(a) maximise opportunities for New South Wales-based companies from Defence's growing exports and investment in defence capability—in both acquisition and sustainment,

(b) encourage defence industry innovation, research and education, including developing the future workforce,

(c) identify targets, programs and projects for defence spending in New South Wales,

(d) maximise the economic benefits of locating defence force bases and defence industry in the regions,

(e) how to establish and sustain defence supportive communities;,

(f) further enhance collaboration between the New South Wales Government and Commonwealth agencies, and

(g) any other related matter.

(2) That the committee report by June 2018.

The Hon. Penny Sharpe: What about Garden Island?

The Hon. GREG PEARCE: Garden Island is a fantastic contributor.

Personal Explanation

THE HON. DR PETER PHELPS

The Hon. Dr PETER PHELPS (15:02): By leave: I wish to correct the record in relation to an incorrect comment I made last Wednesday. Last Wednesday I said that the Biofuels Regulation (No. 2) had reduced the fine relating to a breach of section 9A (1) of the enabling Act from $550,000 to $5,500. That was incorrect. The regulation merely created a new penalty provision for that amount. In fact, the statutory fine for service station owners who have failed to achieve the E10 mandate remains at $55,000 in the first instance and $550,000 for every subsequent instance.

Bills

CIVIL LIABILITY (THIRD PARTY CLAIMS AGAINST INSURERS) BILL 2017

Second Reading

Debate resumed from 3 May 2017.

The Hon. ADAM SEARLE (15:03): I lead in this place for the Opposition on the Civil Liability (Third Party Claims Against Insurers) Bill 2017. The Opposition does not oppose the bill. The object of the bill is to give effect to the New South Wales Law Reform Commission's recommendations in report No. 143 entitled "Third party claims on insurance money". This report was the result of a review of the now 70-year-old provisions of section 6 of the Law Reform (Miscellaneous Provision) Act 1946. That 1946 legislation provides for a comparatively complex scheme to allow a third party to enforce a statutory charge over insurance money payable under a contract of insurance to a person indemnified under the contract of insurance in relation to a liability of the insured person to pay damages or compensation to the third party concerned. This bill removes that mechanism and enables the third party to proceed directly against the insurer for their claims for damages or compensation.

The Law Reform Commission report helpfully provided a draft bill. I note that the commission's bill has been adopted almost completely in relation to its substantive terms; the only differences being in relation to the title and other non-essential aspects. The commission received a reference on 22 February 2016 to review and to report on this issue. The report was dated November 2016, and this legislation is a result. In record time, the commission has provided a useful solution to a significant problem. Paragraph 1.2 of the report states:

> … this reference has been given against a backdrop of general dissatisfaction with the drafting of s 6 and the problems that this has presented for interpretation generally. The section has also presented particular problems in light of changes to the insurance market since it was enacted 70 years ago. Over the past 25 years, the courts have resolved some, but not all, of the uncertainties about the interpretation of s 6.

The commission points in particular to the uncertainties attaching to section 6 around instances where the defence costs of directors and officers of a company are funded from the same pool of funds as for the company's liability to plaintiffs and whether the change prevents insurers paying defence costs. The aim of the section 6 scheme is to provide a plaintiff with a way to obtain the proceeds of insurance directly from the insurer of a defendant. Without such a scheme, a common law plaintiff cannot directly recover from an insurer, even where the insured defendant has disappeared, does not exist or is not worth pursuing. As the Law Reform Commission points out, at common law, if a defendant was bankrupt, the insurance proceeds would go to the trustee in bankruptcy, and the plaintiff merely becomes an unsecured creditor to receive possibly only a partial payment and perhaps not even that, despite insurance moneys having been paid.

Despite the undoubted desirability of something like the section 6 scheme, the Law Reform Commission report records a series of judicial criticisms of the section, including Justice Kirby's reference to it being

"undoubtedly opaque and ambiguous". There are also particular criticisms because of the currently different legislative and insurance context. According to the commission, there is a lack of clarity concerning section 6 and directors and officers insurance policies, claims made and notified policies, liability for pure economic loss, and contracts for reinsurance. This is hardly surprising when the original second reading speech seem to have as its main target collusion between defendants and insurers. There are also some conceptual difficulties with the idea and use of a special statutory charge.

