

Mr Dan Barron-Sullivan; Mr Brendon Grylls; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr Colin Barnett; Mr Ross Ainsworth; Mr Paul Omodei; Mr Max Trenorden; Mr Mark McGowan; Acting Speaker; Mr John Kobelke; Mr Clive Brown

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## CIVIL LIABILITY BILL 2002

### *Second Reading*

Resumed from 14 August.

**MR D.F. BARRON-SULLIVAN** (Mitchell - Deputy Leader of the Opposition) [5.03 pm]: We have to pity some members in Parliament. When I consider the plight of a young, ambitious politician who is given the opportunity to deal with an important piece of legislation in this Parliament and is involved in considerable debate about that legislation but ends up with a headline that is negative to his cause, I have to feel sorry for him, even when that person is a member of an opposing political party. When the parliamentary secretary, the member for Rockingham, dealt with the Insurance Commission of Western Australia Amendment Bill 2002 - a sibling piece of legislation, if I can call it that - he tried to profess what marvellous things it would do for community groups throughout Western Australia. He must be pretty unhappy about things when he ends up with a headline "Insurance hopes dashed - legislation unlikely to lead to lower premiums: MLA". That headline just about sums up the Government's effort in relation to public liability insurance.

We are being asked to fly blindfolded with both these pieces of legislation, particularly the Civil Liability Bill 2002. On the one hand, we are being asked to trade in benefits for accident victims; on the other hand, we are not being given any factual information on the impact on premiums. Not only is there no assurance that premiums will come down as a result of this legislation, but also there is no indication from the Government that it is putting in place a mechanism to ensure that any reduced costs to the insurance industry will be passed on in the form of lower insurance premiums. In debate on the Insurance Commission of Western Australia Amendment Bill, the parliamentary secretary indicated quite clearly that there was no certainty that premiums would come down as a result of the legislation. When we get to the consideration in detail stage of this Bill, I look forward to the parliamentary secretary providing us with some detailed actuarial assessments on what this legislation will do to reduce costs in the insurance industry and, most importantly, whether those reduced costs will be passed on in the form of lower insurance premiums.

A number of people in this Chamber have from time to time indicated that there is a need for a national response to the situation confronting small business, community groups, sporting associations and the broader community with public liability insurance. Only today in question time, the Premier reiterated the need for a national response. It was as a result of the lead shown by the Commonwealth, particularly by Senator Helen Coonan, that the States were brought together in a number of forums and, ultimately, a review of the laws of negligence was implemented under the stewardship of Justice Ipp. The interim report by Justice Ipp and his review team states -

Many of those with whom the Panel has consulted (representing many different interests) have stressed the desirability of enacting measures to bring the law in all the Australian jurisdictions as far as possible into conformity. The Panel unqualifiedly supports this aspiration . . .

Under the heading "A national response" the report reads -

The Panel's recommendations should be incorporated . . . in a single statute . . . to be enacted in each jurisdiction . . .

However, the States have gone off on their own, implementing legislative and policy measures as they see fit either for political purposes or in an attempt to justify their actions on the basis of the individual needs of their States. The latter argument has been used by the Premier to explain the difference between the approach taken by the Western Australian Government and that of a number of other States. However, we have not heard a valid explanation of why, suddenly, the State Government has gone cold on the idea of a national response. I would have thought the onus was on the Premier and the Government to work with their colleagues in the other States to bring about the national response that we have heard about a number of times in this Chamber and that has been pointed out to us is so important if we are to tackle this crisis across the nation.

To say that Western Australia is unique or has a different situation from that in New South Wales or Victoria is true to an extent. We are mindful that the operations of the insurance industry have been different in other States, especially in New South Wales and to a lesser extent in Victoria, but Western Australia has also been responsible for driving up insurance premiums. We had the notorious Nagle case at Rottneest some years ago. We must look at our own backyard to see what legal and policy remedies are required to resolve the public liability problems in our community.

