVID SHOEBRIDGE [9.40 p.m.]: There is a fundamental problem with allowing someone who might have English as a second language or who might have no understanding of the workers compensation scheme the option to waive their rights. And I would forgive anyone for having no understanding of how the workers compensation system operates, particularly after it has been mangled by this Act. Almost no worker waiving their right to legal advice would know exactly what they were giving up. Until they get legal advice almost no-one will know that if they sign up to an agreement that is for less than 15 per cent whole person impairment they are giving up forever their right to common law entitlements. Almost no worker will know that if they sign up to whatever is on the table they will never have a second bite at the cherry due to the changes the Government is introducing.

Let us take an example of a worker who is just about to have a knee replacement. A cunning insurance company would say, "You have got a bit of a problem with your knee. We will give you 11 per cent whole person impairment." The insurance company would probably know that if the worker had a knee replacement

their impairment might go up to 16 or 17 per cent. The insurance company would sign them up to 11 or 12 per cent, get them to waive their right to obtain legal representation and the worker would never know what they gave up. They would never know that if they had waited until after the surgery they would have a significantly higher impairment. They may even have had an entitlement to common law damages instead of having their payments cut off 2½ years down the track, which is when the payments of most workers will be cut off under this bill. Because the system is becoming harsher and more penal it is even more important that workers get legal advice before they sign away their rights.

The Hon. GREG DONNELLY [9.42 p.m.]: Now that I have a cooler head I wish to apologise to the Chamber, the staff, Hansard and those present in the gallery for my outburst. It was not acceptable and I apologise for any offence caused.

Question—That The Greens amendment No. 18 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Clarke
Mr Roozendaal	Mr Blair
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendment No. 18 [C2012-107B] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.50 p.m.]: There is a defect in Opposition amendment No. 45; it has not been drafted properly. I amend Opposition amendment No. 45 as circulated by replacing "Page 37" with "Page 36", deleting "(3)" after "proposed section 322A", and inserting before "lines 1-5" the words "lines 21-33 to page 37,". I move Opposition amendment No. 45 on sheet C2012-100I, as amended:

No. 45 Page 36, schedule 2.2 [4], proposed section 322A, lines 21–33. Omit all words on those lines.

Essentially I am seeking to delete the entirety of proposed section 322A, one assessment only of degree of permanent impairment. I am seeking to make this part of the bill consistent with Committee recommendations, which found that one assessment only was too harsh. There should be more than one assessment and by removing this clause or provision that objective would be obtained.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.53 p.m.]: This matter has been addressed in previous debate. I do not want to labour the point and repeat the debate.

Mr DAVID SHOEBRIDGE [9.53 p.m.]: For the reasons previously expressed, The Greens support the capacity to have more than one impairment assessment. There are all sorts of reasons why that is fair and we endorse the Opposition's amendment.

Question—That Opposition amendment No. 45 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 45 [C2012-100I] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.55 p.m.]: I move Opposition amendment No. 46 on sheet C2012-100I.

The CHAIR (The Hon. Jennifer Gardiner): Opposition amendment No. 46 has been dealt with; it has been negatived.

The Hon. ADAM SEARLE, by leave: I move recommitted Opposition amendment No. 46 on sheet C2012-100I:

No. 46 Page 37, schedule 2.3, lines 8–16. Omit all words on those lines.

Very simply, the Government is seeking to include part of the Civil Liability Act 2002 and section 26I (2) includes the word "offender". It seems to describe injured workers as offenders. The Hon. Peter Primrose made that point last night and no-one in the Government picked it up. It comes from that part of the Civil Liability Act where it talks about damages being limited to workers compensation for people in custody who are injured on work release programs. The lazy draftsperson has simply picked it up and plonked it in.

Mr David Shoebridge: It is not fair to say the draftsperson was lazy; it was an error.

The Hon. ADAM SEARLE: Someone just plonked it in without making the relevant amendment and we are trying to fix it. If there was any imputation on the draftsperson, I withdraw it. It was as a result of the haste of the process.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.57 p.m.]: I have supported the Deputy Leader of the Opposition to put his point. I have taken advice and am told that the drafting is in fact correct. Therefore, I suggest that we do not proceed with the recommittal.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.58 p.m.]: On the basis that it has already been voted on and lost and that the Minister has been so advised we will not press it, but it is shocking and appalling to have a piece of legislation with the imputation that an injured worker is an offender.

The Hon. Greg Pearce: It relates to the scheme.

Schedule 2 agreed to.

Mr DAVID SHOEBRIDGE [9.59 p.m.]: I intended to move The Greens amendment No. 23 on sheet C2012-107B but, on advice from the Clerks, the appropriate procedure is to speak against the schedule and then vote against the schedule in a division. If the amendment were moved and agreed to, that would delete the whole of schedule 3. I withdraw The Greens amendment No. 23 and I will speak against schedule 3. Schedule 3 is the wholesale removal of the entitlement to damages for nervous shock. The effect of that provision can be illustrated by this scenario. Let us imagine a woman who is at home and whose youngest son is at work, perhaps as an apprentice. Due to a terrible workplace tragedy, the apprentice, her son, is crushed to death at work.

The woman would not be a dependent of the young apprentice, so no death benefit would be payable to her. But when a mother finds out that her child has been killed in a horrific accident, it is well within the compass of the employer, who may have been negligent in killing the worker, that when the loved one finds out about potentially the horrific nature of her child's death she suffers a palpable nervous shock reaction, lapses into decompensation and suffers a very substantial mental incapacity that might take her out of the workforce for approximately four years. The parent may suffer very significant mental anguish and lose income or she may suffer a significant mental shock as a result of that event.

Literally for centuries it has been accepted that there is an entitlement in such circumstances for loved ones who have seen their close relative killed in those types of circumstances and who have suffered palpable nervous shock to recover damages in relation to nervous shock. They have been able to recover damages for mental impairment that goes beyond ordinary grief and for wages lost while they try to come to terms with the terrible mental anguish they have suffered in those circumstances. But under the Government's proposal, those persons would lose any entitlement to nervous shock damages. That compensation has been totally abolished. They will not get lump sums for dependency. They will not get anything. They will suffer the type of horrific outcome I have described and they will not receive a dollar. The Government's proposal is meanness compounded on misery to get rid of damages in such circumstances. The Greens are strongly opposed to the removal of nervous shock damages. I assure the Government that I hope at some point New South Wales will have a fresh administration and that whoever is elected will reinstate the essential and just compensation entitlements for people.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.02 p.m.]: The Opposition opposes the retention of schedule 3 to the bill. Schedule 3 gives effect to the committee's recommendation No. 4, which in turn is reflective of the Minister's issues paper. The rationale is said to be that the compensation system is to support injured workers, but of course it is more than that. It has always been more than that.

The Hon. Dr Peter Phelps: No, it has not.

The Hon. ADAM SEARLE: It has.

Hon. Dr Peter Phelps: It has not.

The Hon. ADAM SEARLE: The scheme originally was called the workmen's compensation scheme and it was designed not just to support the injured worker. It recognised that more often than not the injured worker had a dependent family. It was designed to support not only the individual but also, through them and through the loss of earning capacity, their family—their wife, their children, et cetera. To remove the capacity of nervous shock claims to be made by relatives or dependents of deceased or injured workers will cut at one of the foundations of the scheme. This is clearly an ideological issue rather than a cost issue.

The Hon. Trevor Khan: It is a philosophical issue.

The Hon. ADAM SEARLE: All right, philosophical rather than ideological. If one looks at the actuarial costings of the package that the committee asked the actuaries to produce—particularly at pages 188 and 189 where we can see how the actuaries have crunched the numbers on a range of matters—one would need a very powerful microscope to see any amount of money referable to the removal of nervous shock. There is something there for journey claims and something there for strokes and heart attacks, but there is nothing there for nervous shock. It recognises that the claims are very rare and they succeed only in the clearest case where there has been a high level of trauma experienced by the family of the injured or deceased worker. Given the very high level of trauma that would be necessary for anyone to recover compensation, why would the Government and why would this Parliament want to punish those families and deprive them further by removing this capacity to recover under this head of damage in these circumstances? I accept that it is a philosophical issue, but it is not a satisfactory approach. This is just another example of a bill before the Committee that kicks the injured worker or, in this case, kicks the family of the injured worker.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [10.05 p.m.]: Schedule 3 to the bill, which inserts a new section 151AD into the Workers Compensation Act 1987, is intended to limit common law claims for nervous shock suffered by a relative or a dependent of a deceased or injured worker, unless the nervous shock itself is a work injury. This reflects the view that an employer's liability for psychological injury to family members does not fall within the objects of the workers compensation legislation. The Greens proposed amendment would remove this reasonable provision and increase costs to the scheme. The Government opposes the amendment. No other State, except New South Wales, allows for nervous shock claims by non-employees.

Following the death of a worker, the workers compensation scheme already pays generous benefits to financial dependents or to the deceased worker's estate if there are no dependents. WorkCover also has a counselling and liaison service to provide grief and bereavement support as well as counselling to bereaved families. Removing the provision for relatives or dependents of deceased or injured workers to make claims for nervous shock will provide a closer connection between work, health and safety responsibilities and workers

compensation premiums by eliminating costs arising in circumstances over which employers have limited control. Consistent with the principles of workers compensation legislation, workers who witnessed the workplace death of a colleague and suffer psychological injury would remain able to make a claim. Accordingly, the Government opposes The Greens amendment.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.07 p.m.]: I agree with the Hon. Trevor Khan that this is a philosophical issue. Having regard to the remarks of the Minister, clearly this provision is emblematic of the philosophy of this bill, which is to change our workers compensation system fundamentally from a broader social justice perspective to a residualist safety net, if that. That is an approach that the Opposition simply cannot support.

Dr JOHN KAYE [10.07 p.m.]: In the Minister's explanation, he referred to the insertion of new section 151AD. What he did not talk about is the deletion of section 151P, which refers to damages for psychological and psychiatric injury. It provides that damages for psychological and psychiatric injury are not to be awarded in respect of an injury in favour of, firstly, the injured worker, or, secondly:

> A parent, spouse, brother, sister or child of the injured or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric illness and not merely a normal emotional or cultural grief reaction.

Schedule 3 seeks to take away an injury caused by an action of the employer. This is a matter which is as much a part of valid compensation as is injury to a worker at the workplace.

Question—That schedule 3 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Blair	Ms Fazio
Mr Clarke	Mr Roozendaal
Mrs Mitchell	Mr Veitch

Question resolved in the affirmative.

Schedule 3 agreed to.

Mr DAVID SHOEBRIDGE [10.16 p.m.]: I move The Greens amendment No. 24 on sheet C2012-107B:

> No. 24 Page 39, schedule 4 [1], proposed section 59A (2), lines 12–16. Omit all words on those lines.

This amendment is designed to remove new section 59A (2). The draft bill states:

> If weekly payments of compensation are or have been paid or [are] payable to the worker, compensation is not payable under this Division in respect of any treatment, service or assistance given or provided more than 12 months after the worker ceased to be entitled to weekly payments of compensation.

Removing that provision will mean that once weekly compensation has been paid, a worker has an entitlement to medical expenses for as long as they are—in the words of section 60—"reasonable and necessary" to deal with the consequences of the injury. That is what the law currently provides; that is what the law should provide. That is why The Greens are moving this amendment. Otherwise, 12 months after a worker last receives their weekly compensation their medical expenses will be cut off. There will be no more painkillers and no more physiotherapy. If they need further surgery there will be no payment for further surgery and if they need an artificial joint there will be no payment for that either. That is totally unfair. Whilst ever medical expenses are reasonable and necessary as a consequence of a work-related injury injured workers should receive them. Workers who have had an accident and are suffering incapacity and ongoing pain are not doing so by choice. They went to work for somebody else and they were injured in the course of that work. Whilst ever that happens, workers compensation should pay for the reasonable and necessary medical expenses of those workers.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.18 p.m.]: The Opposition supports the amendment.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [10.18 p.m.]: In New South Wales workers compensation benefits cover the cost of any medical or related treatment that is reasonable and necessary for the treatment and rehabilitation of compensable injury. There were no effective limits on the amount of time that these benefits remain available or the total costs that can be expended. Medical liabilities have increased by around $1.8 billion, to around $3 billion, in the past five years. Several Australian jurisdictions limit medical cost entitlements. For example, in Victoria medical entitlements cease 12 months after the injury occurs or 12 months after incapacity payments cease, whichever is later, with some exceptions, such as a severe injury. We need to get back to the fundamental aim of the scheme, which is to return injured workers to safe and durable employment. For that reason the Government considers that changes to the workers compensation legislation are crucial and we do not support The Greens amendment.

Mr DAVID SHOEBRIDGE [10.19 p.m.]: As I read this provision, even the most catastrophically injured worker will lose the entitlement to medical expenses 12 months after the Commonwealth statutory retirement age. I would like the Minister to clarify on the record whether that understanding is correct. If that is the case, imagine a worker who has had a truly catastrophic injury and is a quadriplegic, needing 24-hour nursing and a whole series of things just to get by—to be fed, to be cleaned, to be looked after—because of an horrific work accident. As I understand it, once that worker hits the Commonwealth retirement age of 67 they cease to be entitled to weekly payments, and then 12 months after that the scheme will withdraw all medical assistance. The nurse will go away, the attendants will go away. The fresh wheelchair and all necessary medical assistance will evaporate. So that injured worker will be old and catastrophically injured. What will they do? What does the Minister expect them to do? Am I wrong in my understanding that that is the impact? The Minister says I am not. What will that worker do? What is the quadriplegic worker going to do? The nurse will be gone and the medical assistance will be gone. What will they do—just die?

Question—That The Greens amendment No. 24 [2012-107B] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendment No. 24 [2012-107B] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.28 p.m.]: I move Opposition amendment No. 49 on sheet 2012-100I:

No. 49 Page 39, schedule 4 [1], proposed section 59A. Insert after line 24:

(5) This section does not apply to treatment comprising the provision, replacement, maintenance or repair of any prosthesis (including crutches, artificial members, eyes or teeth and other artificial aids or spectacles).

The Opposition opposes philosophically the entire concept of limiting medical and related expenses but in particular we think, based on the evidence heard by the committee and on our own individual experience, that including the provision, replacement, maintenance and repair of prostheses within the definition of medical and related expenses would work a very substantial injustice to people who need prostheses, including the replacement of prostheses periodically. As I indicated during the second reading debate—and I think other members made the point also—prostheses are not a once-and-for-all procedure. They wear out. They need to be replaced every five or six years, particularly when a younger worker perhaps loses a foot or the leg below the knee and they need a prosthesis to have any meaningful quality of life—to say nothing of returning to work. They need that equipment. They need that equipment; again it will wear out and they will need to replace it. The bill provides a limitation of, first, 2½ years for compensatory payments—with medicals going for an extra year, that is a 3½ year cap on medical support for those workers. It will be difficult to get beyond the first 2½ years to the second 2½ years, to take it to a total of five years; and to get beyond five years will require injuries of a most extraordinary nature.

The Opposition is of the view that adding onto that for people who need a prosthesis will be an absolute injustice. We ask for some concession to be made, that is, simply removing from this cap the provision or replacement, maintenance or repair of any prosthesis, including crutches, artificial members, eyes or teeth and other artificial aids or spectacles. I note that the Minister said that the entire purpose of the bill is to ensure the safe and durable return to employment of injured workers. Let us hold the Minister to his word. If an injured worker needs a prosthesis, he or she cannot do without it. These people cannot work or have any quality of life without a prosthesis if they have lost a foot, leg, arm or hand. It is not a luxury item; it is a necessity. If injured workers are to have any chance of returning to work, let alone a durable return to work, they need this equipment. The caps provided in the legislation will mean that the workers compensation system might provide people with their first prosthesis but they will not get any other prostheses unless they are catastrophically injured. As we have heard, a 20 per cent whole-of-person impairment means that a worker is seriously injured, and that threshold is too high. I earnestly ask the Government or at least the members of the Christian Democratic Party or the Shooters and Fishers to accept this amendment and to say, "Let us remove prostheses from the medical expenses cap."

Dr JOHN KAYE [10.32 p.m.]: The art of great public policy is empathy; it is putting oneself into the location and space of every individual one is trying to represent. We represent injured workers. Imagine someone who has lost a limb or an eye and their prosthesis has worn out. Because of the injury, their earning

capacity has been dramatically decreased. The money available to them is at the edge; they live hand to mouth. They are then faced with trying to find the money to replace their artificial eye or limb. The heart of workers compensation is about maintaining dignity for injured workers.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members who wish to engage in conversation will do so outside the Chamber.