The Law Reform Commission raises a series of other issues, including priority between charges where there are multiple plaintiffs, where the person covered did not enter the contract, and issues surrounding limitation periods, among other things. The commission argues for a provision such as section 6 because of the undesirable alternatives. Paragraph 4.1 of the report states:

> Without a provision such as s 6, successful plaintiffs might be unable to recover from a defendant where, for example:
>
> - the defendant does not have sufficient assets to meet a judgment but has not yet been declared bankrupt or insolvent
> - the defendant is bankrupt but the trustee does not pursue the defendant's entitlement to insurance, or
> - the insurer refuses to indemnify the defendant and the defendant is unwilling or unable to enforce its rights against the insurer.

The commission correctly rejects the alternative of vacating the field and relying on Commonwealth legislation because the present provisions are not adequate. This rejects the position of the Insurance Council and the Australian Institute of Company Directors. The commission does say that the best option might be uniform legislation, but that would have to be in the form significantly improved Commonwealth provisions. The present provisions have difficulties because they do not cover all cases of insolvency and can require additional steps in litigation and the involvement of additional parties. There is no present sign of the Commonwealth taking the necessary steps to improve the law in this area.

Recommendation 10 of the report, reflected in clause 14 of the draft bill and clause 11 of this bill, ensures that it does not affect the rights conferred under the provisions of workers compensation and third party motor vehicle legislation, which I believe is a prudent step. With those brief observations and as I indicated, the Opposition does not oppose the bill.

The Hon. PAUL GREEN (15:09): On behalf of the Christian Democratic Party, I speak to the Civil Liability (Third Party Claims Against Insurers) Bill 2017. Compulsory third party [CTP] insurance—personal injury—covers drivers of vehicles from claims for compensation for injuries and deaths arising out of use of motor vehicles. CTP is paid each time a vehicle is registered. Recently we went through a series of reforms relating to the CTP green slip, which ultimately aims to better support people injured on our roads and to reduce the cost of green slips. The Law Reform Commission reviewed section 6 of the Law Reform (Miscellaneous Provisions) Act 1946, which provides a mechanism enabling a third party to enforce a statutory charge over insurance moneys. Historically, there has been a problem of a special "charge" that attaches to the money that the insurer would be required to pay under the insurance contract. The charge has caused many conceptual problems, for example, in cases where the insurance contract also allows money to be paid to fund the defence of directors and officers of defendant companies.

The aim of the bill is to enact the recommendations of the Law Reform Commission's Report 143, "Third party claims on insurance money". The Attorney General released the report on 19 December 2016. The Law Reform Commission recommended enabling the third party to bring proceedings directly against the insurer in respect to his or her claim for damages, compensation or costs against the insured persons rather than proceeding to enforce a specially created statutory charge. The Law Reform Commission states:

> ... the new provision should ensure that an insurer is not liable for more than the insurer would have been liable to pay under the insurance contract. It should also ensure that the insurer can rely on the same defences that the insured defendant could have relied on in an action brought by the plaintiff.

The proposed changes will be of substantial interest to both insurers and insured entities. The report's recommendations and this bill should resolve the inherent uncertainty that is present. This bill allows a right for plaintiffs to directly recover from the insurer without the need to resort to a charge over the insurance proceeds. The amendment will limit recovery to the amount the insurer would have paid in respect of the defendant's liability to the plaintiff, avoiding the possibility that defence costs are being caught within the scope of the section. The Christian Democratic Party commends the bill to the House.

Mr DAVID SHOEBRIDGE (15:12): On behalf of The Greens, I indicate our support for the Civil Liability (Third Party Claims Against Insurers) Bill 2017. The bill repeals section 6 of the Law Reform (Miscellaneous Provisions) Act 1946. I wonder if the Parliament which passed that Act thought it would still be a key tool for civil litigation 70 years later.