One of the key recommendations was for individuals taking part in recreational activities to be more responsible for their own actions. For example, I am aware of a business that hires out vehicles and can no longer obtain public liability insurance, even though it has never had a single claim. People are not able legally to take

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responsibility for their own actions in such circumstances, and in some cases the insurance industry has attached such a premium to those activities that not only has the cost of premiums risen to exorbitant levels, but also premiums have not been available. I know that other States are heading down the path of limiting liability in such cases. It will be interesting to see whether Western Australia has assessed that situation, whether it will have an impact on premiums and, importantly, what the impact will be on accident victims.

I return to what I said in the beginning: I find it difficult discussing and debating this legislation because the Government has not given us sufficient facts. Facts provided to us from people in the community indicate that perhaps the onus should be on the insurance industry to explain to a greater extent why we need tough legislative change. I do not see it as the insurance industry's responsibility solely; it is also the Government's. The Executive arm of this Government has decided to bring legislation to this Parliament. If it is to take benefits away from people in the community, it should demonstrate how the loss of those benefits will be outweighed in the public interest through lower insurance premiums and more accessible and available insurance across the board. I am one of a number of people who say that people must take a greater degree of personal responsibility wherever possible. This was reiterated in the Ipp review under the heading "General Principles", where it stated

The Panel sees its task as being to recommend changes to the law that imposes a reasonable burden of responsibility on individuals to take care of others and to take care of themselves.

In New South Wales there was a case of someone diving into the water after having drunk alcohol and taken illicit drugs, hurting himself and then successfully suing the local council for the best part of \$4 million. Most people around the community would scratch their heads and say that was not a fair outcome, and I agree. We need from the Government some sort of detailed assessment of those cases, perhaps some case histories, so we can look at the precedents and gain an understanding of which matters and which rights can be wound back under the legislation to try to take the load off insurance premiums.

I now turn specifically to the Civil Liability Bill 2002 - there was a lot of general discussion during the previous debate on public liability matters - and say, firstly, that this legislation constitutes the first dribble of reform of the tort laws in this State. It does not go as far as the legislation in New South Wales, for example, or some of the other States, and there is an argument that it does not need to go that far. The Government argues that Western Australia's situation is a lot better than that in New South Wales, but we must look in our own backyard. We had the classic case of the person who was injured at Rottneest; it opened the doors for some fairly significant public liability payouts. Again, we must accept this legislation at face value, because the Premier tells us that Western Australia's situation is different from that in New South Wales, although we do not have any figures to demonstrate that. In fact, there really is a paucity of good, reliable data. It became clear during our briefing that the Government, in its report to the federal Government, had to rely on Trowbridge Consulting to get a fair understanding of the actuarial situation regarding public liability insurance. Interestingly, during the major briefing provided by the Government - and I am indebted to the parliamentary secretary for arranging that briefing - the advisers indicated that we do not have detailed Western Australian statistics, even on payments, for public liability insurance. If I recall, an assessment was carried out by Crown Law on the results of a number of court cases, but approximately 95 per cent of matters are settled out of court. The insurance companies are hardly likely to provide that sort of information; and I know it has not been collected. This means that the outcome of 95 per cent of these court cases is not known in detail. No extensive actuarial survey work has been done in this area and, I repeat, we are flying blind in our assessment of this legislation.

I may be wrong, but during the briefing I referred to earlier, when I commented about the situation confronting small business, I was told that the Small Business Development Corporation had indicated to the Department of the Premier and Cabinet that there was no significant problem in the business community. I am glad the parliamentary secretary is present. In case he is not already aware, there is not just a problem about public liability insurance in small business, there is nothing short of a crisis. I have spoken to numerous small business people in a range of industries who have been confronted with very, very heavy increases in insurance premiums. For example, I doubt if there is a single scaffolding business in this State that has not experienced at least a doubling of insurance premiums. One scaffolding operator I spoke to had a family income last year of about \$28 000. His public liability insurance premium was due to jump from just over \$2 000 to approximately \$20 000. If he pays his insurance premium and his income projections continue, he and his family will have to survive this year on an income of approximately \$10 000 - purely as a result of the increase in the public liability insurance premium. As I understand it, that scaffolder is now operating without public liability insurance; that is what is happening in the small business community. I referred earlier to a case of a business operator who was not able to get public liability insurance. I asked him what he was going to do. I said that if someone had an accident he would be gone for all money; he would lose his house, his business and everything. He said, "What