Dr JOHN KAYE: The provisions that the Opposition's amendment seeks to change will take away the dignity of those who have a prosthesis that needs to be replaced. The amendment is simple and straightforward, and The Greens strongly support it.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.33 p.m.]: I should have made the point that without doubt these prostheses are expensive. At the least they cost several thousands of dollars; many cost tens of thousands of dollars. If individual workers must replace a prosthesis at their own expense after the five-year or six-year mark, that will be a significant financial impost that many people simply will not be able to afford. This is an important measure, and we ask the Government to embrace it.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [10.33 p.m.]: I acknowledge those comments. Like many of the issues in this place, there are significant emotional and financial issues that have to be addressed. In the New South Wales scheme, benefits cover the cost of medical and related treatment which is reasonably necessary for the treatment and rehabilitation of compensable injuries. As I said earlier, medical costs in the scheme have blown out significantly. Following the joint standing committee work and the work done by agencies, we have adopted the new thresholds which we believe—and I was certainly told this—will be fair and should work much better in the future. The Government's intention is that the law and justice committee will have ongoing oversight of the operation of the scheme. I expect the committee to do further work on this issue. I have a problem with the notion of shopping around for one particular piece of medical equipment or another and putting that in the legislation. The Government does not support this amendment to the legislation. However, I certainly would like to see further continued work on it to see whether there is a need for change.

The Hon. Sophie Cotsis: Will you give a report back?

The Hon. GREG PEARCE: Of course.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.35 p.m.]: I understand the Government's concern about picking out a particular item of medical expenditure, for example, for specialist treatment. It is a bit like choosing to protect police over every other emergency service worker from the depredations of this most catastrophic bill. Nevertheless the Government seems to have been able to square itself to doing that. We simply ask the Government to do something for the rest of the community. There is no suggestion that someone who needs a prosthesis is faking it or that there is fraud. If people are to have not only quality of life but a chance of returning to work they must have this expensive equipment. We acknowledge the increase in medical expenses. But if people are to have dignity, quality of life and any chance of a durable return to work, they cannot have this aspect of medical expenses capped because they will not be able to afford a replacement prosthesis or they will afford it but at a cost to their quality of life and other financial wellbeing. So we urge, if not the Government, then certainly the right-wing crossbenchers—the Christian Democratic Party and the Shooters and Fishers Party—to have a little humanity for people who need this vital equipment. Please do something for the rest of the community.

Question—That Opposition amendment No. 49 [C2012-100I] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Harwin	Mr Pearce
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Mr MacDonald	Mr Colless
Miss Gardiner	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

Opposition amendment No. 49 [C2012-100I] negatived.

Mr DAVID SHOEBRIDGE [10.44 p.m.]: I move Greens amendment No. 25 on sheet C2012-107B:

No. 25 Page 39, schedule 4 [2], proposed section 60 (2A) (a), line 35. Insert ", except where there was an urgent and genuine need for the treatment or service and it was not practical to obtain that prior approval" after "approval)".

Amendment No. 25 seeks to amend proposed new section 60 (2A) (a) on page 39 of the bill that provides that a worker's employer is not liable to pay for any medical treatment or service unless there has been pre-approval other than in the first 48 hours after an injury. I have a few comments about that provision. If someone is seriously injured and, let us imagine, loses consciousness and is in a coma for a week, that person will not be able to make a workers compensation claim in the first 48 hours, but will continue to receive treatment during that time. Under this provision in the bill, that person will have no entitlement to recover expenses for any treatment received after the first 48 hours. That is remarkable. Why would there be such a provision? Why would a comatose worker not be able to recover expenses for treatment he or she received while comatose because he or she would not have been able to submit a workers compensation claim? Why? What on earth is the rationale for that?

Imagine workers with a serious knee problem and while walking the knee problem causes them to collapse, fall over and injure themselves and they have to see a doctor. They will not be able to get pre-approval at all from the insurance company to see that doctor. If they see a doctor in those circumstances, as the bill currently stands they will not be able to recover the expense of seeing that doctor. If the doctor prescribes medicine or physiotherapy or further treatment, those workers will not be able to receive that treatment until they fill out whatever paperwork is required to get pre-approval from the insurer. The Government has not thought this amendment through. I do not think the Government has thought about the practical reality of the amendment in its current terms.

Whilst offended at the whole concept of having pre-approval as a basic requirement, The Greens believe that the worker has to get the treatment wherever it is reasonable and necessary, and the employer should pay. The test should be reasonable and necessary. I accept that the Government wants to have in place this scheme of pre-approval as a basic principle. Surely the Government should have some goodwill to allow flexibility for the actual real life of injured workers and include that pre-approval is required for medical expenses, except when there is an urgent and genuine need for the treatment of service and it was not practical to obtain prior approval. That is all The Greens ask for in this amendment. I hope to get some support for this amendment.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [10.48 p.m.]: My advice is that Mr David Shoebridge is wrong. Obviously, the examples he gave of someone being comatose for a week as an inpatient in a hospital will have his or her costs met either through the normal hospital system or through the WorkCover guidelines. The bill seeks through these provisions to achieve an overall approach to keep the cost of medical services under control and, as part of that, to ensure that the WorkCover scheme does not underwrite the costs of inappropriate or experimental services and treatments. That is why prior approval is sought.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [10.49 p.m.]: The Opposition supports The Greens amendment.

Mr DAVID SHOEBRIDGE [10.50 p.m.]: The Minister says that but it is actually not true. I hear the Hon. Duncan Gay making mocking sounds behind me. It is a matter for him. This is a serious matter. He can behave like a goose if he wants. I withdraw that. It is late. The Minister is incorrect because there is no liability to pay the medical expenses outside of the first 48 hours unless there has been pre-approval. If there is no liability it would be unlawful for the guidelines to allow for the payment. It would be unlawful for the guidelines to do it because it would be disbursing public money unlawfully. The guidelines cannot override the Act. in the other circumstance I gave of a worker collapsing because of a knee injury and needing to see a doctor, that person would not be entitled to recover those medical expenses and it would be unlawful for a scheme agent to disburse those expenses. I ask the Government to reconsider its position and get further advice from the bureaucrats. I ask members to support this amendment.

Question—That The Greens amendment No. 25 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Harwin	Mr Pearce
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Mr MacDonald	Mr Colless
Miss Gardiner	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendment No. 25 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [10.57 p.m.]: I move The Greens amendment No. 26 on sheet C2012-107B:

No. 26 Page 40, schedule 4 [2], proposed section 60 (2C) (b), lines 23–25. Omit all words on those lines.

The Greens amendment No. 26 would remove a provision in the bill that would allow the WorkCover guidelines to prohibit entire classes of medical expenditure and medical entitlements. This would allow the guidelines, which are not open to review by this House as subordinate legislation, to water down the statutory entitlement to reasonable and necessary medical expenses. It is for those reasons The Greens move the amendment.

Question—That The Greens amendment No. 26 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendment No. 26 [C2012-107B] negatived.

Schedule 4 agreed to.

Reverend the Hon. FRED NILE [10.59 p.m.]: I move Christian Democratic Party amendment No. 4 on sheet C2012-115B:

No. 4 Page 42, schedule 5, lines 3-11. Omit all words on those lines. Insert instead:

Section 10 Journey claims

Insert after section 10 (3):

(3A) A journey referred to in subsection (3) to or from the worker's place of abode is a journey to which this section applies only if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose.

I am pleased to move this amendment because as members know the legislation makes no provisions for journey claims at all. I know this is not a 100 per cent claim provision as some members would wish, but I believe it is a big move forward, particularly for professionals who are employed in the public service such as paramedics. They may see a situation and stop their car to help someone and while doing so become involved in an accident themselves. This often happens when there has been an accident. An off-duty teacher going to work might see a child being abused on the side of the road. The teacher stops his or her car and another car smashes into the back of the car and injures the teacher.

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! Members will cease interjecting.

Reverend the Hon. FRED NILE: This amendment provides an opportunity for coverage where there is an accident or an incident when people are going to or from their place of employment. It is a big improvement on having no provision at all.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.02 p.m.]: This amendment, which we do not oppose, is as close to utterly useless as it could be unless journey claims were removed from the legislation altogether. The test in this amendment is that there is a real and substantial connection between the employment and the accident or injury. If there is a real or substantial connection between the accident or injury and a person's employment it is probably in or arising out of the course of the person's employment. It would be covered already.

Dr John Kaye: That is already the situation.

The Hon. ADAM SEARLE: That is already the situation. If Reverend the Hon. Fred Nile thinks this will make a big difference he has been substantially misled by whoever provided the advice. At the moment journey claims are a feature of the scheme. There was debate in the committee about what can be afforded; some places have it and others do not, and it is a debatable point. If members look at the actuarial costings on page 189 of the committee's report they will see there are not that many journey claims. When allowances are made for the workers compensation scheme claiming back from the Motor Accidents Scheme—which it can do in a substantial majority of cases—and mitigating the cost, the net cost of journey claims to the workers compensation system is just under 6 per cent of total cost. It is $93 million.

The Hon. Greg Pearce: Six per cent?

The Hon. ADAM SEARLE: It is 5.86 per cent according to the actuaries PricewaterhouseCoopers in their answers to question on notice by the committee members. It is $93 million a year. That is not an insubstantial amount of money, but when one considers that $2.6 billion is collected in premiums and there are 46,000 claimants in the system at any one time it is not the item that is going to break the bank as such.

The Hon. Trevor Khan: It is a significant item.

The Hon. ADAM SEARLE: I accept that it is a significant item and for good reason. Unlike Victoria, for example, we do not have a no-fault transport accident compensation scheme. Our Motor Accidents Scheme, leaving aside the Lifetime Care and Support—

The Hon. Greg Pearce: This is a scheme put in by your Government—a Labor Party Government.

The Hon. ADAM SEARLE: I am not making a criticism; I am just pointing out the facts.

The Hon. Greg Pearce: You designed the scheme.

The Hon. ADAM SEARLE: I believe the Greiner Government designed the scheme in 1989.

The Hon. Greg Pearce: You had 16 years.

The Hon. ADAM SEARLE: I am just pointing out that because the Motor Accidents Scheme is fault based and, in the workers compensation space to use the Minister's terminology, that omission—if it is an omission—is supplemented by the fact that there is provision for journey claims. The committee heard a lot of really persuasive evidence. Leaving aside the police examples, which were particularly harrowing because off-duty police either respond to incidents or are coming home from a very tiring double shift and due to fatigue have accidents—

The Hon. Trevor Khan: Or they were struck by a brick on the way to work.

The Hon. ADAM SEARLE: I acknowledge that interjection. In the cases referred to in police evidence there were elements of fault, so the Motor Accidents Scheme would not have covered them. That is okay, of course, because we will make sure the police are not dragged into this. However, nurses who do double shifts and come home fatigued may have a momentary lapse of attention and be involved in an accident. If they are injured or killed they will get nothing and neither will their families because there will be an element of fault. The Construction, Forestry, Mining and Energy Union also gave significant evidence about construction workers moving from site to site, often travelling long distances between their residence and their workplace very early in the morning or late in the afternoon when it is getting dark.

A significant proportion of motor accidents happen at dusk when the light is changing and it is not easy to see. Added to that is the significant fatigue caused by working 12-hour shifts as they do in the construction industry. If accidents are deemed at least in part the fault of the driver there is a very significant risk of many hundreds if not thousands of people who are injured on the roads going to and from work and who presently would be looked after medically and through weekly benefits being cut out of the scheme. They may become destitute because they do not have enough income support and, importantly, do not have their medical expenses met as they currently do.

It would be an enormous tragedy if this aspect of the scheme were reduced. Very significant numbers of people would be drastically disadvantaged. It would be a shame for our society if that proved to be the case. Leaving aside The Greens, I had hoped that although the other members of the crossbench support the bulk of proposals in the bill they at least would have said to the community, "The scheme is deteriorating. We need to make some pretty significant cost savings but whether the issue relates to prostheses or journey claims we will give something back. We will at least say that we acknowledge that this would be unjust and we will leave this as a feature of the scheme—

The Hon. Dr Peter Phelps: Journey claims were never meant to be a substantial part of the scheme.

The Hon. ADAM SEARLE: You say that but of course—

The Hon. Dr Peter Phelps: Would you like me to quote the Labor Minister?

The Hon. ADAM SEARLE: No, I would not like you to quote the Labor Minister. Instead I will quote you the Coalition members of the committee who acknowledged that it was a legitimate part of the scheme if it could be afforded.

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! The Hon. Adam Searle will resume his seat. Members will refrain from interjecting when the member is addressing the Committee.

The Hon. ADAM SEARLE: It is a substantial feature of our scheme—

The Hon. Dr Peter Phelps: And it was never meant to be.

The Hon. ADAM SEARLE: I acknowledge that interjection because the honourable member is making a fool of himself and reflecting poorly on his party given that he is the Government Whip. I have had

my outburst and I will continue. The issue here is that this is a very important aspect of the scheme's achieving its social justice objectives. Taking out this provision would be a tragedy. With the best will in the world, the amendment put forward by Reverend the Hon. Fred Nile is almost completely useless because most of the circumstances to which it could conceivably apply would already be covered because people would be in the course of their employment.

However, there may be a very, very small number of occasions on which somebody who is not actually at work—perhaps going to or from work—sees a situation congruent with their professional occupation and commitment and attends to that professional commitment. That person would not be covered under the Government's legislative proposals, but may have the benefit of this amendment. That very, very small residual possibility is the only reason that the Labor Opposition very reluctantly supports the amendment. Basically, the amendment is a fraud on the many people who gathered out the front of this establishment today and had been looking to the conservative members of the crossbench in this place to at least ameliorate some of the harshest aspects of the proposals in the bill. They have been sorely and sadly let down. It is most unfortunate that this scheme will come to pass. The Labor Opposition will support this amendment, but only through gritted teeth, and only because it is one step short of completely useless.

The Hon. Dr PETER PHELPS [11.10 p.m.]: The honourable member has made a remarkable claim, so I will quote from the Labor Party's Minister for Labour on this matter:

> In addition, a worker will receive compensation for injury sustained on his journey to and from the place of employment. The practical effect of this is to treat the worker's home, instead of the employer's premises, as the ordinary starting and finishing point of the risk of injury to the worker. This particular provision has been adopted from the Queensland Act. It has been in force in that State since 1916, and the experience there is that it does not impose a heavy burden on industry. The figures reveal that in Queensland it does not cost more than 1 per cent.
>
> Mr FOSTER: What do you say will be the cost of this position?
>
> Mr BADLEY: In Queensland, it does not show an increase cost of more than 1 per cent.

So the cost is infinitesimal—completely at odds with what the honourable member has said.

Mr DAVID SHOEBRIDGE [11.11 p.m.]: The Government Whip has just read onto the record some debate from a 1926 *Hansard* to support his argument. Am I correct that it was a debate from 1926?

The Hon. Dr Peter Phelps: Just as the Leader of the Opposition did.

Mr DAVID SHOEBRIDGE: Yes, 1926. That was a debate about the likely proportion of journey claims. Since 1926 there have been some changes in transport—perhaps not as many as we in Sydney would like, but there have been some changes in transport. One further matter needs to be considered: that things notionally classified as journey claims have greatly expanded over the past four or five years; in fact, the number of claims classified as journey claims has come close to doubling. There is a reason for that. It is that when an employer has an injury that is classified as a journey claim that does not add to their premiums. They say, "I had nothing to do with that; it was a journey claim."

So there is great pressure on employers to classify every single motor accident injury not as an injury that happens in the course of employment but as a journey claim, because every time they can have it treated as a journey claim they can avoid having to pay increased premiums. That is due to a gross failure by WorkCover to properly oversight and properly interrogate this expansion in journey claims over the past three or four years. Rather than try to get to the source of the problem and make WorkCover more accountable, or seriously review WorkCover and its failure to properly review and interrogate this expansion of journey claims and hold to account employers—who, on any view of it, are clearly inappropriately classifying a series of motor accident injuries as journey claims—this Government removes the entitlement to journey claims of workers.

We heard Reverend the Hon. Fred Nile stand in this place and say that we should not worry, as the amendment of the Christian Democrats is a major step forward. He holds out this amendment as a major step forward. Let us be very clear about this. Right now, as we are speaking, workers in New South Wales have a full entitlement to journey claims. This Christian Democratic Party amendment is not a step forward; it is a dramatic step backwards. Reverend the Hon. Fred Nile gave the example of an ambulance officer stopping on the way to work to do the duty of an ambulance officer, to assist someone who had been injured. Right there that ambulance officer almost certainly would be engaged in his or her employment as an ambulance officer.

Reverend the Hon. Fred Nile put forward the argument that a teacher who sees a child in an accident and in going to the assistance of the child gets knocked over by a lorry could somehow craft a complicated legal argument that those circumstances would thread the eye of the needle provided by the Christian Democratic Party amendment. That argument fails because the next amendment that the member will move seeks to remove any entitlement that workers have to costs in the Workers Compensation Commission. No worker will be able to afford a lawyer to even run a case and mount the abstruse legal argument that he puts forward. Worse still, the member was out the front of this House only a matter of hours ago addressing a sea of firefighters, nurses, teachers and other workers and saying to them that he was their saviour and he would protect their rights to journey claims.