The Hon.Walt Secord: They probably did.

Mr DAVID SHOEBRIDGE: Maybe they did. The bill replaces section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 with a new a standalone Act, called the Civil Liability (Third Party Claims Against Insurers) Act. As far as The Greens understand from reading the bill, it implements each of the recommendations of the New South Wales Law Reform Commission's Report 143, "Third party claims against insurance money". Section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 is a section that is regularly used in a number of civil litigation cases in New South Wales. It allows a claimant who is bringing a civil claim to access proceeds of insurance where proceedings against an insured defendant are not possible or would be fruitless. Examples are when the defendant is missing or, as is more commonly the case, where the defendant is a corporation and it is either solvent or deregistered.

Currently, section 6 of the Act attaches a special charge to any money that is payable under the insurance policy and requires that money, if the claim is proven, to be paid to the claimant, and it does not proceed through the insured. There are a number of reasons why that provision was put in place. One was to prevent fraud or collusion between an insured and an insurer to ensure that proceeds of an insurance policy that are meant to benefit a claimant found their way to the claimant. The insured and the insurer should not have a collusive arrangement to reduce the amount of money that is paid under the policy or provide it to an insured who then has a scheme to avoid it going to the claimant.

The wording of section 6 is, to say the least, oblique. I will not read it onto the record. It is a legislative provision that has been litigated up hill and down dale. Some of the observations that the Parliamentary Secretary made in his second reading speech in support of the bill are worth repeating. President Kirby, as he then was, in *McMillan v Mannix* (1993) 31 NSWLR 538 said at 542:

> ... the interpretation of section 6 of the Act is problematical ... ambiguity may be its only clear feature.

More recently, their Honours Justices Emmett and Ball, in *Chubb Insurance Australia v Moore* (2013) 302 ALR 101 at 113, said:

> Section 6 should be repealed altogether or completely redrafted in an intelligible form, so as to achieve the objects for which it was enacted.

Case after case has pointed out how obtuse the wording of section 6 is. Very similar words to section 6 of the New South Wales Act have been interpreted in a different way in jurisdictions such as New Zealand. After having the matter referred to it, the Law Reform Commission—with the assistance of Parliamentary Counsel, who are as professional as ever in this State—then came up with a draft bill. The original draft bill and the report of the Law Reform Commission was to amend section 6 of the current Act. The only way in which this Act diverges from the recommendations of the Law Reform Commission is that instead of amending section 6, this Act puts in place the entirely new Civil Liability (Third Party Claims Against Insurers) Bill. It does not in any way change the effect of it.

It would be useful if the Commonwealth mirrored the legislation, and the Law Reform Commission has recommended that. The Law Reform Commission said that, ideally, the Commonwealth would come up with legislation that is identical to this, other States would mirror it and then we would remove the need for forum shopping. A small degree of forum shopping occurs when one State has a more workable provision than others. We have an obligation to sort this mess out and hopefully that is what Parliament will do. There is some concern that when a provision relating to insurers' liability is changed, it will have a retrospective effect on claims that are made after the passage of legislation even if they relate to insurance policies that were entered into prior to the passage of the bill. That is a good thing and it should happen. In the eyes of The Greens, that retrospectivity creates no practical problems. The Law Reform Commission report states:

> Our recommendations do not increase the liability of insurers. Like the current s 6, the new provision should ensure that an insurer is not liable for more than the insurer would have been liable to pay under the insurance contract. It should also ensure that the insurer can rely on the same defences that the insured defendant could have relied on in an action brought by the plaintiff.

I do not think it is useful to state how we believe the provisions will work. In that regard, The Greens rely wholly upon the very professional, competent and balanced report of the Law Reform Commission. We believe this legislation enacts the provisions in accordance with the Law Reform Commission and we commend the bill to the House.

The Hon. CATHERINE CUSACK (15:19): On 26 February 2016, the former Attorney General asked the New South Wales Law Reform Commission to review section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 to consider whether the section should be repealed or amended and whether the policy objectives remained valid or could be better achieved. As Mr David Shoebridge has indicated, this is a 70-year-old piece of legislation. Many changes have been made in the insurance industry in the ensuing seven decades and there has been a general dissatisfaction with the way this section has been operating in a modern context.