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do I do? Do I shut up shop tomorrow morning? Then I won't have an income; I won't be able to keep my family." That is the extent of the problem in the small business community.

I will listen attentively to the parliamentary secretary's explanation about what this legislation will do for the small business sector. The people I have run this past are saying it will not do enough; it will not bring premiums down and it will not make those policies available. I wonder if it is not another case of the Government being seen to be doing something without being able to justify the impact of the legislation or to quantify the extent to which premiums will come down. I can look at this legislation and I can get some idea of how benefits will be limited or curtailed for people who are victims of accidents, but I cannot see that there will be any quantifiable effect on insurance premiums. That is something the parliamentary secretary must explain if he is to convince the community that this legislation will have a beneficial impact.

The legislation is limited to public liability insurance and is not retrospective. Perhaps the parliamentary secretary could give some indication of whether the need for retrospectivity was analysed; and, if so, on what basis it was decided not to make the legislation retrospective. We have been given absolutely no data to demonstrate whether it would have been of benefit to make it retrospective, whether it would have had any further impact on premiums or whether it would have left more people in the lurch without accident benefit. At least one other State has enacted retrospective legislation; that is, New South Wales. On the information available, it is very hard to assess whether the legislation should have been made retrospective. I would appreciate the parliamentary secretary's assessment of that in due course.

Mr M. McGowan: Do you support the legislation becoming retrospective?

Mr D.F. BARRON-SULLIVAN: I have no idea whether that would be of benefit. The problem is that we are flying blind again. If the parliamentary secretary could provide information that demonstrates there was no need for retrospectivity, I would understand.

Mrs C.L. Edwardes: We do not support retrospectivity as a matter of course.

Mr D.F. BARRON-SULLIVAN: Some parliamentarians do not mind the idea of retrospectivity, but on this side of the House, as a matter of principle, we do not support retrospectivity. If some overwhelming public interest were to be served by legislation being retrospective, that needs to be spelt out so that we can consider it. It has not come through in this legislation, and I would welcome the parliamentary secretary's advice on whether it was assessed, and what are the pros and cons. We are trying to get a better overall picture of the situation in regard to this legislation and the Government's response to the State's public liability insurance crisis.

The first part of the legislation deals with limiting damages for personal injury. The key feature is that it does not affect personal injury payments and claim arrangements under state laws that relate to vehicle accidents, workers compensation or criminal injuries compensation. The second feature I identify is that the legislation provides for a general damages threshold of \$12 000. I understand from what the parliamentary secretary has said and from our briefing that this was based loosely on the provisions of the Motor Vehicle (Third Party Insurance) Act. Essentially, that means that no pain and suffering payments will be available below the \$12 000 limit, which will be indexed. Damages for pecuniary or economic loss are fixed under this legislation at a maximum of three times the gross average weekly earnings. The legislation contains provision for structured settlements, by which I mean periodic payments, rather than lump sums, to be paid to accident victims. Structured settlements will be a voluntary option to which the parties must agree by consent order in the court. The legislation would also limit the amount payable for home and nursing care and would include a minimum threshold, which I understand is being considered at about \$5 000.