Dr John Kaye: Working hard for them.

Mr DAVID SHOEBRIDGE: Absolute rot. At best, probably 1 per cent of journey claims will be protected by this amendment. Maybe the Government has convinced Reverend the Hon. Fred Nile that his amendment will save journey claims. Maybe, somehow or other, in some dark room with a lack of oxygen, the Government convinced the Christian Democrats that this amendment would protect journey claims. It will not. Maybe one or two workers will be protected, and for that reason alone we will vote for the amendment but vote against the schedule and these changes to journey claims. The amendment is not saving anyone.

Reverend the Hon. FRED NILE [11.16 p.m.]: I did not want to take a point of order when Mr David Shoebridge was speaking but I made it clear to those protesting outside the Parliament that the amendment we would move is based on the South Australian model. I made that very clear. And I explained to the union representatives as well. So I have not in any way sought to mislead them.

Dr JOHN KAYE [11.16 p.m.]: I wanted to address the two examples given by Reverend the Hon. Fred Nile. Though Mr David Shoebridge did that to some extent, I want to go into a bit more detail. Reverend the Hon. Fred Nile says that this amendment is terrific, and look at all the people it will cover. Imagine a teacher going to work and seeing a child by the side of the road in some form of difficulty. The worker stops to help the child of course. In doing so the teacher is injured. Reverend the Hon. Fred Nile argues that that teacher will be covered by this amendment. I very much doubt whether the teacher would be covered, because a teacher's employment is not helping random children.

Reverend the Hon. Fred Nile: The teacher is helping children.

Dr JOHN KAYE: That is not what teachers are employed to do. They are employed for the purposes of education—education in schools. They are employed by their employer to educate a particular set of children, not to randomly help children in the wild, as it were.

Reverend the Hon. Fred Nile: So would you agree that the teacher should be given assistance? If you were the judge, would you say, "No, you have no assistance"? I would not say that.

Dr JOHN KAYE: If I were the judge and I were reading the amendment that presumably the Christian Democrats have drafted I would say the teacher was not covered. The words of the amendment contemplate a real and substantial connection between the employment and the accident or incident. There is no connection of a random child out of school and a teacher via the teacher's employment. The fact that we are having this argument goes to the point made by Mr David Shoebridge.

The Hon. Adam Searle: It is legally unclear.

Dr JOHN KAYE: It is legally unclear. I do not think it is all that unclear, but at least it will permit of an argument. The second example used by Reverend the Hon. Fred Nile was of an emergency services worker. What Reverend the Hon. Fred Nile might be aware of—and I have been made aware of this by talking to emergency service workers—is that when wearing their uniform and seeing an accident they are required, even when not formally on duty, to assist—

Reverend the Hon. Fred Nile: When they're not wearing uniforms.

Dr JOHN KAYE: It would be helpful if Reverend the Hon. Fred Nile would let me complete what I am saying. Then he could respond. That is normally the way it works in Committee. If emergency service workers are in uniform they are obliged by the terms of their employment to assist at an accident they encounter.

It is not a journey claim when they assist. If they are injured in the course of assisting they are therefore injured in the course of their work, not in the course of a journey from their home to their work. The Christian Democratic Party amendment would have no bearing and is not relevant to that case. Whatever number of cases are covered by the amendment will be a very small proportion of journey claims. We have to be honest: if we do not vote against schedule 5—I presume the amendment will be successful—we will wipe out 99 per cent of journey claims. A weird, strange, confluence of circumstances of about 1 per cent may be covered by the amendment. Reverend the Hon. Fred Nile would not then be justified to say that the Christian Democratic Party saved journey claims because it did not; it is only saving some tiny, insignificant percentage of them. Approximately 99 per cent of journey claims are being wiped out, and that is what members are voting for if they do not vote to wipe out schedule 5.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.21 p.m.]: This debate has illustrated that the legal phraseology of proposed section 10 (3A) is unclear. The further restriction is that it relates only to when the worker is travelling to and from their place of abode. For the sake of argument let us use the example of Reverend the Hon. Fred Nile of a teacher assisting a child in distress, which is sufficiently congruous with their professional obligations, or an ambulance driver attending to someone in need of medical attention. What happens if on those occasions they were not travelling between home and work or to and from their place of abode? What if they were on a picnic or out shopping? The number of people who would actually have any realistic opportunity of using this would not even be every professional person who goes out of their way, at their risk, to fulfil an associated professional task. This illustrates how very few people this provision would apply to. The Opposition will not oppose the amendment because, clearly, it will be supported, but the schedule as amended should not be part of the bill.

Question—That Christian Democratic Party amendment No. 4 [C2012-115B] be agreed to—put.

Christian Democratic Party amendment No. 4 [C2012-115B] agreed to.

Question—That schedule 5 as amended be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Harwin	Mr Pearce
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Mr MacDonald	Mr Colless
Miss Gardiner	Mr Mason-Cox	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Blair	Ms Fazio
Mr Clarke	Mr Roozendaal
Mrs Mitchell	Mr Veitch

Question resolved in the affirmative.

Schedule 5 as amended agreed to.

Schedule 6 agreed to.

Mr DAVID SHOEBRIDGE [11.30 p.m.], by leave: I move The Greens amendments Nos 28 and 29 on sheet C2012-107B in globo:

No. 28 Page 45, schedule 7 [1], line 8. Omit "the main". Insert instead "a significant".

No. 29 Page 45, schedule 7 [1], line 12. Omit "the main". Insert instead "a significant".

These amendments seek to retain, in effect, the current disease provisions in the Act.

TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones): Order! Members will keep the level of their conversations to a minimum or leave the Chamber.

Mr DAVID SHOEBRIDGE: The Government's bill seeks to amend the definition of "injury", insofar as it deals with disease injury, by providing that a disease injury means a disease that is contracted by a worker in the course of employment, but only if the employment was the main contributing factor to contracting the disease. It has, as a second element, the aggravation, acceleration, exacerbation or deterioration of any disease in the course of employment, but only if the employment was the main contributing factor to that aggravation, acceleration, exacerbation or deterioration. This overturns approximately 80 years of understanding of what a disease claim is for the purpose of workers compensation.

The Hon. Trevor Khan: In New South Wales.

Mr DAVID SHOEBRIDGE: In New South Wales. We are in New South Wales, I remind the Hon. Trevor Khan, and in New South Wales for the last 80 years—

The Hon. Sophie Cotsis: We're in O'Farrell land.

Mr DAVID SHOEBRIDGE: We're in O'Farrell land. For the last 80 years workers have been entitled to compensation where they have contracted a disease or a disease has been aggravated, accelerated, exacerbated or has deteriorated, where employment has been a significant contributing factor to that disease. That is a restriction that was put into the Act about 20 years ago. Prior to that there was a greater entitlement to recover disease claims and it was restricted by putting in place "significant contributing factor" as one of the tests. The Hon. Trevor Khan is right. This is a further tightening of the entitlement to workers. A classic example would be a bricklayer who over time constantly bends for the purposes of laying bricks: bending, laying bricks, picking up bricks, bending, laying bricks, picking up bricks. Over time that constant bending is a significant factor in the deterioration of a bricklayer's lower back.

The same with steel fixers: There are almost no steel fixers older than 60 years of age working because after 20 or 30 years of being a steel fixer and constantly bending, the employment is a significant contributing factor to lower back injury. That has always been classified as a disease claim because there has been this ongoing aggravation of a degenerative back. Another example would be repetitive strain injury claims where many female workers, in particular, suffer a repetitive strain injury when they do repetitive tasks and repetitive duties. Obviously bricklayers have a life outside of bricklaying where they bend and twist and pick up stuff, and it would be almost impossible for most manual workers to say that the employment, of itself, was the main contributing factor and that the other activities the worker did for 14 or 16 hours a day outside their employment was not the main contributing factor.

If a worker has to prove that the employment was the main contributing factor as opposed to a significant contributing factor for their disease, it will raise the bar to such a level that most workers will not be able to prove it. Most epidemiological studies make it very difficult for a worker to prove that those kinds of occupational aggravation diseases are caused in the main by employment. But almost all of those studies will say that employment is a significant contributing factor to contracting the disease or the aggravation, acceleration or exacerbation of the disease, and that means that those bricklayers, those steel fixers, those people doing repetitive tasks will basically lose their entitlement to workers compensation.

That is a major step back for workers in New South Wales; it is a major step back for whole classes of workers. I do not understand the rationale for it other than it seems to be a barefaced attempt to save money from the workers compensation scheme at the expense of those classes of workers. That is why The Greens move these amendments: to basically preserve the current definition of "disease" and liability for employers where the employment is a significant contributing factor to the disease or acceleration of the disease.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.36 p.m.]: The Labor Opposition supports The Greens amendments Nos. 28 and 29. We think this is an unduly harsh and restrictive amendment which will have the effect—no doubt the desired effect—of knocking out many future claims that are currently covered. It has been well accepted that no compensation is payable unless employment is a substantial contributing factor. Many of the complaints from employers and insurers have been about the integrity or the application of section 9A.

The Hon. Trevor Khan: That is precisely right.

The Hon. ADAM SEARLE: That does not mean there is anything wrong with the law, just the way it has been applied. Again, there are other ways to address it. It is a case of throwing out the baby with the bathwater. Restricting it to the main contributing factor is obviously a new restriction and another step towards the complete refocusing of the New South Wales workers compensation system to a bare ultra-minimum system rather than what it has historically been, that is, a form of support for persons who are injured in the course of or arising out of employment. The current term of "a substantial contributing factor" is recognition that work has largely caused the injury. Making the injured person prove that it was the main contributing factor creates a very difficult evidentiary barrier to many, if not most, claims being able to be substantiated. Therefore, we support maintaining the status quo.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.38 p.m.]: The draft bill adopts the tests, which follows recommendation 14 of the joint select committee. Accordingly, the Government does not support The Greens' amendment.

Question—That The Greens amendments Nos 28 and 29 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendments Nos 28 and 29 [C2012-107B] negatived.

Question—That schedule 7 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Harwin	Mr Pearce
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Mr MacDonald	Mr Colless
Miss Gardiner	Mr Mason-Cox	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Blair	Ms Fazio
Mr Clarke	Mr Roozendaal
Mrs Mitchell	Mr Veitch

Question resolved in the affirmative.

Schedule 7 agreed to.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.45 p.m.]: I move Opposition amendment No. 54 on sheet C2012-100I:

> No. 54 Page 47, schedule 8 [3], lines 1-7. Omit all words on those lines.

This amendment deals with commutations by agreement. Like a similar amendment that we debated earlier, this amendment dispenses with the requirement that a worker obtain independent legal and financial advice. However, it permits the worker to waive that advice. The clause states:

> Compliance with subsection (2) is not required if the commutation agreement contains a provision in which the employer or insurer certifies that it is satisfied that the worker has waived the right to obtain independent legal advice and independent financial advice before entering into the agreement.

That is contrary to committee recommendation 13.

The Hon. Trevor Khan: Are you cherrypicking?

The Hon. ADAM SEARLE: I am highlighting where the Government has chosen to depart from the committee's recommendations—even the ones we did not agree with—to be harsher towards injured workers. Recommendation 13 states:

> That the NSW Government liberalise the availability of commutations, generally subject to the proviso that the injured worker has obtained independent legal and financial planning advice before agreeing to a commutation.

The Hon. Paul Green was particularly concerned about the wellbeing of persons who might come into a lump sum and not disperse it in their best interests. I raised that in the second reading debate and the honourable member said that he was talking about large amounts of money, although that was not the substance of the discussion in the committee.

The Hon. Trevor Khan: It was.

The Hon. ADAM SEARLE: It depends on what one sees as a large amount of money. Sometimes $10,000, $20,000 or even $50,000 can be a substantial amount to a person. Before people give up their right to take a commutation it is important to ensure that they understand the impact of doing so. It is not a matter of simply giving up weekly benefits—although it is often calculated as a multiplier of that amount. People who accept a commutation lose their right to ongoing medical care and support. Judges in the old Compensation Court would not approve a commutation until the worker was put in the box and satisfied the judge that they knew what they were doing and had obtained independent legal advice. I saw many cases where the judge was not satisfied and knocked back the commutation in the worker's best interests. That was a good break on making sure that workers who were desperate for a lump sum to pay down debts and secure their future did not just grab an attractive amount of cash that was small in an overall sense but significant to them and give up things that they needed, such as ongoing medical care. It was an important safeguard and a social justice measure that is now being crushed and cast aside.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.49 p.m.]: This amendment is made somewhat redundant by Christian Democratic Party amendment No. 5.

Mr DAVID SHOEBRIDGE [11.49 p.m.]: For the reasons previously given about the need for independent legal advice and what an important safeguard it is, The Greens support the Opposition amendment. In fact, we commend the Opposition for bringing the amendment to the Committee. It is essential that workers obtain some legal advice before they sign off on agreements that will terminate their entitlement to workers compensation. I see that Reverend the Hon. Fred Nile intends to move an amendment about financial advice. If the financial advice is dealing with a $2,000 settlement from a compensation insurer it is not going to be a great deal of help, is it?

The Hon. GREG DONNELLY [11.50 p.m.]: The issue of waiving is significant. I ask members to pause to remember that figures of $10,000, $20,000 or $30,000 are large sums of money for some of the people who will be faced with the decision whether to, in effect, settle on a particular package. In our profession we think of large sums of money as being hundreds of thousands of dollars.

The Hon. Trevor Khan: No, we don't.

The Hon. GREG DONNELLY: People here will be dealing with much smaller multiples of thousands of dollars. Of course, they will ultimately settle on something that will be legally binding. People may accept an offer on impulse. Other people could be mightily tempted to accept an immediate settlement because it will provide a lump sum payment forthwith. The Minister said that this amendment was in similar terms to that which will be moved by the Christian Democratic Party. Amendment No. 5 says "the regulations may require".

That amendment will not introduce the provision of a satisfactory set of circumstances for individual workers who have to make these critical decisions. That amendment also refers to "independent financial advice", whatever that means. The Christian Democratic Party amendment deals with a "may", not a "shall" or a "must", and it concerns independent financial advice. Once again, I urge the minor parties to reflect on the fact that if this legislation passes this waiving will play out in situations henceforth in which workers who find themselves in vulnerable situations will feel pressure to settle on a matter. Once that is done it is the end. Many people will put themselves into a binding arrangement that I am sure, on reflection, a number of them will regret.

Question—That Opposition amendment No. 54 [C2012-100I] be agreed to—put and resolved in the negative.

Opposition amendment No. 54 [C2012-100I] negatived.

Reverend the Hon. FRED NILE [11.54 p.m.]: I move Christian Democratic Party amendment No. 5 on sheet C2012-115B:

No. 5 Page 47, schedule 8 [3]. Insert after line 7:

(2B) The regulations may require the provision of independent financial advice to a worker (at the expense of the insurer) before the worker enters into a commutation agreement and any such requirement applies despite any other provision of this section.

This amendment is self-explanatory. It is important that injured workers get the right advice before they enter into a commutation agreement. We have deliberately emphasised "independent financial advice" rather than legal advice because lawyers may consider their own interests rather than the interests of workers.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [11.55 p.m.]: The regulations may, but then again they may not because no regulation may be made. I would like the Minister to confirm whether it is the Government's intention to make such a regulation. If it is the Government's intention then this amendment once again reveals the lack of bona fides in this aspect of the debate. It would have exactly the same effect as the Opposition amendment that was just defeated. But the Government could not possibly let the Opposition have a win, no matter how small or incidental. No, the Government has to prop up one of the friendly crossbench parties that are backing the package as a whole. This is an example of a case where the effect is the same if the regulation is made, but it may be worse than that. Unless the Minister confirms here and now that there will be a regulation, this machinery may be completely inoperative. If it is to be operative, this Committee should have embraced the Opposition amendment. But, of course, it chose not to—and that speaks volumes about the way in which the debate has been conducted.

Mr DAVID SHOEBRIDGE [11.56 p.m.]: If it is so important to the Christian Democratic Party that workers get independent financial advice, why make it discretionary? That has not been explained. For Reverend the Hon. Fred Nile to suddenly say he is concerned about what workers will do with their money after he has supported provision after provision in this bill—

The Hon. Duncan Gay: Point of order: I have sat here quietly, but frankly there has been enough personal sledging by this member of Reverend the Hon. Fred Nile. The issues before the Committee do not require personal sledging.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members will refrain from making personal reflections. Members will confine their remarks to the amendment before the Committee.

Mr DAVID SHOEBRIDGE: The member moving this amendment should not suggest that it will go anyway near protecting the interests of workers in a scheme that is savaging the rights of workers. The legislation removes whole classes of compensation, makes whole sets of claims void, removes the entitlement for widows to get nervous shock claims, wipes out journey claims, and cuts the medical expenses of 68-year-old workers with the most catastrophic injuries.