In undertaking the review, the commission was asked to have regard to all relevant issues relating to the uncertain practical application of section 6; the impact or potential impact of relevant case law and developments in law, policy and practice by the Commonwealth in other States and Territories of Australia and overseas; the impact of any repeal of section 6 on protections for third party claimants seeking to recover the proceeds of a liability insurance policy to which they are entitled; whether any repeal or amendment of section 6 should apply to contracts already in force; and any other matters the commission considered relevant to the terms of reference.

The legislation before the House is a result of that review. It gives effect to recommendations of the New South Wales Law Reform Commission's Report 143, "Third party claims on insurance money: Review of s 6 of the Law Reform (Miscellaneous Provisions) Act 1946". The report was handed to former Attorney General Gabrielle Upton on 22 November 2016, and she released it on 19 December 2016. I will quote some of the remarks made by the Law Reform Commission when that report was released. The Law Reform Commission said:

> Section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) allows a plaintiff in civil litigation to access proceeds of insurance where proceedings against an insured defendant are not possible or would be pointless because, for example, the defendant is missing or insolvent. It achieves this by a special "charge" that attaches to the money that the insurer would be required to pay under the insurance contract. The charge has caused many conceptual problems, for example, in cases where the insurance contract also allows for money to be paid to fund the defence of directors and officers of defendant companies.

The Law Reform Commission also said:

> We recommend a new provision that clarifies areas of uncertainty and makes reforms where necessary. The new provision does not rely on the "charge" but rather provides a plaintiff with direct access to the insurer, in appropriate cases.
>
> Our recommendations do not increase the liability of insurers. Like the current s 6, the new provision should ensure that an insurer is not liable for more than the insurer would have been liable to pay under the insurance contract. It should also ensure that the insurer can rely on the same defences that the insured defendant could have relied on in an action brought by the plaintiff.

Following the release of this report in December, key stakeholders in the insurance and legal industries have expressed broad support for the commission's findings and the proposed changes. The Insurance Council of Australia [ICA], which represents 90 per cent of premium income written by private sector general insurers, has supported the changes. This is an industry that has revenues of more than $44 billion per annum and assets of $121 billion. It is very important, not only to the wellbeing of every Australian and every Australian business, but also to investors in the economy of our country.

The National Insurance Brokers Association, which represents 90 per cent of insurance brokers and administers that profession's code of conduct, also supports this legislation. The ICA has stated that clarifying uncertainty surrounding section 6 is in line with its long-standing position on the need for reform in this area. The National Insurance Brokers Association has also welcomed the commission's recommendations in addressing the concerns amongst insurers and brokers on legal costs surrounding directors' and officers' liability insurance.

I pause here because this goes to the heart of the reasons that the Law Reform Commission was asked to conduct this inquiry in the first place and why this is such a serious issue. Justice Kirby, for example, described this section as "undoubtedly opaque and ambiguous". The New South Wales Court of Appeal has also described section 6 as unclear and called for it to be "completely redrafted in an intelligible form". The areas of uncertainty and inadequacy in its application have related to directors' and officers' insurance policies, claims made and notified policies, liability for pure economic loss, and contracts for reinsurance. These comments and issues highlight the struggle that the legal profession has had with this section.

Leading corporate law firms with extensive experience in insurance practice and litigation have provided support for the proposed changes. Herbert Smith Freehills supports legislative reform in "providing much needed clarity for all interested parties, in particular insurers and company directors and officers". King and Wood Mallesons has noted the conceptual difficulties in the existing section 6 and agrees that implementation of the commission's recommendations would address "the inherent uncertainty currently present"—in particular, whether directors and officers are able to access insurance money to fund their defence and whether these funds are to be personally provided.