It is worth noting that the legislation does not include a cap on general damages. That is different from the provisions of the Motor Vehicle (Third Party Insurance) Act. It would be interesting to hear the parliamentary secretary explain why the Government has decided to make this legislation broadly consistent with the Motor Vehicle (Third Party Insurance) Act. I would like to see some good data demonstrating the impact on the motor vehicle insurance area of a \$12 000 threshold on general damages. Has it had the effect of significantly containing premiums in that area? What is the Government's projection of the likely impact of a threshold of \$12 000 on premiums in the public liability insurance field? Conversely, I assume that the Government must have determined that placing a cap on general damages, similar to that contained in the Motor Vehicle (Third Party Insurance) Act provisions, would not have had a significant impact on premiums or might not have been worth the trade-off of a reduction in benefits. This aspect is important because other States have imposed caps. South Australia has imposed an amount of \$2.2 million, I think. New South Wales and Queensland have opted for a cap the equivalent of three times the average weekly earnings. I presume that the Western Australian Government has contacted these other Governments and compared notes and data to find out why those other States have placed a cap on general damages, whereas obviously the Government in this State has opted not to

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do so. Is our situation so totally different from that in South Australia, for example, where a cap has been introduced? Alternatively, has South Australia got it wrong and do the figures not stack up? Once again, we are flying blind. Once again, it would be nice to have some good actuarial data on the implications of applying a cap as has been done in other States.

When I asked about the data and so on, and we found out clearly that there was none, we were advised that the threshold had been a policy decision. I find it extraordinary that, on the one hand, we are dealing with people's benefits after they have had some pretty horrific accidents and, on the other hand, we are trying to balance the need to ensure adequate compensation for such people with the need to drive premiums down and contain them across the whole community. It is quite worrying to suddenly find that there is no real basis for this decision, other than the fact that it was a policy decision. Someone who had been assessed for damages worth \$10 000 but did not receive that amount might ask why he had not. If we were to say that it was in order to keep premiums down in this State, he could ask us to prove it. We have no figures to prove it; in fact, we have nothing. When I asked for those figures in a briefing by government officers on behalf of the parliamentary secretary, I still did not get them. At the consideration in detail stage, I would love to know how that policy decision was made. We would love to see some slightly more objective data to back up the decision. As I said earlier, and as the member for Kingsley pointed out in some detail during the briefing, it would be interesting to see what the impact of the motor vehicle insurance limits are on payouts and, more to the point, what the impact of those limits is on premiums in this State.

Structured settlements have not previously been favoured because they have been subject to commonwealth taxation, whereas lump sums have not. As the parliamentary secretary will be aware, the federal tax arrangements are being changed. Even so, during the briefing from the Western Australian Insurance Commission, it was made clear to us that there would probably be no impact either way if structured settlements were made more of a mandatory requirement. Therefore, it is good that the legislation provides the facility for structured settlements. I hope that as tax laws change, it will afford the parties involved in each action before the courts another remedy that they can consider when resolving these sorts of claims.

As for the economic loss provided for in the Bill, it could be suggested that the restrictions are somewhat unfair on high income earners. It has certainly been put to us that they discriminate against anyone who is young, has potential in a career path or has had a high income and is temporarily out of the work force. For example, a man or a woman who left the work force to care for a child, and who subsequently has an accident, may find that his or her income is assessed at a lower level than might be considered appropriate. No solid data has been presented to demonstrate that these restrictions will have a significant impact on the costs incurred by insurance companies or on premiums. It would be nice if the Government had quantified the impact of these restrictions before it decided to put this legislation through the Parliament.

The second part of the legislation deals with the advertising of legal services. This matter has also been considered by the other States. The key features are that it provides for a penalty of \$10 000 for touting for personal injury legal services, and it restricts advertising to material that has been printed or published on the Internet and that has been determined to be in accordance with the legislation. It provides also that no-win, no-fee advertisements will be banned, and that advertising will not be allowed in and around hospitals. The general idea seems to be to limit the amount of claims activity that is generated by supermarket lawyers, if I can put it that way. I would appreciate the parliamentary secretary's advice on how these limitations on advertising will be determined and implemented, because I suspect that this Bill has loopholes that we can drive a truck through. For example, a lawyer may place an advertisement in a newspaper that states, "Do you need legal advice? If so, we may be able to provide it free". Even though to me that is a sort of no-win, no-fee advertisement, it probably would be determined to be in accordance with this legislation, because it does not specifically relate to public liability insurance or accident payments.