The Hon. Dr Peter Phelps: Point of order: The member is canvassing previous rulings. He should also confine himself to the specifics of the amendment, not engage in a retrospective of debate and refer to votes that have occurred previously.

The CHAIR (The Hon. Jennifer Gardiner): Order! I invite the member to address the amendment before the Committee.

Mr DAVID SHOEBRIDGE: In summary, the amendment is next to useless in the scheme of the savage attacks being made by this bill.

The Hon. ROBERT BROWN [11.58 p.m.]: The Shooters and Fishers Party support the amendment by Reverend the Hon. Fred Nile. I note that in his contribution the Deputy Leader of the Opposition requested—or should I say challenged—the Government to confirm that such a regulation would be made. Given the lengthy discussion we have had with the Government, perhaps it would be pertinent for the Minister to confirm it for the record.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.59 p.m.]: I am very happy to—in fact I have been on the record for some considerable time indicating that we will be looking at some form of limited commutations, particularly to deal with some aspects of the tail. We do not have any specific proposal at this stage, but I expect us to work on that in the new term.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.01 a.m.]: The Minister has confirmed that the Government is looking at limited commutations—so far, so good. But there is no confirmation that, if the Government did action it, this regulation would be made. I am not trying to be tricky but the Minister did not answer the question that I posed about the regulation, about which the Hon. Robert Brown asked for confirmation.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.01 a.m.]: It does not help the debate when we have The Greens, because they are not getting their way, engaging in personal vilification. Perhaps they could actually contribute to the debate. My understanding is that using the word "may" is parliamentary drafting practice and, as the Deputy Leader said a couple of minutes ago, with the regulation in place that will be one of the matters considered and included in it.

Question—That Christian Democratic Party amendment No. 5 [C2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 5 [C2012-115B] agreed to.

Question—That schedule 8 as amended be agreed to—put and resolved in the affirmative.

Schedule 8 as amended agreed to.

Mr DAVID SHOEBRIDGE [12.02 a.m.], by leave: I move The Greens amendments Nos 30 to 42 on sheet C2012-107B in globo:

No. 30 Page 48, schedule 9.1 [1] and [2], lines 4–10. Omit all words on those lines.

No. 31 Pages 48–50, schedule 9.1 [5], line 16 on page 48 to line 22 on page 50. Omit all words on those lines.

No. 32 Page 50, schedule 9.2 [1] and [2], lines 27–34. Omit all words on those lines.

No. 33 Page 51, schedule 9.2 [3], line 3. Omit ", deemed insurers".

No. 34 Page 51, schedule 9.2 [4], line 7. Omit ", deemed insurers".

No. 35 Page 51, schedule 9.2 [5], line 10. Omit ", deemed insurers".

No. 36 Page 51, schedule 9.2 [6], line 13. Omit ", deemed insurer".

No. 37 Page 51, schedule 9.2 [9], lines 19–24. Omit all words on those lines.

No. 38 Page 51, schedule 9.2 [11], lines 28 and 29. Omit all words on those lines.

No. 39 Page 52, schedule 9.2 [13], line 5. Omit "or deemed insurer".

No. 40 Page 52, schedule 9.2 [14], line 8. Omit "or deemed insurer".

No. 41 Page 52, schedule 9.2 [15], line 11. Omit all words on those lines. Insert instead:

Insert instead "an insurer or self-insurer".

No. 42 Page 52, schedule 9.2 [16], lines 12 and 13. Omit all words on those lines.

The provisions in new division 6, headed "Transfer of Claims", are effectively privatisation by stealth of the $14 billion WorkCover fund. They will allow the authority to sell off entire classes of claims to any corporation—it does not even have to be a licensed insurer—and, with them, give to that corporation the liabilities attached to the claims. There is no limit. It does not have to go to licensed insurers. It is arguably constitutionally invalid because it will conflict with the Commonwealth Insurance Contracts Act. The Government might want to pretend that these are claims managers and claims agents, but they will be insurers. I would have thought they would certainly be treated as insurers. Therefore, there will likely be a requirement for whichever corporation is the subject of one of these transfer claims—that purchases one of these claims, thousands of these claims or all the claims of the WorkCover scheme—to be compliant with the provisions of the Commonwealth Insurance Contracts Act. So the attempt in this legislation to try to get around that requirement and to have them as licensed insurers may well fail for constitutional reasons.

It is simply remarkable that at no point in its public commentary has the Government admitted what the effect of these provisions will be, which is to open the door for the wholesale privatisation of the entire $14 billion statutory fund. No doubt the Government's friends in the finance sector are slavering at the concept. The merchant bankers and the former commercial clients of the finance Minister when he was working for Freehills are probably circling like vultures, eager to get their hands on the $14 billion worth of funds currently in the ownership of the public authority. But it would be a step backwards if not only the claims could be sold but the assets could then be transferred to private corporations. Those private corporations would then have the power to deny claims because they would effectively be claims agents. They would have the capacity to deny claims without any really effective oversight by the WorkCover Authority.

The private corporations would have a real financial interest in denying the claims because they would no longer be claims managers or claims agents; they would have skin in the game because they would own the assets. So when they buy a claim they get the $100,000 that has been put aside to meet the claim. The next day they can deny liability or find—on the basis of no evidence—that the worker is fit for duties with one of their work capacity assessments. They can deny the claim, get the $100,000 that has been set aside to meet the liability and put the money in their back pocket. It is an extraordinary proposition that without any of these controls, without any ability to genuinely challenge these decisions of insurers, the Government would allow the privatisation and transfer of all the assets attached to claims. The Greens oppose this change.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.06 a.m.]: The Opposition supports The Greens amendments, but it is a bit of a mixed bag. No doubt the provisions in the schedule are referable to recommendation 18:

> That the NSW Government reopen the opportunity for specialised insurance arrangements, with appropriate prudential supervision and safeguards.

So far, so good.

The Hon. Trevor Khan: And we saw the benefits of that in the evidence.

The Hon. ADAM SEARLE: Yes, and we saw the benefits of appropriate specialised self-insurance in the evidence, and the two Labor members on the committee had no problems with that approach. However, this provision goes much further than is necessary, or reasonably necessary, to give effect to that. The Opposition is concerned about schedule 9, from pages 48 to 50, and at least all of schedule 9.1. We do not see that being at all necessary for specialised self-insurance. We have some of the same concerns identified by Mr Shoebridge, which I raised in my contribution during the second reading debate and which I will not repeat.

The Hon. Trevor Khan: But you don't adopt this hysterical "reds under the bed"—

The Hon. ADAM SEARLE: I think I phrased it slightly differently, but certainly I do not think it is necessary to give effect to the specialised self-insurance idea. It is conceivable that schedule 9.2, from page

50 to the end of the schedule, does some machinery things that might support specialised self-insurance and I would like to support that. But because of the way in which the amendments have been moved in globo it is either all or nothing. Specialised self-insurance can be given effect to under the existing regulatory regime. It has largely been held back by a policy decision of the WorkCover Authority and the Government not to have the appointment of any further specialised self-insurances. Recommendation 18 can be given effect to by the existing legislative regime through a changed policy outlook by the authority and by Government, and certainly we would support it in doing that.

Due to the short time that we have had to consider the bill—it is only 25 hours since we started debating the legislation and we received it only a bit earlier than that, at about 5 o'clock—I have not been able to work out the exact import of schedule 9.2. Adopting the precautionary principle, the Opposition will vote for The Greens amendments. We support expanded specialised self-insurance arrangements where appropriate. For example, in construction both sides of the industry remain interested in pursuing self-insurance. I think motor trades is another area where there is at least some interest in exploring that, and I urge the Government to explore those options under the existing regulatory regime. If some tweaking is needed, it can come back with a standalone set of changes focused precisely on that issue. I think what has happened here, as a result of some maligned conspiratorial purpose or not, is that the provisions go much further than is reasonably necessary. We do not understand that. That is why the Opposition will support The Greens amendments and oppose parts of the bill.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.09 a.m.]: The Government supports the recommendations from the report. The object of the Government's amendments is to complement the existing powers of the nominal insurer to appoint scheme agents to manage policies and claims on its behalf. The amendments give the nominal insurer an additional option for claims management by allowing the nominal insurer to transfer a specified cohort of claims, such as, for example, severe injury claims, to insurers that can best manage them. It is not a conspiracy.

The employer's insurance policy will remain with the nominal insurer. That will improve outcomes for injured workers by ensuring that the claims are managed by specialist agents when that is necessary. The bill provides numerous safeguards to ensure that claim agents are accountable to the nominal insurer and WorkCover as a regulator of claims management. They will be subject to the same rules as the nominal insurer and specialised insurers. The Government opposes The Greens amendments.

Dr JOHN KAYE [12.10 a.m.]: I think we are talking about a completely different bill. The Minister talks about transfer for the purposes of managing, but proposed sections 218 and 219 talk about transfer as in transfer of ownership. It is not a matter of management; it is actually a matter of ownership.

Mr David Shoebridge: And the liability.

Dr JOHN KAYE: The whole lot goes over. The whole kit and caboodle goes over. They become the nominal insurer. It is a complete transfer. It is a complete privatisation of that claim out of WorkCover to a private insurer. This is privatisation. It has nothing to do with self-insurance. That is in a different division of the Act. Self-insurance is in division 5 and this is division 6. This is, pure and simple, privatisation of the scheme—and a very nasty privatisation at that. An injured worker who is so transferred, either individually or by dint of being a member of a class, is transferred to an insurer who gets all the assets and liabilities associated with that worker, and then the insurer will have the capacity to say, "Sorry, we now assess you as not needing any more help", flick them off, and take the money. It is a licence to rip off the scheme. It is a very dangerous licence. The Greens amendments will stop that from happening by changing the nature of the transfer and by changing it to the deemed insurer.

Question—That The Greens amendments Nos 30 to 42 [C2012-107B] be agreed to—put and resolved in the negative.

The Greens amendments Nos 30 to 42 [C2012-107B] negatived.

Schedule 9 agreed to.

Schedule 10 agreed to.

Mr DAVID SHOEBRIDGE [12.13 a.m.]: I move The Greens amendment No. 43 on sheet C2012-107B:

No. 43 Page 59, schedule 11 [11], lines 21–27. Omit all words on those lines.

This amendment will remove the changes as to costs proposed by this Government. Instead of having the position of workers ordinarily not paying costs even if they are unsuccessful, but provided that they have not run a vexatious or fraudulent claim, the Government's proposal is to have costs follow the event. If a worker wins, the worker gets his or her costs. But if the worker loses, even if it is an arguable claim and even if there is no suggestion that the claim is vexatious or fraudulent, the worker will have to pay the costs of the insurance company. Earlier I said that there is a power relationship imbalance between injured workers on one side, who often have lost their jobs, have very modest assets and who may have no income at all while they are waiting to have their workers compensation benefit paid, and on the other side probably a multinational insurance company.

The reason there has not been this type of provision of costs following the event in workers compensation since 1926 is to recognise that inherent massive power imbalance between an injured worker and an insurance company. To allow workers to run a case for their workers compensation claim with the risk of potentially having to pay the costs of the insurance company if their claim fails could send workers many thousands of dollars backwards, simply for running their compensation claim. If a worker runs a claim that is vexatious or fraudulent, the worker should bear all the costs. That is the way the law currently stands. But if a claim is arguable, bona fide and decent but fails perhaps because the worker is running a difficult legal argument or the worker's doctor, on close review, was not as persuasive as was the insurance company's doctor, it is a genuinely major backward step for workers compensation if the worker has to pay the costs of the insurance company. The provision obviously is intended to discourage workers from running claims.

The Hon. Trevor Khan: It is more than that. When they lose, they get their costs paid by the insurance.

The Hon. Adam Searle: No, they don't.

Mr DAVID SHOEBRIDGE: I note the Hon. Trevor Khan's interjection. Currently, if a worker runs a case and loses the case the worker gets no costs paid at all. The way the law currently operates in workers compensation matters is that it is unlawful for a solicitor or a lawyer to recover any costs at all from their clients. Win, lose or draw, it is unlawful for them to recover costs from their client in workers compensation claims. The worker's lawyers are limited to a very tight, some would say quite mean, schedule of costs that are set in a regulation.

The Hon. Trevor Khan: They would say that.

Mr DAVID SHOEBRIDGE: I am sure. The regulation greatly limits the amount of costs that can be paid and recovered by workers' lawyers. In none of the reviews of the scheme have legal costs been said to be anything like a significant contributor to the deficit—not at all. The real contributor to the deficit is the hundreds of millions of dollars going to private insurers. But putting that to one side, no-one has ever said that legal costs have been in any way a significant driver of the scheme. The Government's proposed changes to the costs are very retrograde and, if they become law, will seriously discourage workers from running genuine bone fide claims.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.17 a.m.]: The Opposition supports The Greens amendment because it is similar to Opposition amendment No. 55, which was proposed for the same reasons and now will not need to be moved separately. This is a retrograde step not only because it makes costs follow the event. The provision seems to say that costs should follow the event unless it appears to the commission that some other cost order should be made as to the whole or any part of the cost. That sounds reasonable: it is within the discretion of the tribunal. The extra concern of the Opposition relates to the words "or as the regulations otherwise provide".

The Hon. Greg Pearce: That is getting into the conspiracy theory.

The Hon. ADAM SEARLE: It is not so much getting into the conspiracy theories. We have a situation in which the Executive Government, in relation to the making of the regulation—for example, not entirely unlike the wages cap—can dictate to an independent tribunal what it can and cannot do. Those separate words mean that the Executive, through the making of a regulation, can blind whatever discretion is otherwise conferred on the tribunal from this bill. It is a significant change from the status quo. It is one that impacts negatively on workers and it will have a chilling effect on workers trying to pursue and validate their just legal claims. A person's house is usually all they have, if they have that.

Even though they may have a very good claim for compensation arising out of an injury, if there is any risk to the security of their family, what little security is left, they simply will not be able to take that risk. The Opposition considers that to be harsh and unfair and it is a substantial change. I want to confirm something said earlier by way of interjection. From my limited practice in this area, if a lawyer ran a case for an applicant and did not succeed the lawyer did not get paid. Insurance lawyers get paid win, lose or draw but applicant lawyers get paid only when they win. That is okay; no-one is complaining about that. But to fundamentally change the system in the way that is proposed is unjust.

The Hon. GREG DONNELLY [12.20 a.m.]: I wish to make some additional comments about the costs provision without repeating the points that have already been made by the Hon. Adam Searle and Mr David Shoebridge. With such a provision in place conversation between a lawyer and an injured worker would be one of cautionary discussion about the implications if the worker's case was unsuccessful. The reality of having costs follow for ordinary working people on wages, not high salaries, will mean that they could be confronted by huge legal bills that could run into tens of thousands of dollars. This will sharply focus a worker's mind—

The Hon. Trevor Khan: Is it a bad thing for people's minds to be focused?

The Hon. GREG DONNELLY: No, it is not bad that a worker's mind is focused but I think there might be a presumption in the Hon. Trevor Khan's interjection—please correct me if I am wrong on that—namely, in the minds of people who have been injured lies the thought that they will get what they can from the system because they have been injured. My experience from dealing with injured workers is that that is not the case.

The Hon. Trevor Khan: What I am saying is that in any litigation the costs and the implications of those costs is a matter that focuses the minds of litigants. That is an accepted concept in litigation.

The Hon. GREG DONNELLY: With respect to the workers compensation law in this State, the Hon. Trevor Khan knows that going back to the antecedents of this legislation—right back to 1926 and following through—we have had a status quo provision where that is not the case. That is a long time. Those who have practised as solicitors or barristers in this area would say, as a general comment, that on average workers are not looking to milk the system or to get as much as they can out of it. These workers have found themselves in the invidious position of having been injured at work. They are in need of a fair and reasonable system to assist them, hopefully, to make a full recovery and to return to work.

The scenario that if a worker's case is not successful the worker will have to face the costs will put many of them in situations where they will be forced to take a conservative position. They are not people of means, and they never will be. Those workers will have to defer not proceeding because the risk of failing is simply too high. The only major asset that many of them have is a house and a mortgage. That is what will be up for grabs if the case is not successful and they have to deal with costs. I support this amendment. Once again I invite the minor parties to reflect on this amendment.

The Hon. Robert Borsak: We have.

The Hon. Robert Brown: Read all the amendments and you will see that we have.

The Hon. GREG DONNELLY: I invite the minor parties to look closely at this amendment, as I have invited them to do with other amendments. The cost implications of this are significant. Members should be looking to restore as much fairness as they can in this legislation.