Norton Rose Fulbright sees the bill as benefiting all stakeholders in this area. The firm notes that directors and officers will have comfort regarding access to insurance moneys to fund a defence and insurers will have certainty that their liability is not increased. They concluded that in the absence of conclusive guidance from the High Court, "legislative reform is the only way forward". I conclude by congratulating former Attorney General Gabrielle Upton and the current Attorney General, the Hon. Mark Speakman. I thank the New South Wales Law Reform Commission for undertaking this difficult review.

Mr David Shoebridge: It all happened quite quickly.

The Hon. CATHERINE CUSACK: I acknowledge that interjection. It did happen quite quickly. Sometimes these matters can take six to eight years to reach the point of legislation. That is probably the more

usual pace at which these things operate. Given the significance of the issues that have been highlighted around the governance arrangements of Australia's greatest companies and the amount of premiums that everybody is relying on an ability to claim, the speed yet carefulness and thoroughness with which the commission has acted is deeply appreciated. It is supported by all sides in this Parliament. I thank them and congratulate them, and commend this bill to the House.

The Hon. Dr PETER PHELPS (15:27): I speak on the Civil Liability (Third Party Claims Against Insurers) Bill 2017, but before I commence I would like to have a bit of a discursive look at tort law reform generally within the State of New South Wales. As members will no doubt remember, in my inaugural speech in this place I raised the issue of tort law reform for a range of issues. I find that the longer I am in this place the more I come to appreciate common law as opposed to statutory law—something which I find myself in hideous agreement on with The Greens member opposite, Mr David Shoebridge. The incursions of the Parliament into the area of tort law have overwhelmingly been poor, disadvantageous and in many instances antithetical to the original ideals of the tort common law. Unfortunately, over a period of time legislators have determined that they are more representative of a series of community attitudes and feelings than the judiciary.

To some extent I can understand why members of Parliament might feel that way. However, the simple fact remains that for centuries common law has been the way in which community expectations about how we deal with each other, the interactions we have and the consequences of those interactions have been dealt with. Much as I love the Parliament, as I stated, attempts to statutorily change common law doctrines have been overwhelmingly negative compared to the natural evolution which I believe the judiciary would have made over a substantial period of time had it not felt that its announcements would not have been overridden for the sake of—I will not say political expediency but political thought processes above and beyond a pure quest for justice in and of itself.

Those interested members who consider themselves laymen—and I consider myself a layman in most legal matters—could not go further than Justice David Ipp's excellent speech in 2007 on tort law in this State and his arguments on the changing tides of tort law, and David Ipp later became the Independent Commission Against Corruption Commissioner. Originally it was fairly minimalist and over time it became a little more interventionalist from the common law. Attempts were made by the legislature to pare it back and the legislature decided to increase the scope of tortious activity to the point where, Justice Ipp argued, at that stage the Government then went through an overreaction and attempted to pare back the breadth of plaintive actions.

Mr David Shoebridge: Bob Carr hated lawyers.

The Hon. Dr PETER PHELPS: Understandable, and Ipp in that speech makes the excellent point that we have almost always had overshoot where legislative enactment has attempted to try to correct perceived deficiencies in the common law, when I would argue instances of overreach by the courts are almost always corrected by superior courts or, alternatively, through the natural learning experience of the courts, which will find a way around precedents and stare decisis to conveniently move on or exempt an earlier precedent for the sake of a much more contemporary outcome.

In this instance, as members have stated, this was a fairly simple reference last year from the then Attorney General, the Hon. Gabrielle Upton, for the Law Reform Commission to look at section 6 of the Law Reform (Miscellaneous Provisions) Act and make recommendations in relation to its continued existence or any possible amendments to it. The Law Reform Commission recommended the fairly simple idea to basically excise it from the existing Act and give it its own Act. Although I am not sure that legislative enactment is always desirable, it is already part of the statutory code in this State and if the Law Reform Commission thinks it is a good idea, then it probably is.

I have a great deal of time for the NSW Law Reform Commission, which may come as a surprise to Mr David Shoebridge. It should not be forgotten that the NSW Law Reform Commission is in fact the product of a Coalition Government. It was formed in the early years of the Askin Government, and whatever one may think of the Askin Government—and I am sure we all have our own ideas about the utility and efficacy of the Askin Government—

The Hon. Don Harwin: It did many good things.