I would also like the parliamentary secretary to tell the House whether the Government has considered or is considering any other initiatives that would provide for a reduction in premiums and why those initiatives have not been picked up by the Government to date. I will put a few of those initiatives on the record, and perhaps down the track the parliamentary secretary can address some of these matters. Some of the other States have provided direct assistance to the small business community through temporary stamp duty relief. In this State people pay eight per cent stamp duty on public liability insurance premiums. The Tasmanian Government has abolished stamp duty on public liability insurance premiums effective from 1 July, and I understand that New South Wales has announced it will halve the stamp duty on insurance premiums from 10 per cent to five per cent. When we consider that the Government in this State must be profiteering from stamp duty on the increase in public liability insurance premiums, a strong moral case can be put for some form of temporary stamp duty relief to provide direct assistance to the small business community, community groups and sporting associations.

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I would appreciate some figures from the parliamentary secretary if this matter has been considered. I understand from the data on public liability insurance that the Government raises between \$8.9 million and \$9 million in stamp duty from public liability insurance premiums. The stamp duty on insurance premiums has skyrocketed this year, I think by approximately \$50 million. Rather than sit back and take advantage of these skyrocketing public liability insurance premiums, the Government should try to reduce the load on the community by returning some of that revenue to the community in the form of stamp duty relief. I would welcome the parliamentary secretary's comments on whether that initiative has been considered; and, if so, why the Government has not gone down this path.

I would also like to know whether the Government has considered providing direct assistance for the development of risk management strategies, as is being done in at least one or two other States. Some community and sporting groups have indicated to me that the requirement to develop risk management strategies will impose quite a burden. The Government has said that government departments are working with different groups in this area. However, that is not direct assistance. It would be excellent if the Government would use some of its profits from the stamp duty on insurance premiums to meet some or all of the costs of these groups for the development of risk management strategies. I would also like to hear from the parliamentary secretary whether the Government has considered giving any assistance to the small business sector for risk assessment. For example, the Government could set a threshold of businesses with a turnover of less than \$750 000 per annum and provide some money through the Insurance Commission of Western Australia, or whatever, to coordinate the provision of risk assessment advice to the small business sector. Alternatively, it could allow a 50 per cent rebate for small businesses that go down this path. The main thing is that the Government should demonstrate that it has some real commitment to the small business sector by being prepared to help it reduce risks in the workplace and, therefore, help reduce insurance premiums across-the-board.

I asked earlier about a cap on general damages similar to the cap provided for in the Motor Vehicle (Third Party Insurance) Act. I am interested to know how that was assessed. I would also appreciate some response on why a different calculation method was not used for economic loss. Three times the average weekly earnings may appear to be a fairly satisfactory rudimentary benchmark. However, as I indicated earlier, that may be an unfair arrangement, particularly for people on higher incomes. It is beholden on the parliamentary secretary to explain why that measure was introduced.

The Government has been very quiet on its intention to extend the statute of limitations. I ask the parliament secretary to indicate whether any assessment has been carried out to determine what impact that will have on public liability insurance premiums, because it clearly will have a negative impact on insurance premiums in this State.

Although I am not keen on taking an overly bureaucratic approach, one of the other States has appointed an insurance commissioner and is limiting the capacity of litigants to recoup legal costs from a losing opponent. Victoria may have already introduced legislation along these lines. It would take some persuasion to convince me that we should appoint an insurance commissioner, but this has happened elsewhere, and presumably the Government has had close liaison with the other States and has been able to assess measures such as this. I would like to know whether this measure has been assessed and whether alternative ways of trying to keep the lid on public liability insurance premiums have been looked at, or whether it is just the case that a policy decision has been made and in some subjective way it has been determined that this is in the best interests of this State.