Reverend the Hon. FRED NILE [12.24 a.m.]: Because Christian Democratic Party amendment No. 6 on sheet C2012-115B has the same wording—as does the Opposition's amendment—to omit the words appearing on page 59, schedule 11 [11], lines 21 to 27, we will support this amendment. The Christian Democratic Party will then move amendment No. 6 which replaces the omitted words with new ones. Reluctantly I have to admit that, for the first time, the Christian Democratic Party will support The Greens amendment.

Question—That The Greens amendment No. 43 [C2012-107B] be agreed to—put and resolved in the affirmative.

The Greens amendment No. 43 [C2012-107B] agreed to.

Reverend the Hon. FRED NILE [12.25 a.m.]: I move Christian Democratic Party amendment No. 6 on sheet C2012-115 B:

No. 6 Page 59, schedule 11 [11], lines 21–27. Omit all words on those lines. Insert instead:

[11] Sections 341, 342, 343 and 345

Omit the sections. Insert instead:

341 Costs

(1) Each party is to bear the party's own costs in or in relation to a claim for compensation.

(2) The Commission has no power to order the payment of costs to which this Division applies, or to determine by whom, to whom or to what extent costs to which this Division applies are to be paid.

The impact of these changes is very simple—namely, injured workers do not have to risk paying the other party's costs if they lose a dispute. Each party will pay their own costs.

Mr DAVID SHOEBRIDGE [12.27 a.m.]: The Greens are strongly opposed to this amendment for two reasons. First, this amendment will, rather remarkably, get rid of the capacity of an injured worker to recover costs from an insurance company even if the worker wins. So even when a worker wins, according to Reverend the Hon. Fred Nile, that worker will have no entitlement costs. I am dumbfounded that the Christian Democratic Party would move such an amendment. Worse still, this amendment gets rid of the current provisions in the Act that regulate costs and restrain lawyers as to how much they can charge clients. Currently, lawyers are prohibited from charging solicitor-client costs to injured workers. They cannot do it.

Even if a lawyer wanted to try to recover costs directly from a worker and to enter into a costs agreement, and even if the worker was in agreement, it is unlawful for a lawyer to recover costs from an injured worker at the moment. The only way a lawyer can get paid for running a compensation case at the moment is for a costs order in the commission and regulated costs, and even then they are very much restrained in how much they can recover. Lawyers can only recover very modest costs in the scheme of things, nothing like the kinds of costs paid in commercial disputes or in the District Court or Supreme Court. Costs that are payable at the moment for workers compensation matters are very modest, regulated costs and they are recoverable from the scheme.

Reverend the Hon. Fred Nile wants to abolish any capacity to have the insurance companies in the scheme pay a very modest amount of regulated costs and, instead, let all the lawyers off the leash and have them able to get unregulated costs directly from the injured worker. Injured workers will be running their case to get $300, $400 or $500 a week; they might get $10,000 or $20,000 from the Workers Compensation Commission after running a case and then the lawyer will be able to take every single penny from the worker through an unregulated costs agreement. Reverend the Hon. Fred Nile says he wants to restrain legal costs. He is allowing lawyers to have unregulated, uncapped fees recoverable directly from injured workers, instead of the current scheme that has capped regulated fees recoverable only from the fund and only under the direct supervision of the Workers Compensation Commission. It looks awfully like the Government will support this crazy proposal.

The Government will come on board because it has done a deal with Reverend the Hon. Fred Nile to support this insane proposal to get rid of the capacity to recover regulated costs from the commission, to get rid of the caps on legal costs and to have lawyers able to recover unregulated costs not from the insurance companies but from the injured workers who will not be able to get a single dollar of their costs paid for by the insurance companies or the scheme. It is madness and meanness wrapped together. This is the first time I have seen this Government—any government that I know—suggesting that lawyers should have no restraint on how much they can charge for workers compensation matters. It is madness. Government members either do not know what they are doing or, worse still, they know what they are doing and they are letting injured workers have their entire settlements, their entire compensation entitlements, pay for their legal costs without any capacity to restrain it at all. Of all the absolutely crazy, cooked-up deals that we have seen in the course of tonight's debate, this one has to take the cake. This is utter madness.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.32 a.m.]: I thought I had lost my capacity to be shocked in this place. This is a significantly worse provision than that proposed by the Government. Let us unpack it. The mover of the amendment said workers can run their case without being worried about being exposed to the insurer's costs. The reality is in the current arrangement they are not so

exposed. It does not happen. If they win, their costs are met from the scheme. If they lose, they do not have the scheme costs visited upon them. It does not happen. What will happen if this amendment is carried is that workers will have to pay out of their own pocket if they are successful or even if they are not successful. At the moment, if they are not successful their lawyers cannot recover against them. Under the current scheme if the worker's claim fails the worker does not have to pay his or her own lawyers, but because this provision mandates that each party is to bear its own costs, if the worker's claim fails the worker will have to pay his or her lawyers.

Not only will workers not be protected from any evil of the kind the amendment is said to be designed to meet, which is illusory, this amendment will expose them to a new evil that does not currently exist. Furthermore, what does the injured worker recover? Let us suppose the dispute is over weekly payments. They are injured, off work and not getting paid and they need weekly payments. If they succeed, they do not get a pot of gold or a lump sum. They get at best what they have been losing: their weekly wage. They will have to pay out of that average weekly wage legal costs, which will erode the value of anything they get and they will be much worse off than they currently are. Given that the amounts of money we are speaking about in the hands of the injured worker are so small, legal costs would quickly outstrip the value of any award and it would not be economic to engage lawyers to run a case, in the same way that using lawyers to run unfair dismissal cases, which are cost free, is not economically viable and so largely does not happen.

Let us turn to lump sums. The Government has now successfully persuaded this House to delete pain and suffering, section 67 payments. So, that lump sum goes out. At the very best you have section 66, lump sum for permanent impairment. Again, the Government has succeeded in persuading the House to raise the threshold from 1 per cent in the case of bodily impairment, or 6 per cent for hearing loss, to a new, massively high 10 per cent threshold, which means that most cases will not make it. I say to members of the Christian Democratic Party, the Shooters and Fishers Party and the Government: Do not embrace this because you are creating a new evil that does not exist. The effect of it will be that if a worker runs a case and even if the case succeeds the value of any award will be completely eroded by having to pay unregulated legal costs, as Mr David Shoebridge has said. Whereas at present legal costs are very modest and are heavily regulated by the scheme.

Of course, that is not what this provision is designed for. This provision, whether Reverend the Hon. Fred Nile understands it or not, is designed to prevent people bringing any case to validate their claim. Workers who are injured in the course of their employment, lose their income, cannot provide for their families, cannot meet their mortgage, cannot put food on the table and cannot support their children and have mounting legal costs they need to meet for their bodily wellbeing so that they have some chance of getting back to work simply will not be able to take the risk of running a case. They will not be able to engage lawyers to do it. I ask Reverend the Hon. Fred Nile to withdraw this amendment because he is creating a catastrophically bad situation for injured workers. This is a desperately bad idea. Everyone in this House will live to regret this provision because it will remove the ability of injured workers to run cases if those cases are not accepted by the insurers.

Mr DAVID SHOEBRIDGE [12.36 a.m.]: We are yet to hear what the Government's position is.

The Hon. Greg Pearce: I told you my position.

Mr DAVID SHOEBRIDGE: He says he has already told us his position. I am yet to hear a justification for the position. We know what the Government's position is. It is signing up for this mad proposal. We have not yet heard why it is signing up to this mad proposal. It is not just the cost of the lawyers we are talking about here. We are talking about all the disbursements that have to be paid. For example, if a worker wants to make a lump sum claim the worker needs to see a specialist, have the specialist write a report and set out the extent of the impairment. The specialists charge normally one thousand dollars or more to do that, because that is what medical specialists charge. The proposal that has been put on the table by Reverend the Hon. Fred Nile—

The Hon. Greg Pearce: This is legal costs.

Mr DAVID SHOEBRIDGE: It includes disbursements. If the Minister says it does not include disbursements he should say it on the record. He has not said it on the record. Ordinarily, costs include the disbursements attached to the costs. Workers will have to pay for their own medical reports or not pay for their medical reports because they do not have the money because they are injured workers and do not have an income. But, assuming they can borrow some money and pay for the medical reports, they might win their case.

They will then have to pay the costs of running their own case and the costs of the medical report out of their own settlement. That is what the Christian Democratic Party thinks is a fair system in workers compensation. Again, the Minister says sotto voce, repeatedly, that he has explained why this is happening. I have not heard an explanation for this utterly reckless proposal in relation to legal costs.

Reverend the Hon. Fred Nile: In your interpretation.

Mr DAVID SHOEBRIDGE: In anyone's interpretation. There is no doubt not only is this a mean scheme but now this utterly unbalanced mad scheme that has been put forward in relation to legal costs will work its way through over the next weeks, months and years. Unscrupulous lawyers will seek to take advantage of the unregulated costs and fleece injured workers of the entirety of their compensation entitlements and then seek to recover their costs against workers' homes, thanks to Reverend the Hon. Fred Nile's amendments, which will be supported by the Government.

There will be another class of claims from workers who will not be able to get legal advice and will not be willing to enter into costs agreements. They will see that it is uneconomic to run their case because the compensation entitlements they will recover over time will not justify the legal costs they must pay out of their own pockets to run their case. That is what will happen as a result of this, almost as certain as day follows night. At some point—most likely on this Government's watch—we will have to come back and try to recover something from the wreckage that this ill-thought out amendment from the Christian Democratic Party, supported by the Government, will cause to the workers compensation scheme in New South Wales.

The Hon. GREG DONNELLY [12.40 a.m.]: I understand that Reverend the Hon. Fred Nile is trying to address an issue about costs. I can only assume that what has happened inadvertently—and with no malice intended—is that Parliamentary Counsel acted on instructions to put together an amendment that would address the member's concern, in isolation of having a detailed understanding of how the current system operates with respect to costs. So Parliamentary Counsel put together wording which, on reading it, appears to be reasonable. However, it has not done that in the context of being able to juxtapose what it has put together against the current system to see the differential impact.

I am not criticising Parliamentary Counsel because I do not expect them to have an in-depth knowledge of the cost arrangements in the current workers compensation system. I can only think that that is how this has come about. I do not want Reverend the Hon. Fred Nile to think that we do not appreciate his attempt to address an issue in the best way he can in the circumstances before him. But I think what happened inadvertently is that Parliamentary Counsel drafted some words in isolation. I support the comments of other speakers on this issue. I think the amendment will have inadvertent catastrophic consequences in terms of the new workers compensation system if it is supported in these terms.

Dr JOHN KAYE [12.42 a.m.]: I have grave concerns about what is happening here. I am not trying to impute motives to anybody.

The Hon. Trevor Khan: Well, you've spent the night—

Dr JOHN KAYE: On this matter I am not trying to impute motives to anyone.

The Hon. Greg Pearce: You've spent the night doing that.

Dr JOHN KAYE: On this matter I am not. I think there is a risk. We have heard from two members who have substantial experience as lawyers in the workers compensation area and have represented injured workers. Between them, they have about two decades of experience—probably more than two decades—and they have raised alarm about this amendment. We also heard from a former secretary of the largest union in New South Wales who has a huge body of experience of dealing with injured workers. Those members know the workers compensation system in a way that I do not. I have interacted with this matter purely as a policy advisor and a member of Parliament. I have never interacted with it as someone who has dealt with injury, nor has anyone in the Christian Democratic Party. Reverend the Hon. Fred Nile has approached this matter from the same base from which I have approached it.

Judging by what I know of the scheme and how it works, I feel that we are on the edge of doing grave damage to individuals. I urge members to pull back from this. I do not know where this comes from, but that does not matter. What matters is that if this amendment is accepted injured workers will be denied the right to

legal representation and to take a matter further through the legal system. I think we should pull back. I urge Reverend the Hon. Fred Nile to think carefully about the amendment, to pull back, to say, "Okay, maybe this isn't the right way to go". I heard what the two lawyers and the former union official said. Perhaps there is some wisdom in what they said. Perhaps this will result in real harm being done and we should pull back from it.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [12.45 a.m.]: This proposal is in the context of the new independent review mechanism that we have included, which makes decisions. Obviously the structure of that is not prepared or complete at this stage, but we will include capacity to have the necessary medical checks and other information prepared. It is meant to be a low-cost way of dealing with benefits issues and whole person impairment. The sorts of cases that will go to the Workers Compensation Commission will be limited, essentially, to legal disputes. Dr John Kaye told us about the expertise of his colleague. We had a discussion about this a little while ago. I told Dr John Kaye's colleague that a regulation-making power will allow me to deal with legal costs, and he said that there is no regulation-making power. I have checked again and I do have that power. There are separate regulation-making powers relating to health checks and so on. So we will be addressing those issues.

Reverend the Hon. FRED NILE [12.46 a.m.]: In view of the criticism of the amendment, I simply reiterate the purpose of the amendment. As I said, the injured worker does not have to risk paying the costs of the other party, which could be the insurer, if the worker loses a dispute. Each party will pay his or her own costs. That is the intention of these amendments.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.46 a.m.]: I accept that that is the genuine intention of the amendments. Such an approach might be okay if we were talking about discretionary litigation. I think the Hon. Trevor Khan talked about litigation focusing the mind, sometimes at the risk of costs—or perhaps in this case the costs not being met—even if the litigation is successful. Perhaps members should ask themselves whether this is something they want to be doing. Of course, that may be a reasonable approach in most forms of litigation, but it is different in this context. Injured workers only litigate if they are injured. Usually they are not at work, they are not getting paid and they need income to support their family. In the case of injured workers, there is also the issue of medical expenses. The only reason they would litigate is because their medical expenses are not being met.

So they either do nothing and they and their family suffer, because of the wont of medical attention or not being able to meet medical bills, or they take the risk of litigation. Again, it is not much of a choice. If they do not litigate they suffer and their family suffers; if they do litigate they will have to pay their own lawyers even if they lose. Under the current system, even if they lose the costs are not visited upon them. So the concern of the mover to protect injured workers from having costs laid upon them if they are unsuccessful does not apply in the current system. I accept that that is the genuine intention but it does not happen. It is an illusion. That evil does not exist. The amendment visits the other evil of exposing workers to having to pay the costs of their own lawyers, which they are not exposed to currently whether they win or lose. This arrangement will make running these cases uneconomic. It is not like a commercial dispute, for example, where a person might get $10,000 or tens of thousands of dollars if they win. Under this bill, there is no pain and suffering, lump sums for permanent impairment are limited and there is provision for weekly benefits.

The other benefits from litigation are medical costs. If the injured worker wins the case he or she cannot cash in part of the value of the medical expenses to pay for their lawyers; that comes out of either the weekly payments or the small lump sum payments they will receive. The effect will make it simply uneconomic for injured workers to run a dispute. That means workers will not receive their weekly compensation or lump sum payments or have their medical costs met. I understand the intention, but this provision will wreak a terrible evil on injured workers in this State.

Question—That Christian Democratic Party amendment No. 6 [C2012-115B] be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Blair	Ms Fazio
Mr Clarke	Mr Roozendaal
Mrs Mitchell	Mr Veitch

Question resolved in the affirmative.

Christian Democratic Party amendment No. 6 [C2012-115B] agreed to.

Schedule 11 as amended agreed to.

Mr DAVID SHOEBRIDGE [12.57 a.m.], by leave: I move The Greens amendments Nos 44 and 48 on sheet C2012-107B in globo:

No. 44 Pages 60 and 61, schedule 12 [1], line 9 on page 60 to line 26 on page 61. Omit all words on those lines. Insert instead:

1 Application of 2012 amendments

An amendment made by the *Workers Compensation Legislation Amendment Act 2012* (referred to in this Part as the *2012 amending Act*) does not apply to or in respect of an injury received before the commencement of the amendment.

No. 48 Pages 61–67, schedule 12 [1], line 36 on page 61 to line 4 on page 67. Omit all words on those lines.

Both amendments remove the substantial retrospectivity provision in the bill. The Government wants the bill to apply retrospectively to entitlements regarding any injury that was incurred before the date of the bill. If someone had a workers compensation case in 1995 and they went to court, had their day in court, and received an award that they thought was continuing, the Government wants to be able in 12 months to chop off the medical expenses and weekly payments and make sure they can never claim again for lump sums. That is the bald intention of the Government and that is what the transitional provisions provide for. If a person has had a nervous shock injury but they have not managed to get the claim on, the Government wants to abolish that claim. Even if someone has an ongoing workers compensation claim in respect of a lump sum claim or another claim that is going to be removed by the provisions of this bill, it can retrospectively remove that entitlement through the retrospective transitional provisions. It is grossly unfair.