The Hon. Dr PETER PHELPS: As the Leader of the Government points out, it did many good things. One of the first things that it did was the creation of the NSW Law Reform Commission.

Mr David Shoebridge: A little corrupt though.

The Hon.Walt Secord: A tad corrupt.

The Hon. Duncan Gay: Not the whole government.

Mr David Shoebridge: Just the Premier.

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): Order! Mr David Shoebridge will refrain from interrupting the debate.

The Hon. Dr PETER PHELPS: It is worth noting that the NSW Law Reform Commission this year celebrates its fiftieth birthday—50 years of continuous service in this State as an independent evaluator of existing laws and a recommender of reforms to the existing statutory, and in some cases common law, laws of this State. To this day it provides expert legal policy advice to government on matters that are referred to it by the Attorney General. In response to references the commission prepares reports that comprehensively analyse issues identified in the reference and makes recommendations to government for legislative reform. The commission provides impartial, reasoned and well-researched policy advice to government. It is not the only instrumentality that does that. Indeed, I suggest that many of the committees in this Parliament provide a comparable service to the Executive. Whether that Executive chooses to follow that advice is something we can debate but, nonetheless, it is one of the many sources provided to the Executive.

The advice provided by the NSW Law Reform Commission is especially valuable in relation to particularly complex areas of law, such as the contents of this bill. The commission's work has been important in contributing to improving and modernising the law, simplifying and consolidating the law, removing inefficiencies and defects in the law, recommending the repeal of laws that are unnecessary and obsolete—because only the legislature can repeal laws that are unnecessary and obsolete and I encourage the legislature to repeal many, many more laws that I view as unnecessary and obsolete—and improving access to justice.

The Hon. Paul Green: Anarchy.

The Hon. Dr PETER PHELPS: I will take that interjection. The honourable member says "anarchy". Anarchy is antithetical to the worldview of the classical liberal. The classical liberal accepts there is a role for government but he accepts that there is a limited role for government. It is not to take the role of one's mother and father; it is not to take the role of one's husband or wife; it is not to be the nanny to see one through life. The role of government should be necessarily limited to those few things which government does well and nothing beyond that. I am not a proponent of anarchy; I am simply a proponent of a limited form of government that allows individuals to get on with their life without unnecessary interference or intrusion by a group of people who have no direct relevance to my life, to the honourable member's life or alternatively to the life of anyone else in this place.

I return now to the bill. The commission undertakes a collaborative process to contribute to law reform. When responding to a reference from the Attorney General the commission will research the law and conduct literature reviews; release consultation papers that discuss key issues and present options for reform; and call for submissions in response to consultation papers and conduct face-to-face consultation with interest groups, experts, non-government organisations and government agencies to gauge public perceptions about current laws.

The commission then considers its research and views expressed in the consultation and submission process in order to produce a final report that makes recommendations to government for reform of the relevant area of law. The final report is then provided to the Attorney General. The Attorney General must table the commission's report in both Houses of Parliament in accordance with legislative requirements and that is the report we have here today, report 143, which then became the basis for the instrument that we see before us today—the Civil Liability (Third Party Claims Against Insurers) Bill 2017.

It is a complex piece of legislation but clearly the complexity necessarily results from the nature of the understanding of existing section 6. In this respect the new bill provides a great deal of clarity and certainty to those people who are seeking to undertake actions pursuant to section 6 of the existing Law Reform (Miscellaneous Provisions) Act 1946 and to give them, the courts and the community a greater sense of surety that justice will be brought about through any potential action.

This is another example of the great work of the Law Reform Commission in relation to modernising and harmonising provisions. While this Government rightly commends itself for the great economic and social benefits that have accrued to this State and continues on the path of reform in tort law, I would like to see changes to defamation law. I realise we now have a supposedly national scheme for defamation law, but it is certainly the case that defamation law in this State should be reviewed, in my opinion, with a view to making it less onerous for a whole class of people, not the least of whom is journalists.