The issue of waivers has been raised a number of times. I referred earlier to the need for people to take responsibility for their actions. Some of the other State Governments have already sought to include a greater voluntary assumption or self-assessment of risk in their legislation. The Commonwealth is also proceeding with legislation. It would be interesting to hear from the parliamentary secretary whether the Government will introduce complementary legislation when the Commonwealth has moved in that direction. Will any legislation be contemplated in this State to waive the element of risk for people who undertake recreational activities? It is very difficult for members on this side of the Chamber to know these things when we do not have details in front of us. The incident to which I referred earlier of someone on the eastern seaboard who dived into the water and hurt himself and then sued the local council would fit into this category, as would the notorious situation that arose from an incident that occurred on Rottnest Island some years ago. It will be interesting to see what consideration the Government has given to the provision of some form of legal waiver in those circumstances. Another case involves people who attend motor racing events. Many people in the community would agree that, providing the signage is adequate and tickets contain the proper warnings, people should assume a greater degree of personal responsibility if an accident occurs at a motor racing event. Is the Government still considering this? What does it consider are the pros and cons of moving down that path?

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Perhaps the Government should consider other innovative ideas; for example, eliminating the potential to take multiple insurance coverage of the same risk. Perhaps this could be done by somehow extending the scope of insurance policies for facility owners. It could apply if a local charity were to hire a council hall in which it allowed individual groups to set up stalls. The local council, those behind the charitable groups and the stallholders would presumably all have public liability insurance cover for the same thing. I understand that the Government is not very keen on an insurance partnership with local government. I am interested to know why the Government is shying away from working in partnership with local government. Surely if we knocked a couple of heads together and introduced a more streamlined system that simplified the overall insurance arrangements, that would be a classic example of how, in some small way, premiums in this State could be reduced.

So far in this debate we have not discussed the other side of the equation; namely, the need to reassess the availability of good rehabilitation and health care for people who are seriously injured. I raise that particularly as a member who represents a regional electorate where very often the care taken for granted in the metropolitan area is not available. As the other half of the equation it is incumbent on the Government to ensure that quality ongoing care is available for people who need it. A classic example is people with head injuries. Even in Bunbury, the State's largest regional city -

Mr D.A. Templeman: It is not the largest regional city.

Mr D.F. BARRON-SULLIVAN: We like to see it that way.

Mr D.A. Templeman: Mandurah is the largest regional city. Bunbury is the second largest regional city -

Mr D.F. BARRON-SULLIVAN: Is there adequate provision for people with head injuries in Mandurah? I genuinely do not know whether there is.

Mr D.A. Templeman: I am not aware whether there is.

Mr D.F. BARRON-SULLIVAN: It seems that the two largest regional cities in this State do not have proper facilities at which to treat people with head injuries. I have assisted families to get relatively young people into accommodation at old people's homes because nothing else is available. We must also examine the other half of the equation.

In relation to the legislation we just passed - I hope the parliamentary secretary will comment on this - we should be able to provide advice to people in community groups who have questions, especially people in small business who are losing sleep because their premiums have skyrocketed or they cannot get insurance. They want to talk to someone, and they could talk to me. However, the notion of establishing a hotline was suggested. We did not mean a telephone with no-one on the other end. We meant a hotline manned by someone who could give good, relevant advice to each organisation, based on a good understanding of the insurance industry and small business and how community, charitable and sporting organisations operate. It is not a matter of spending a lot of money. However, surely a little bit of money spent on establishing a hotline manned by good, dedicated people will pay dividends later, particularly when the other legislation has been passed and small groups want to know how to become incorporated or small businesses want to know about risk assessment so they can demonstrate to insurance companies that they are viable propositions. Although, in general terms, the Small Business Development Corporation and government agencies are contributing here and there, we need good quality advice on the other end of the phone that people can access with ease, preferably for the price of a local call or for a free call for regional people.