The Greens amendments remove the retrospective provisions and make it clear that any amendments made by the Workers Compensation Legislation Amendment Bill 2012 do not apply to or in respect of an injury received prior to the commencement of the amendment. For example, if the injury occurred prior to the execution of the bill then you have the rights that existed at the time of the injury. Injuries from here on in are fair game under the new workers compensation bill. What The Greens amendment does is to uphold the rule of law in New South Wales. That law says no government should retrospectively change rights. The Government would not do this other than in taxation areas, which is the one modest exemption that is accepted. No government would ever retrospectively take away the rights of employers or retrospectively take away the rights of commercial parties. But this Government has no problem at all in retrospectively taking away the rights of injured working people. This amendment will preserve those rights that crystallise before the bills come into effect.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.01 a.m.]: The Opposition supports these two Greens amendments. They are the same as Opposition amendments Nos 56 and 60. They remove retrospectivity. The Government's bill does have retrospective effect in that it brings people who are currently on weekly benefits under the new weekly benefits regime, including the caps and time limitations. The bill has a

retrospective effect on nervous shock claims unless the claim was filed before 19 June. If you have a right or cause of action but you have not actioned it, it will be extinguished by this bill. There has been a longstanding presumption that when governments bring forward legislation to change rights and entitlements, which they are able to do, those changes occur from that date onwards. For example, in the bill the Government says anything happening on 19 June or thereafter is under the new regime. That is standard practice. What is not standard practice is to say that people who have rights before that time will lose those rights, or they will be modified and brought within the ambit of the rights of the bill.

Reverend the Hon. Fred Nile: They may get better benefits under the new legislation.

The Hon. ADAM SEARLE: I acknowledge that interjection. On balance, injured working people will not have more rights under this regime; they will have fewer rights.

Reverend the Hon. Fred Nile: Greater benefits.

The Hon. ADAM SEARLE: Even taking into account any possible increase in weekly benefits for some, the step-downs, the caps and the time limitations undercut them. On balance, Labor says people will be worse off. They will not be able to access the section 66 lump sums as they currently can. They will be much harder to get and only for very seriously injured people. The amount of money flowing out of the system will be reduced and there will be no section 67 payments. There will be no pain and suffering payments; they are gone. This is a retrograde step.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.03 a.m.]: These amendments would make changes made by the bills unworkable. The effect would be to delete the transitional provisions which are necessary to implement the changes made in the bills. There would be inequity between injured workers and employers and an unsustainable administrative burden if those amendments were to succeed. I point out to members of the Opposition and The Greens, as the Hon. Fred Nile interjected, that if the Opposition and The Greens were to persist with this it would condemn many workers who are currently on the statutory amount of $430 to continue on that instead of being able to step up to the new benefits. The Opposition and The Greens would potentially stop people who are 30 per cent whole person impaired achieving long-term security and stop people who are seriously injured getting benefits at the increased rates. When the Labor Party introduced its amendments to the scheme many of the provisions were effective as of 27 November 2001, the day the bills were introduced.

Mr DAVID SHOEBRIDGE [1.04 a.m.]: True it is that in November 2001 the Labor Government crafted a law that said all injuries from the time the bill was introduced would be subject to the new bill.

The Hon. Greg Pearce: No, if they hadn't been filed.

Mr DAVID SHOEBRIDGE: Indeed, common law claims that had not been filed. The Greens opposed that retrospectivity. But the retrospectivity in this bill goes vastly beyond that. This applies to cases that have been run before the Workers Compensation Commission and had their day in court. They have their judgement and orders. Even those cases will be overturned; their entitlements will be overturned by reason of the Government's amendments. Catastrophically injured people who thought they would have medical cover for the rest of their life as a result of these transitional amendments are going to have them chopped off when they are 68 years of age. That is the effect of the transitional amendments.

Many workers who thought they would have modest ongoing workers compensation entitlements for the rest of their working life are going to see them cut off after12 months, 2½ years or five years at best when this bill takes effect—and their medical expenses will be cut off soon after. This bill, to coin a Coalition phrase, has bucketloads of retrospectivity. It is beyond anything we have seen before in terms of compensation changes in this State or any other changes to compensation that I have heard of at any time in Australia. It is radical legislation, not only in what it does going forward; it is radical in what it does going backwards. This Government says it is conservative. It is not conservative; it is red in tooth and claw radical, and this proves it.

Question—That the Greens amendments Nos 44 and 48 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendments Nos 44 and 48 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [1.16 a.m.], by leave: I move The Greens amendments Nos 45, 46 and 47 on sheet C2012-107B in globo:

No. 45 Page 61, schedule 12 [1], line 27. Omit "**benefits**".

No. 46 Page 61, schedule 12 [1], line 29. Omit "The benefits amendments do". Insert instead "An amendment made by the 2012 amending Act does".

No. 47 Page 61, schedule 12 [1], lines 34 and 35. Omit "the benefits amendments". Insert instead "the 2012 amending Act".

These amendments relate to the savings provisions that prevent the retrospective operation of the benefits cuts in this legislation. Schedule 12 [4] says that the cuts to benefits in this legislation do not apply for the purposes of the Workers Compensation (Dust Diseases) Act or the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act. To the extent that the provisions seek to get rid of the entitlement to have lump sum compensation for whole person impairment claims from 1 to 10 per cent, those entitlements remain for State Emergency Service and Rural Fire Service workers, and to the extent that there are benefits recoverable under the Workers Compensation (Dust Diseases) Act those benefits remain the same for section 67 benefits and for ongoing medical expenses for the balance of people's lives.

Those benefits are protected. But the way the clause is drafted, all those ugly, retrograde procedural and jurisdictional changes that have been put in place—including the rather ridiculous and damaging changes to costs in the Workers Compensation Commission and the inability to challenge work capacity decisions—and have such negative impacts will apply even to Rural Fire Service personnel and State Emergency Service volunteers when they have an injury. The Greens amendments will provide that these amending Acts do not apply to claims made by Rural Fire Service or State Emergency Service personnel or to claims under the Workers Compensation (Dust Diseases) Act. They protect not only the benefits but also those greatly enhanced procedural rights that those claimants would have had before this amending Act was introduced.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.18 a.m.]: For the reasons I indicated in relation to previous matters, the Government does not support the amendments. These transitional arrangements are essential to give effect to the changes in the legislation.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.18 a.m.]: The Opposition supports these amendments. They are reflective of Opposition amendments Nos 57 and 58. The difficulty here is that this whole section of the bill hinges on the term "benefit amendments", which means the changes contained in schedules 1 to 7. If these changes are not made and replaced with the terminology of the 2012 amending bill, even if other later changes that are foreshadowed take place—for example, if police or coalminers are somehow excluded—there is a danger that a number of procedural changes wrought by the bill will still be visited upon them. That is not free from doubt, because we are dealing with fairly complex legislation in a fairly short time frame. My grave concern is that without these amendments, and without an intention to do so, groups intended by everyone to be kept out will be dragged into at least some of the procedural and organisational changes wrought by this provision, such as, for example, the new costs regime. The new costs regime, which I will not reflect on, will be visited upon police, coalminers and others if some of these changes are made. That is why we support the amendments.

Question—That The Greens amendments Nos 45, 46 and 47 [C2012-170B] be agreed to—put and resolved in the negative.

The Greens amendments Nos 45, 46 and 47 [C2012-107B] negatived.

Mr DAVID SHOEBRIDGE [1.21 a.m.]: by leave, I move The Greens amendments Nos 49 and 51 on sheet C2012-107B in globo:

No. 49 Page 67, schedule 12 [1], line 21. Insert "**, paramedics and firefighters**" after "**Police officers**".

No. 51 Page 67, schedule 12 [1], line 23. Insert ", paramedic or firefighter" after "police officer".

These amendments will ensure that the protection from benefit cuts proposed by the Government to apply to police, Rural Fire Service and State Emergency Service workers will also apply to those other, much-prized emergency personnel, paramedics and firefighters. As the Government's bill is currently drafted, police have their benefits protected, Rural Fire Service personnel and State Emergency Service personnel have their benefits protected, but the other emergency service personnel, the firefighters and the paramedics, who will be working side by side with Rural Fire Service and State Emergency Service personnel—all of whom will be going to the same bushfires, or the same road trauma incidents, or to fight the same fires and dealing with the same consequences of emergencies throughout our city, country and regional areas—will not. There will be two classes of benefits. The employed firefighters and the employed paramedics will get the stripped-down benefits, but the police, Rural Fire Service and State Emergency Service personnel will have the superior benefits, before they were so badly savaged by this Government's amending bill. That is grossly unfair for the emergency services sector.

The Hon. Lynda Voltz: It is unfair for nurses.

Mr DAVID SHOEBRIDGE: I note the interjection of the Hon. Lynda Voltz. I absolutely agree. Nurses, teachers, construction workers, cleaners, bus drivers—

The Hon. Penny Sharpe: All workers.

Mr DAVID SHOEBRIDGE: All workers should have this entitlement. That goes without saying. I think that that has been the tenor of tonight's debate. I think both the Opposition and The Greens have effectively said that all workers should be protected. But when you carve out some emergency service workers, the police, the Rural Fire Service and the State Emergency Service workers and protect them, it is grossly inconsistent not to also protect those other vital emergency service workers—the firefighters and the paramedics. In fact, on any survey of professions, it is the paramedics and the firefighters who are some of the most trusted and dearly prized professions—vastly more so than politicians—in this country. We would urge all members to support The Greens amendments.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.24 a.m.]: The Opposition supports The Greens amendments. Although it is invidious to pick and choose between different classes of workers, nevertheless the bill already does that. But, equally, there is a logic in that emergency service workers have death and disability schemes like those of police; and in a sense, the police also have a death and disability scheme that supplements the workers compensation arrangements. So there is also a logic to ensuring that these workers are excluded from the operation of the bill.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.25 a.m.]: The Government has considered representations, on behalf of the firefighters and paramedics, on the idea of exempting firefighters and paramedics from the effect of the changes to the workers compensation legislation. After a thorough examination of the proposal, and on advice, it is clear that there would be a considerable number of those firefighters and paramedics who would not have access to considerable benefits which will flow from the legislation, particularly in relation to seriously injured workers, the wages calculations and so on. There are circumstances in which firefighters would be better off as a result of the changes to benefits; for example, those who are more than 30 per cent impaired will have access to 80 per cent of their pre-injury earnings until their retirement. This is a considerable advantage over the current scheme. I can say though that if there are alternative proposals which the firefighters wish to explore in respect of potential future opportunities to enter into dedicated statutory arrangements similar to those recently entered into by the police, the Government will support a referral to a parliamentary committee for such consideration.

Reverend the Hon. FRED NILE [1.27 a.m.]: The Christian Democratic Party, in cooperation with the Shooters and Fishers Party, had planned to move these amendments. But, on advice from the Government, which we accepted as being factual, that it would be a disadvantage to these categories of paramedics and firefighters to be given this exemption, we did not proceed with the amendments. The Greens are not worried that it will be a disadvantage. The paramedics and firefighters will get fewer benefits if The Greens amendments are carried. Apparently the Government will support the amendments.

The Hon. Greg Pearce: No, we are not supporting these amendments.

Reverend the Hon. FRED NILE: You are not supporting these amendments? It is the later amendments that you are supporting?

The Hon. Greg Pearce: Yes.

Reverend the Hon. FRED NILE: We will oppose them as well.

Dr JOHN KAYE [1.28 a.m.]: I would like to make the position clear. For the edification of Reverend the Hon. Fred Nile, all the advice we have had, other than that which has come from the Government, from a range of legal experts, people who work with unions and individual workers, every single piece of advice we have had is that 99.9 per cent of workers who are injured will be worse off under the changes. The Minister shakes his head; that is certainly his opinion. But everybody else who has looked at this legislation is saying exactly the same thing: the overwhelming majority of workers will be worse off under this scheme. These are difficult amendments for us because we think, "What about teachers, nurses, manufacturing workers, childcare workers and dental technicians?" I recognise the logic of keeping emergency services workers in the one compensation scheme. However, it appears the way this Chamber operates is that although the Shooters and Fishers Party and the Christian Democratic Party were about to support us, when they heard that the Government was not supporting us they changed their mind and so the amendments will not get up. It is a very interesting outcome.

The Hon. ROBERT BROWN [1.30 a.m.]: We always have these problems when we deal with legislation like this. My understanding was that because no-one was certain about who was right and who was wrong the Government would support The Greens amendments. Either way, if the Shooters and Fishers Party do not support The Greens amendments, will the Minister provide an assurance that he will examine whether there is any disadvantage and will he ensure that there is a nil disadvantage?

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.31 a.m.]: As I indicated, the Government thinks it is best if the parliamentary inquiry establish that with the proper support. As I said earlier, I will support doing that.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.32 a.m.]: While it is not free from doubt, I think we can take this sensible approach to the issue about whether paramedics and firefighters will be better or worse off. The only conceivable beneficial changes in the Government's regime are the changes to the calculation of weekly wages—given that the previous benchmark was award wages and many people in the private sector are paid well above award wages—which we would concede could conceivably lead to a beneficial outcome.

Reverend the Hon. Fred Nile: They certainly would.

The Hon. ADAM SEARLE: I note the interjection of Reverend the Hon. Fred Nile. Anyone who knows anything about public sector awards and pay rates is aware that they are paid rate awards. Whether we are talking about the current workers compensation system or the proposed enhancements for weekly benefits as claimed by the Government, for public sector workers there is no change because before this bill is passed a public sector worker is paid according to the award or the enterprise agreement, no more no less, and even with the Government's recalculated changes to how the award is calculated it is the same.

The Hon. Trevor Khan: Are you saying overtime and shift allowances?

The Hon. ADAM SEARLE: Not overtime and shift allowances. I note that the Government's bill strips those out after 12 months.

The Hon. Trevor Khan: Overtime and shift allowances are included in the calculations.

The Hon. ADAM SEARLE: I understand that. This is one of the difficulties of doing legislation late at night and in a very short time frame, but it seems to me that there is at least, prima facie, a very sound argument that there will be detrimental effects to these groups of workers. We support the amendments.

Question—That The Greens amendments Nos 49 and 51 [C2012-107B] be agreed to—put.

The Committee divided.

Ayes, 20

Ms Barham	Mr Green	Ms Sharpe
Mr Borsak	Dr Kaye	Mr Shoebridge
Mr Brown	Mr Moselmane	Ms Westwood
Mr Buckingham	Reverend Nile	Mr Whan
Ms Cotsis	Mr Primrose	*Tellers,*
Ms Faehrmann	Mr Searle	Mr Donnelly
Mr Foley	Mr Secord	Ms Voltz

Noes, 15

Mr Ajaka	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	
Mr Gallacher	Mrs Maclaren-Jones	*Tellers,*
Mr Gay	Mr Mason-Cox	Mr Colless
Mr Harwin	Mrs Pavey	Dr Phelps

Pairs

Ms Fazio	Mr Clarke
Mr Roozendaal	Mr Blair
Mr Veitch	Mrs Mitchell

Question resolved in the affirmative.

The Greens amendments Nos 49 and 51 [C2012-197B] agreed to.

Mr DAVID SHOEBRIDGE [1.41 a.m.], by leave: I move The Greens amendments Nos 50 and 52 on sheet C2012-107B in globo:

No. 50 Page 67, schedule 12 [1], line 22. Omit "benefits amendments". Insert instead "amendments made by the 2012 amending Act".

No. 52 Page 67, schedule 12 [1], line 29. Omit "benefits amendments". Insert instead "amendments made by the 2012 amending Act".

These amendments make sure that for now not only will the benefit cuts in this bill not apply to firefighters, paramedics and police or coalminers, which was the effect of the previous two amendments, but also that the procedural changes of the loss of capacity to get costs in the Workers Compensation Commission and the inability to challenge things such as work capacity assessments will not apply to those emergency service workers. It basically carves them out and protects them from all aspects of the changes made by this bill. I commend the amendments to the Committee.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.42 a.m.]: The Opposition supports The Greens amendments Nos 50 and 52. They are the same as Opposition amendment Nos 61 and 62 and they achieve the same effect. For the reasons outlined by Mr David Shoebridge, we also urge the Committee to embrace the amendments.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.42 a.m.]: The Greens amendment No. 50 relates to police officers and the Government has agreed that they would be excluded. Having regard to the vote on the previous amendments and the fact that they are being dealt with together, we will not divide on them. Coalminers have a separate scheme and, again, they are lumped in with the others.

Question—That The Greens amendments Nos 50 and 52 [C2012-107B] be agreed to—put and resolved in the affirmative.

The Greens amendments Nos 50 and 52 [C2012-107B] agreed to.

Reverend the Hon. FRED NILE [1.43 a.m.]: I move Christian Democratic Party amendment No. 7 on sheet C2012-115B:

No. 7 Page 68, schedule 12 [1], lines 5 and 8. Omit "5 years" wherever occurring. Insert instead "2 years".

This amendment concerns the review of the workers compensation legislation. Five years was obviously too long and three years was suggested. We believe it should be two years, and that is what we now move. The Minister also confirmed that the Standing Committee on Law and Justice will conduct this review and it will look again at the whole question of firefighters, police, coalminers and so on.