I would like to see personal tort law reform and a greater return to the common law understanding of volenti non fit iniuria and contributory negligence. I think the fear of litigation flowing from an overly narrow interpretation of the voluntary assumption of risk by individuals engaged in particular forms of conduct is one of the key problems we find in relation to participation and the consequences of participation in sport and other

leisure activities in this State. I am not the Attorney General, and so I have no idea as to whether defamation law reform is being considered, but it is one thing I would like to see. I believe it would fit within a more classically liberal understanding of what government should and should not do, especially considering the progressive reading down of volenti non fit iniuria and contributory negligence over the years. These are my personal views. I commend the bill to the House and I would welcome the support for this legislation of all members.

The Hon. DAVID CLARKE (15:42): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Adam Searle, the Hon. Paul Green, Mr David Shoebridge, the Hon. Catherine Cusack and the Hon. Dr Peter Phelps for their contributions to the debate on the Civil Liability (Third Party Claims Against Insurers) Bill 2017.

In response to the terms of reference provided by the former Attorney General the NSW Law Reform Commission released a consultation paper that identified uncertainties in the application of section 6 and raised five options for reform, namely: one, do nothing, on the basis that section 6 continues to be useful and that relevant High Court and NSW Court of Appeal decisions sufficiently clarify its operation; two, retain the thrust and structure of section 6 but clarify areas of uncertainty; three, retain the thrust of section 6 while reforming areas where it has been criticised as problematic or inadequate; four, repeal section 6 and leave the field to existing or revised Commonwealth provisions and existing State workers compensation and motor accidents regimes; five, retain the thrust of section 6 but rewrite it in a contemporary drafting style, while addressing the clarifications.

The commission received 13 submissions from interested stakeholders including the NSW Bar Association, the Insurance Council of Australia, the National Insurance Brokers Association of Australia, Maurice Blackburn Lawyers, the Australian Lawyers Alliance and the Law Society of NSW. Following these submissions, the commission produced a set of draft proposals that were considered at a round table of interested stakeholders including representatives from the legal profession and insurance industry.

This bill removes the complexity and uncertainty associated with the current operation of section 6 of the Law Reform (Miscellaneous Provisions) Act 1946. It gives effect to all recommendations from the Law Reform Commission, which were heavily consulted on and have broad support. The bill will introduce a new Civil Liability (Third Party Claims Against Insurers) Act, which will modernise the law governing third party insurance claims, and ensure that the law adapts to the changes in the insurance market since it was enacted 70 years ago. Most importantly, it will protect the existing right of a plaintiff to recover compensation or damages directly from the insurer in respect of the insured defendant's liability to the plaintiff. It will not increase the current liability of insurers.

This is another great bill from a great government, the Coalition Government of New South Wales. I commend the bill to the House.

The DEPUTY PRESIDENT (Reverend the Hon. Fred Nile): The question is that this bill be now read a second time.

Motion agreed to.

Third Reading

The Hon. DAVID CLARKE: By leave: I move:

That this bill be now read a third time.

Motion agreed to.

Documents

BUDGET ESTIMATES AND RELATED PAPERS 2016-17

Debate resumed from 7 March 2017.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:46): I will conclude my remarks on the budget estimates, which were curtailed to allow the Hon. John Graham to give his inaugural speech. My earlier remarks were an opportunity for me to thank members of the parliamentary staff who supported me in my former role as President of the Legislative Council. I focused particularly on the building services staff for their role in the capital works projects largely undertaken since 2013, when there was a significant boost to funding. I concluded by in particular thanking Rob Neilsen, who bore a large burden as director of building services during that period. He took on an enormous workload. I had moved on to thanking one member of the building services staff, Philip Goldsmith. I believe Phil would be known by a number of members in his role as curator of the movable cultural heritage of the Parliament, which is quite considerable.

I have worked closely with Phil Goldsmith during the 18 years I have been a member of this place. As members would know I worked for the Parliament for a long time before I became a member of the Legislative