Mr DAVID SHOEBRIDGE [1.44 a.m.]: The Greens support the Christian Democratic Party amendment. It is obviously far preferable—and we think it is a welcome change—to have the review within two years.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.45 a.m.]: The Opposition also supports the Christian Democratic Party amendment.

Question—That Christian Democratic Party amendment No. 7 [C2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 7 [C2012-115B] agreed to.

Reverend the Hon. FRED NILE [1.45 a.m.]: I move Christian Democratic Party amendment No. 8 on sheet C2012-115B:

No. 8 Page 68, schedule 12 [1]. Insert after line 8:

(4) However, if the Minister determines on actuarial advice that the scheme under the Workers Compensation Acts is projected to return to surplus before the end of the period of 2 years:

(a) the review is to be undertaken as soon as possible after that projected date, and

(b) the report of the outcome of the review is to be tabled within 12 months after that projected date.

If the Government is correct in its calculations, there should be signs of returning to surplus rapidly and that could lead to an earlier review. In regard to the other amendments moved by the Opposition and by The Greens, the Christian Democratic Party and the Shooters and Fishers Party admit that there have been some points made by the Opposition and by The Greens in the amendments and that those amendments may not have been carried

during the debate here today. The two crossbench parties have agreed that we will carefully study all the amendments that have been defeated to see what good points they contain. We will prepare a submission concerning our views and make that submission to the Standing Committee on Law and Justice so that the matters of concern will be given top priority by that inquiry.

As responsible crossbench members, holding the balance of power, we have sought to be responsible and not do anything to endanger the financial viability of the workers compensation scheme. That obviously was not a priority or a concern of the Opposition, or especially of The Greens. If all The Greens amendments had been carried we believe it would have caused a failure of the workers compensation reforms to ensure the scheme becomes viable, and we did not wish to endanger the workers compensation scheme on behalf of the workers of this State.

Question—That Christian Democratic Party amendment No. 8 [C2012-115B] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendment No. 8 [C2012-115B] agreed to.

Schedule 12 as amended agreed to.

Title agreed to.

The CHAIR (The Hon. Jennifer Gardiner): We will deal now with the Safety, Return to Work and Support Board Bill 2012.

Clauses 1 and 2 agreed to.

Mr DAVID SHOEBRIDGE [1.50 a.m.], by leave: I move The Greens amendments Nos 1 to 7 on sheet C2012-105 in globo:

No. 1 Page 2, clause 3 (1), paragraph (c) of the definition of ***compensation and other related legislation***, line 23. Omit all words on that line.

No. 2 Page 2, clause 3 (1), paragraph (c) of the definition of ***relevant authority***, line 31. Omit all words on that line.

No. 3 Page 4, clause 6 (1) (e), lines 12–14. Omit all words on those lines.

No. 4 Page 13, Schedule 2, clause 2 (1), paragraph (c) of the definition of ***existing board***, lines 27 and 28. Omit all words on those lines.

No. 5 Page 14, Schedule 2, clause 3 (1), paragraph (d) of the definition of ***former body***, line 13. Omit all words on that line.

No. 6 Pages 18–20, Schedule 3.2, line 1 on page 18 to line 22 on page 20. Omit all words on those lines.

No. 7 Long title. Omit "the WorkCover Authority, the Motor Accidents Authority and the Lifetime Care and Support Authority". Insert instead "the WorkCover Authority and the Motor Accidents Authority".

These amendments carve out the Lifetime Care and Support Authority and the scheme from what will be a monolith of a statutory authority that will be responsible for the Motor Accidents Authority, the WorkCover Authority and the Lifetime Care and Support Authority. It will be rolled up into one great big monolithic statutory authority. If anything came out of the very short review of the WorkCover scheme it is the fact that WorkCover does not function well. In fact, it has been functioning pretty appallingly. The amount of money going to private insurers has skyrocketed and complaint after complaint has been made by injured workers who are the subject of the scheme. I think that members of every political persuasion in this House have criticised it.

The Motor Accidents Authority has presided over a scenario whereby private insurers have gouged supernormal profits from the scheme at the expense of ordinary mums and dads who have paid inflated amounts for their green slips. Instead of that money going to those injured in motor vehicle accidents, it has gone straight into the pockets of the big insurers. We have a completely dysfunctional WorkCover Authority and a completely dysfunctional Motor Accidents Authority. However, we also have the little jewel of statutory authorities, the Lifetime Care and Support Authority.

As a member of the Standing Committee on Law and Justice I had the pleasure of reviewing the authority and I heard the evidence from participants in the scheme—the board members, the doctors, the carers

and the providers. They all said the same thing: It may not be absolutely perfect, but they appreciate and value it. Not only that, it is running to budget and it is projected that it will continue to do so. It is a really good scheme run by a really good authority. Why on earth does the Government want to amalgamate that fantastic scheme with the failures that are the WorkCover Authority and the Motor Accidents Authority? The Greens amendments carve out the Lifetime Care and Support Authority and protect it. If these amendments were passed, the Motor Accidents Authority and the WorkCover Authority would be amalgamated. Heaven help the Government trying to sort out that mess. At least we would keep the Lifetime Care and Support Authority separate to go its own way.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [1.53 a.m.]: The Government opposes these amendments. The committee recommended this measure. However, and more importantly, it is fundamental to the reforms being implemented in the compensation sector. We must achieve efficiencies and savings in this area. Having individual boards for each of these schemes with all the directors being paid fees and additional staff and resources is inefficient and contrary to the interests of the people who pay for these schemes—the employers and the motorists of New South Wales. The individual schemes will continue to be subject to their separate pieces of legislation. I do not believe that Mr Shoebridge's fears are justified. The Lifetime Care and Support Authority will continue to operate, but with a much more efficient management structure and focus.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [1.54 a.m.]: The Opposition supports The Greens amendments. We believe that the amalgamation of the boards of these diverse bodies is a retrograde step. If we have learnt anything from the WorkCover inquiry it is that WorkCover as an organisation would better achieve its diverse functions if it were devolved into a series of more focused and smaller entities. One of those entities could focus on insurance and others on enforcement, education and raising safety standards in industry, just to name a few. There is a regrettable tendency in modern administration to believe that bigger is better and that it is a good idea to create larger and larger clusters of entities. Governments of all persuasions are guilty of that. They create larger and larger bureaucracies that are almost impossible to run and next to impossible for Ministers to oversee.

This bill also removes the arrangements that facilitate specialist input from stakeholders with practical experience of the operation of the individual schemes by appointing a single governing board. With the best will in the world, that board could never have the collective specialist knowledge that is available on the boards of the three schemes. The Opposition believes that the amalgamation is a retrograde step. We have the same concerns as The Greens about bringing the Lifetime Care and Support Authority, which is operating a very successful model, into this orbit, which still has a long way to go before it will operate at maximum effectiveness. The Opposition supports the amendments.

Question—That The Greens amendments Nos 1 to 7 [C2012-105] be agreed to—put.

The Committee divided.

Ayes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Noes, 19

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Mr Gay	Mr Mason-Cox	Dr Phelps

Pairs

Ms Fazio	Mr Blair
Mr Roozendaal	Mr Clarke
Mr Veitch	Mrs Mitchell

Question resolved in the negative.

The Greens amendments Nos 1 to 7 [C2012-105] negatived.

Part 1 [Clauses 1 to 3] agreed to.

Part 2 [Clauses 4 to 9] agreed to.

Part 3 [Clause 10] agreed to.

Part 4 [Clauses 11 to 14] agreed to.

Schedules 1 to 3 agreed to.

Title agreed to.

Workers Compensation Legislation Amendment Bill 2012 reported from Committee with amendments, and cognate bill reported without amendment.

Adoption of Report

Motion by the Hon. Greg Pearce agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [2.05 p.m.]: I move:

That these bills be now read a third time.

Question put.

Division called for and Standing Order 114 (4) applied.

The House divided.

Ayes, 19

Mr Ajaka	Mr Gay	Reverend Nile
Mr Borsak	Mr Green	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Ms Cusack	Mr Lynn	
Ms Ficarra	Mr MacDonald	*Tellers,*
Mr Gallacher	Mrs Maclaren-Jones	Mr Colless
Miss Gardiner	Mr Mason-Cox	Dr Phelps

Noes, 16

Ms Barham	Mr Moselmane	Ms Westwood
Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Searle	
Ms Faehrmann	Mr Secord	*Tellers,*
Mr Foley	Ms Sharpe	Mr Donnelly
Dr Kaye	Mr Shoebridge	Ms Voltz

Pairs

Mr Blair	Ms Fazio
Mr Clarke	Mr Roozendaal
Mrs Mitchell	Mr Veitch

Question resolved in the affirmative.

Motion agreed to.

Workers Compensation Legislation Amendment Bill 2012 read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendments, and cognate bill returned without amendment.

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report the receipt of the following message from Her Excellency the Governor:

Office of the Governor
Sydney 2000

Governor Marie Bashir
GOVERNOR

Professor Marie Bashir, Governor of New South Wales, has the honour to inform the Legislative Council that she re-assumed the administration of the government of the State at 6.05 a.m. on Thursday 21 June 2012.

21 June 2012

ASSENT TO BILLS

Assent to the following bills reported:

National Energy Retail Law (Adoption) Bill 2012
Energy Legislation Amendment (National Energy Retail Law) Bill 2012
Health Legislation Amendment Bill 2012
Judicial Officers Amendment Bill 2012
Crimes Amendment (Reckless Infliction of Harm) Bill 2012
Statute Law (Miscellaneous Provisions) Bill 2012

GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL 2012

Message received from the Legislative Assembly agreeing to the Legislative Council's amendments.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Report: Review of the 2009-2010 and 2010-2011 Annual Reports of the Independent Commission Against Corruption

Reverend the Hon. Fred Nile, as Chair, tabled Report No. 1/55 entitled, "Review of the 2009-2010 and 2010-2011 Annual Reports of the Independent Commission Against Corruption", dated June 2012.

Ordered to be printed on motion by Reverend the Hon. Fred Nile.

Reverend the Hon. FRED NILE [2.11 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by Reverend the Hon. Fred Nile and set down as an order of the day for a future day.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Report: Review of the 2009-2010 and 2010-2011 Annual Reports of the Inspector of the Independent Commission Against Corruption

Reverend the Hon. Fred Nile, as Chair, tabled Report No. 2/55 entitled, "Review of the 2009-2010 and 2010-2011 Annual Reports of the Inspector of the Independent Commission Against Corruption", dated June 2012.

Ordered to be printed on motion by Reverend the Hon. Fred Nile.

Reverend the Hon. FRED NILE [2.12 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by Reverend the Hon. Fred Nile and set down as an order of the day for a future day.

BUSINESS OF THE HOUSE

Withdrawal of Business

Business of the House Notice of Motion No. 1 withdrawn, by leave, by the Hon. Duncan Gay.

SPECIAL ADJOURNMENT

Motion by the Hon. Duncan Gay agreed to:

That this House at its rising today do adjourn until Tuesday 14 August 2012 at 2.30 p.m. unless the President, or if the President is unable to act on account of illness or other cause, the Deputy President, prior to that date, by communication addressed to each member of the House, fixes an alternative day or hour of meeting.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [2.15 a.m.]:

That this House do now adjourn.

WEALTH INEQUALITY

The Hon. CATE FAEHRMANN [2.15 a.m.]: We live in a world where iPhone cases can be bought for $US2,680 for raw titanium, or $US3,810 for gold, or $US4,430 for something called black carbon, while more people go hungry every day than the populations of the United States, Canada and the European Union combined. We live in a world where for every Altruistic Precision iPhone case sold the company Brikk will donate one metric ton of rice to "those in need through select NGOs." We live in a world where people who buy a phone cover for $US4,430 can feel that they are making the world a better place. According to Oxfam, the number of people in the world without enough to eat could soon top one billion. That is one in seven of us. The World Resources Institute states that some 1.3 billion people are living on less than $US1.25 per day with 900 million facing hunger.

Here in Australia the Australian Bureau of Statistics [ABS] Australian Social Trends for March 2012 found that in 2009-10 1.6 million children aged 0 to 14 years—38 per cent—lived in low economic resource households, with 3.3 million people aged 15 years and over—19 per cent. And conditions are getting worse, not better, for people from low socioeconomic households. After adjusting for inflation, the net worth of low economic resource households had not increased significantly since 2003-04, while the average net worth across all other households had increased by 29 per cent. Meanwhile you can buy a Magic Mushroom USB key by Swiss jeweller Swawish with white gold, emeralds and white diamonds for $36,900—if you can afford it. Or a dessert in a New York restaurant described as:

> A fine blend of 28 cocoas, including 14 of the most expensive and exotic from all around the world with five grams of edible 23-karat gold dished up in a goblet lined with edible gold, the base of which is an 18-karat gold bracelet with one carat of white diamonds, all eaten with a gold spoon decorated with white and chocolate-coloured diamonds, which can also be taken home.

And it will cost you is $25,000. Or you could buy a toilet encrusted with Swarovski crystals—72,000 pieces of them—for $130,000, while one in seven people in the world go to bed hungry tonight. When one person can buy a dessert for $25,000 while almost one billion people do not have enough to eat, it is time to admit that things have gone seriously wrong. According to the Australian Council of Trade Unions, the average total remuneration of a chief executive officer of a top 50 company listed on the Australian Securities Exchange in 2010 was $6.4 million, or almost 100 times that of the average worker. Meanwhile, company profits as a share of national income are now back to the record levels of 2008, while the wages share is the lowest since 1964.

One measure to address inequality is capping chief executive officers' salaries. The Australian Greens have suggested capping them to 30 times that of the average wage paid to that company's employees and for a top marginal tax rate of 50 per cent on salaries over $1 million a year.

Other measures that could be implemented right now if governments were courageous enough would be an estate tax, increasing taxes for higher income earners, increasing the unemployment benefit and other welfare payments and increasing taxes on multinational coal and oil companies so that they begin to pay their fair share of the common resources they exploit. We all know that, with multibillionaires in this country in charge of traditional media or taking on those that do not agree with them, it would be a brave government that takes genuine measures to address just some of the worst excesses of inequality. But they will need to very soon and for that to happen the nation needs to have a conversation about growth, and we need to have it now. We need to have a conversation about growth if we are to have any hope of making a significant dent in the gap between the rich and poor. As Economics Commissioner at the Sustainable Development Commission and author of the excellent report, "Prosperity without growth? The transition to a sustainable economy", Professor Tim Jackman, writes:

> The global economy is almost five times the size it was half a century ago. If it continues to grow at the same rate the economy will be 80 times that size by the year 2100.

An economy 80 times the size it was in 1960 would be a disaster for the majority of humanity and would mean irreparable damage to our planet. So we must have a conversation about growth. We are seeing the earth ripped apart, species wiped out and the earth's delicate climatic system wrecked so that multimillionaires can become billionaires and so that billionaires can top the most rich lists. This is happening to support our houses with five bathrooms and too many clothes and too big waistlines, while 1.3 billion people are earning less than $1.25 a day. The Occupy Movement is one response to the displays of obscene wealth we are witnessing across the globe.

So too is the rapidly growing movement of resisting consumer culture, buying local and reconnecting with local communities. It has become extremely urgent for governments to be open to new economic and societal models, ones that recognise the value of community wellbeing and health over increasing shareholder dividends and wealth creation. Governments should be leading the debate in this regard, but they are not. Perhaps, like climate change, they will scoff, delay, deny and delay some more. In the meantime all of us who are comfortable now need to challenge how we have become so and we need to start thinking of ways we can give away much more than one ton of rice.

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AVALON TATTOO

WOMEN IN LEAGUE

The Hon. NATASHA MACLAREN-JONES [2.19 a.m.]: This evening I wish to speak on two community events I recently attended, the annual Avalon Tattoo on the Northern Beaches and the Women in League reception. The Avalon Tattoo was held last weekend on Saturday 16 June, marking the fifth Avalon Tattoo. It was estimated about 3,500 people took to the streets of Avalon, the largest crowd to date. A number of community groups took part in the event, including 250 local people from the Defence Force—navy, army, air force—and State fire service cadets, NSW Police Force, the Ambulance Service, Rural Fires Service and St John Ambulance. It was a full day of events with defence displays, marching bands and, for motor enthusiasts, there was a great display of a variety of vintage vehicles. In addition to the Vietnam Bus and the Vietnam Veterans Motorcycle Club, a glider and flight simulator were also on show, as was a Royal Australian Air Force fire truck and puppies from its dog squad.

The tattoo began with the arrival at Dunlop Park of a Huey helicopter, *Eagle One*, in Vietnam colours, closely followed by a second from RAN Heritage. Governor Marie Bashir attended the event and recognised

outstanding members of the community, including Northern Beaches Local Area Commander, Superintendent Doreen Cruickshank. Superintendent Cruickshank was acknowledged for police work in the area, and Mark Bradbury also was acknowledged for his work in the community and with the Tattoo. The event is free to anyone in the community and is sponsored by the Avalon Beach RSL sub-branch in cooperation with the Pittwater Council. The Warringah Scottish Society, the Clan Gregor Society, David's Larder, the White Heather and the Scottish Banner all preformed, as did local school bands from Barrenjoey High School, the Mater Maria Catholic College and the Pittwater High School.

At midday the street parade progressed from the Avalon Public School to the RSL car park. Marching was piped along with concert bands from the Australian Federal Police, the Rural Fire Service, Clan McLeod, the NSW Fire and Rescue Band and Precision Marching Team, the New South Wales Ambulance, the 23 Field Regiment, the Air League Hornets Drum Corps and the Australian Navy cadets drill display. Following this was an aerobatic display by the Royal Australian Air Force Roulettes before the helicopters departed. After the ceremony with the Governor a traditional sunset ceremony was held, featuring all cadet and defence personnel being led by a lone piper. The day was a great success and I congratulate all who were involved.

The second event I attended was held last Monday night. The Women in League reception was held at the State Library. It was also attended by the Minister for Women, the Hon. Pru Goward, the Minister for Primary Industries, the Hon. Katrina Hodgkinson, the Hon. Sarah Mitchell and Melanie Gibbons, the member for Menai. The Harvey Norman Women in League initiative was established in 2007 to celebrate and acknowledge the role of women in the game of rugby league. Female participation in rugby league is at a record high at the moment, with more than 140,000 women having direct involvement in the game.

Statistics from the Australian Rugby League Commission reveal that almost 40 per cent of employees are women and 41 per cent of the games among National Rugby League [NRL] club members also are women, increasing from 61,150 in 2010 to 82,250 in 2011. Currently there are more than 52,000 female volunteers across the country working as coaches, referees and first aid officers. Furthermore, the appointment of female directors in executive management positions continues to grow annually, increasing from 10 in 2010 to 17 in 2012, which is a 70 per cent increase.

Women in League allows rugby league to showcase the diverse role women have across all levels of the game and highlights the role of rugby league in engaging families and communities through sport, social activities and volunteering. Furthermore, it allows women who are involved in the game to feel proud of their role and feel proud of what they do. There are three components to the Harvey Norman Women in League initiative: firstly, the Women in League events, including the Favourite Son Award; secondly, there is the Women in League round; thirdly, there are the Women in League Awards, which are incorporated within the One Community Awards. Women and girls are an important part of rugby league. There are many different ways that women and girls can and do participate, both on the field and off.

MULTICULTURAL MEDIA AWARDS

The Hon. SHAOQUETT MOSELMANE [2.24 a.m.]: I inform the House of progress I have made on establishing the first Multicultural Media Awards in New South Wales. Multicultural community media outlets and their journalists have never been properly recognised. Disappointingly, neither governments nor non-government organisations have ever, as far as I can tell, endeavoured to establish a system to recognise multicultural media outlets and the journalists that run and operate these important media outlets. Since the first multicultural newspaper in Australia, *Die Deutsche Post*, was published in Adelaide in 1848 there has never been a State award recognising ethnic media—or since the launch of the first Italian language newspaper, the weekly *Uniamoci*, which started in 1903; or the first Greek-Language newspaper, *Australis*, which started in 1914; the first Chinese-owned newspaper, the *Chinese Australian Herald*, or *Guangyi Huabao*, which was launched in 1894; or the Arabic *Sout-el-Moughtareb*, the Voice of the Emigre, which was founded 1969 and the *El-Telegraph*, which started in 1970.

Today there are many language print and electronic mediums, including Vietnamese, Indian, Macedonian, Nepalese, Maltese, Greek, Iranian, Japanese, African, Arabic, Armenian, Bangladeshi, Bengali, Italian, Korean, Chinese, Croatian, Filipino, Polish, Tamil, Sri Lankan, Turkish. Many of them have been established for years yet received neither assistance nor recognition. I name most language media to emphasise the point that there are so many languages and so many people who work in media institutions as well as many others who rely on the information they disseminate. I therefore now have the pleasure to inform the House that, with the support of a panel of distinguished members of our multicultural community, I have commenced the

process of instituting the first Multicultural Media Awards to ever take place in New South Wales and in Australia. Ethnic community media in Australia are valuable institutions that contribute to our vibrant multicultural society. They ought to be given the respect that they and their respective communities deserve.

Multicultural community media have the capacity to raise awareness of community issues that are not immediately accessed by mainstream media. I use by way of illustration the most example of the *Daily Telegraph*'s coverage of the recent murder case of an Australian Pakistani, Shonoz Qidwai, which was first reported by a Pakistani News website *Sada-E-Watan*, which means echoes of a nation. Media organisations in Australian, Asian, European and African communities as well as in the Indian Subcontinent and Arabic communities are booming. The recent Australian Middle East media launch of the *El-Telegraph* newspaper on a daily basis is an example in point. The proprietors certainly are brave taking the decision to print an ethnic broadsheet newspaper on a daily basis in a competitive world when these days sizeable institutions, such as Fairfax Media and News limited are downsizing and changing their business orientations.

Multicultural, non-English and Aboriginal and community media have grown in significance and in stature, but unfortunately the silence on their worth has been deafening. That silence must now be broken and due recognition of migrant and Aboriginal media must now be formalised. Non-English language journalists should now be recognised and their contributions commended. For instance, Simon Ko from *Sing Tao* gave 30 years of service. He has never received proper recognition for the service he has given to many of the one million Australians of Chinese heritage in our community. People like the late Peter Indari and others who contributed so much to Arabic media in Australia ought to be recognised. I am sure there are many, like Theo Skalcos in the Greek media, and many other distinguished journalists or media owners in Indian, African, Asian, Arabic, European and other media outlets who are waiting to be recognised for their hard work and commitment to journalism and journalistic ethics.

The Multicultural Media Awards are intended to recognise excellence among journalists, photographers, graphic artists, editors and publishers from the ethnic community and Indigenous media. The award categories will include the best investigative/in-depth story; the best article on immigration or social justice issues and promotion of social harmony; the best editorial commentary; the best overall design of print publication; the best overall design of an online portal; the best photograph; the best video; the best audio; and the best multimedia package. I commend the Multicultural Media Awards to the House. I look forward to the support of all political parties—Government, Opposition and crossbench—at the upcoming inaugural Multicultural Media Awards that will be presented at the New South Wales Parliament.

UNIVERSITY OF WOLLONGONG BUS SERVICES

The Hon. WALT SECORD [2.29 a.m.]: I support a campaign to expand bus services between the Campbelltown area and the University of Wollongong. Members will recall that on Wednesday 20 June I tabled a petition in this Parliament from a group of Macarthur students who strongly believe there is a need to improve and expand bus services, in particular route 887 and route 887X on the busway timetable. They have a strong and evidence-based case and I support them. The petition was signed by students across the Macarthur region. Those students are from a range of suburbs, including Camden, Camden South, Narellan Vale, Leumeah, Appin, Ingleburn, Rossmore, Leppington, Eagle Vale, Kirkham, The Oaks and Theresa Park. I take this opportunity to draw the issue of bus services between Campbelltown and the University of Wollongong to the attention of officials at Transport for NSW. I also draw this matter to the attention of the New South Wales Minister for Transport, the Hon. Gladys Berejiklian, and her colleague the Minister for the Illawarra, the Hon. Greg Pearce.

Students travelling between Campbelltown and the University of Wollongong experience a great deal of inconvenience because of the current bus arrangements. Presently the first bus departs Campbelltown at 7.04 a.m. and the last one departs Wollongong at 5.40 p.m. A typical bus journey between the two cities takes about 80 minutes. However, if students have lectures, tutorials or exams after 5.40 p.m. they are forced to travel back to Campbelltown on the train via Sydney. This train journey from Wollongong to Sydney and on to Campbelltown can take up to three hours on week nights. About one in five of all students from Macarthur who travel to the University of Wollongong use the bus service; a mere 3 per cent take the train. A recent survey found that 580 students and teaching staff drive their own vehicles or car pool to the University of Wollongong each day. The students believe that if bus services are improved their colleagues and instructors would switch from their vehicles to public transport.

The Campbelltown students would like to see three major changes. They are seeking a revitalised schedule with more peak and off-peak trips, a special 6.45 p.m. service from the University of Wollongong, and

a later mid-evening bus for those staying back at university for other activities. Further, the bus services between Campbelltown and the University of Wollongong are at capacity. On a typical weekday up to 15 students have to stand-up on the bus for the trip between the two cities. I do not have to remind the House that this can be dangerous and uncomfortable. I urge the Ministers to take the views of the Campbelltown university students and teaching staff on board. They believe that it would be appropriate for increased services to be in place by the end of next month. This would match the first week of the new spring session at the University of Wollongong. This matter was recently raised by the South-west Sydney Young Labor Association. I thank the association for its hard work. I also thank the House for its consideration.

REGIONAL MEDIA

The Hon. SCOT MacDONALD [2.33 a.m.]: Tonight I inform the House about regional media. The media are much in the news with Fairfax announcing 1,900 redundancies over the next few years, and News Limited is hinting that it too will undergo significant restructuring. I find a lot of the commentary about these announcements ill informed and disconnected from reality. It will probably lead to more harm than help. Quite a few members of Parliament and staff, past and present, had the benefit of working in regional media. I am aware that Aidan Cromarty, Alice Hardy and others cut their teeth in Rural Press newspapers. Sir Harry Budd was a member of this House for the Country Party from 1946 to 1978 and President of the Legislative Council from 1966 to 1978. He also had extensive experience in regional and metropolitan media. I worked for Rural Press from 1980 to 1983, firstly in Brisbane and then at its Richmond offices.

Regional media have an incredibly important role in the lives of country Australians. They inform their readership on local news, sporting updates, facilitate business and help build a community. I am sure all members have enjoyed the experience of dealing with hardworking journalists in the great task of politicking around the country. But editorial is only part of the media industry. My experience with Rural Press was not on the editorial side but in accounting and management. At that organisation my first role was the liquidation of the Brisbane Express Group, which had been acquired by a division of Rural Press only few years before. We retrenched about 30 staff, closed the papers down and chased outstanding debts. Over my next three years with Rural Press in the regional and rural divisions we were constantly closing papers, starting new mastheads and acquiring media, both newspaper and radio.

In many ways it was exhilarating to work with and for people such as Paul Myers, Brian McCarthy and John B. Fairfax. Marinya Media and Rural Press were constantly evolving in response to changing markets. Later, of course, Rural Press became part of the Fairfax stable. It is distressing to see staff laid off and operations terminated or scaled down, but that has been a feature of media since the first hand was stencilled on a cave wall. However, if I learnt one thing while working for Rural Press it was that delayed difficult decisions meant harder, more painful strategies down the track. While encouraging media organisations to commit to their regional presence we have to be mindful that only their boards and management have the knowledge, responsibility and skills to make those calls.

There is no doubt the business model of newspapers is under threat, but that has been the case for over half a century. Their advertising revenue has been cannibalised by radio, television, direct mail and now the internet. It is fair to say that the internet represents the most fundamental challenge to print media. For the new media platforms there are minimal barriers to entry, unlimited broadcast range, low production cost base, and now there are many options to formal, expensive editorial content. In the future our media will be delivered by a wide range of platforms with a lot of cross-fertilisation. Some of it will be high quality and much of it will be dross—it was always thus. Some of those paintings in the caves would now be classified as X-rated.

We have to let the proprietors get on with the task of restructuring their businesses. It will not be easy and the transition will be ongoing. Before coming to this Parliament I had the belief that politicians were not equipped to advise businesses on their operations. In my first year in this place I have only had that view reinforced. Within reason we can assist, support them and design infrastructure to drive productivity, but we are not managers. Private enterprise is not perfect, but only investors and managers know best how to utilise labour and capital that are constantly changing. I wish the owners, managers and staff of all our media organisations the best. We hope they will continue to be active in our communities, but the best thing I can do for them is get out of their way.

Politicians should also be wary about pontificating on editorial policy. In my time with Rural Press I never saw any editorial interference. The journalists defended their freedom quietly but effectively. No charter, code or agreement can replace mutual respect. Smart proprietors understand that quality journalism sells and

sensible editorial understands that a masthead must be solvent to fulfil its function. I am looking forward to a strong, innovative, financially healthy mix of media, including from Fairfax and News Limited. Probably the best thing the Government can do to assist that is to rebuild the New South Wales economy after 16 years of underperformance and weak leadership from the previous Labor administration.

CHRISTIAN DEMOCRATIC PARTY ANNUAL DINNER

Reverend the Hon. FRED NILE [2.38 a.m.]: Tonight I inform the House about the annual dinner of the Christian Democratic Party on 12 June 2012. The Hon. John Howard, OAM, was the guest speaker. We took the opportunity to congratulate him on his Order of Merit, which I understand is one of only 26 to be personally awarded by Her Majesty the Queen. Mr Howard gave a very informative address. In the first part of his address he spoke about The Greens threat and strongly urged the Coalition at the next State election to ensure that the Greens are placed at the bottom of all the preference lists. He said, "I never thought I would say this, but The Greens are worse than the Labor Party. They should be put below the Labor Party on the preference lists." I hope the Coalition follows his advice. As a constitutional monarchist he also spoke about the Queen's diamond jubilee. The master of ceremonies was my associate the Hon. Paul Green.

Also present was Reverend Dr Ross Clifford, the principal of the Baptist College of Theology—one of the largest colleges in Australia, with an overflow of some 500 students while other denominational colleges are empty. He was also recently elected President of the New South Wales Council of Churches. Steve and Jan Ryan entertained us with some inspiring music. It was my privilege to present Mr Howard with a book outlining the history of the New South Wales Parliament. He was pleased to receive a large montage portrait with photographs of Australian soldiers on the Kokoda Track in World War II. They served valiantly against overwhelming Japanese forces. As I gave the portrait to John Howard I said that we respected that his father and grandfather served in the Australian Army and had a fine record.

My secretary, Judy Russell, organised the event and was most efficient. The dining room overflowed with about 170 guests. As there was not enough room we had to knock back many people who wanted to attend. Next time we will plan for about 350 and pick a night when we are not competing with other members who want to use the parliamentary facilities—probably on a Thursday night if that can be organised. I was impressed by John Howard's address, which was given with great vigour, enthusiasm and humour. I am sure many of those who heard him speak would like him to be re-elected as Prime Minister. I do not think age is a deterrent. Of course, we know that at the next Federal election the Hon. Tony Abbott, who is John Howard's protégé, will be elected as Prime Minister. I am sure he will continue many of John Howard's policies when he becomes the Prime Minister. I am pleased to give that report of a wonderful evening.

PROVOCATION DEFENCE

Mr DAVID SHOEBRIDGE [2.41 a.m.]: At 2.41 a.m., after the fractious debate on workers compensation, it is peculiar to note that in three minutes we will begin a committee meeting to consider the issue of the partial defence of provocation. The debate on workers compensation was partisan: members dug into the trenches and had a go at each other. I can only hope that the committee on the partial defence of provocation will put aside some of that partisan divide—

The Hon. Dr Peter Phelps: I think there is pretty much a unity ticket there.

Mr DAVID SHOEBRIDGE: —and consider some of the misfirings under New South Wales criminal laws with the defence of provocation and the misuse of the defence of self-defence. The Hon. Dr Peter Phelps said that it is pretty much a unity ticket. I do not know that it is entirely a unity ticket. I am sure we will disagree on some areas and there will be a different emphasis on other areas. Only a few weeks ago a husband killed his wife by cutting her 22 times with a box cutter. It was a brutal murder on any view of it.

Reverend the Hon. Fred Nile: On the throat.

Mr DAVID SHOEBRIDGE: He also slit her throat. Rather than use the defence of provocation because he thought his wife was having an affair and would probably leave him, it was sufficient that he said he lost his sense of self-control and should be excused of murder and be able to get a plea on manslaughter. I have not spoken to one member who was not offended by that use of the defence of provocation. Indeed, I recall studying the law a number of years ago when a defendant used the gay panic defence. A man made a homosexual advance to another man, who apparently saw a red mist and was so frightened of the concept of an offer of consensual sexual relations that he killed the man who made the advance.

In that case the defendant argued self-defence to get a plea and have the criminality reduced from murder to manslaughter. Both provocation and self-defence have been used by people who were clearly guilty. Most people would think they were guilty of murder but they got away with being convicted of the much lesser offence of manslaughter. It is important to protect women from violent male partners with regard to the defence of provocation and to protect homosexual men from abuse of the defence of self-defence. I hope the committee steps away from the partisanship of the WorkCover debate and considers, at 2.45 a.m., how to fix the use of the defences of provocation and self-defence.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 2.45 a.m. until Tuesday 14 August 2012 at 2.30 p.m.