I hoped that the Government would have a survey conducted on the impact of the public liability insurance crisis on community groups, charitable organisations, sporting groups and especially the small business sector. A national survey was conducted - not by this Government - in March to assess the needs of community groups. It provided a good picture of the overall situation and demonstrated the seriousness of the public liability insurance crisis in the community. However, it did not touch on small business. I raise this not for the sake of obtaining figures with which to belt the Government around the chops due to the severity of the crisis, but to target areas in which the public liability insurance crisis is hitting the hardest. As the parliamentary secretary will be aware, other States have provided targeted assistance. In the tourism industry, for example, a number of businesses are suffering considerably because either they cannot get insurance or premiums have skyrocketed. Other State Governments have dipped into their pockets to provide financial relief through a fund. They know there is no short-term option, but they do not want businesses to go broke or to operate without public liability insurance.

The parliamentary secretary might say that the horse has bolted and it is too late to undertake a survey. However, I do not think it is. Given the Government has indicated that legislation will be introduced down the track, how much effort would be required to undertake a detailed survey of the small business sector, community

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groups and so on to determine the extent of their concerns and consequently the need for a hotline? What better way to identify the problems that require some sort of financial assistance or further legislative remedial action?

I hope also that the parliamentary secretary will give some indication why the Government has not sought to introduce good Samaritan legislation. On the face of it, it should be worthwhile, although in the absence of concrete data it is difficult to know. Other States have led the charge on this issue. I believe South Australia was the first State to introduce good Samaritan legislation. I would like the Government's advice on why Western Australia has not gone down that path. There was a media report a few weeks ago of someone who had an accident in a shopping centre. A qualified nurse rushed to help the person but the centre management told the would-be good Samaritan that she was not to go near the injured person because the centre management was worried about its public liability situation. I suppose it was worried about being sued if the victim suffered as a result of any treatment or attention by the would-be Samaritan.

Mr J.N. Hyde: That proved to be false though.

Mr D.F. BARRON-SULLIVAN: It proved to be false? Is the member suggesting that sort of thing would never happen?

Mr J.N. Hyde: No, not about the particular incident you brought up. However, the real problem is the creation of a perception of fear in the community when the fear in a case like that is unfounded. We must concentrate on the real problem, not people's perceptions.

Mr D.F. BARRON-SULLIVAN: The member is saying that the fear in that particular case was unfounded. I ask the Government whether it can demonstrate to the Opposition that good Samaritan legislation is not needed. Surf Life Saving Western Australia and a number of other groups say that good Samaritan legislation is needed. The case I mentioned is a good example to examine; however, I am asking what the statistics are across the board in these cases. How many cases are there in which good Samaritan legislation would have had an impact? I do not have that information and that is what we want from the Government. An assessment of the case I mentioned, along with a number of others, would be a tremendous help. How many of those cases would be identified without the advantage of some survey work? On the other hand, a survey of community groups would provide evidence of these examples. Some examples would be found to be unjustified, if indeed that is true of the example I gave. However, we are saying that we want that objective information to determine whether legislative reform in this State should go further. For example, why has South Australia enacted good Samaritan legislation? Was it because the South Australian Government made a policy decision and wanted to look good; was it because it sounded like tough talk and that is what people want to hear; or did it objectively assess the situation and determine that there would be a direct benefit to the community as a whole? All I am saying is please give us the information and tell us whether that potential initiative has been assessed in some detail.

Another matter that I ask the parliamentary secretary to comment on is drug abuse. I am not sure what measures the Government intends taking to limit the extent of negligence liability in cases in which a victim has used illicit drugs or excessive amounts of alcohol, or whatever. I gave a recent example of a case on the eastern seaboard in which someone was injured after drinking alcohol and taking some form of illicit tablets.

Finally, I would very much like the parliamentary secretary to give us an assessment of where we are heading in this State in relation to the other States. The Premier has said on more than one occasion that Western Australia confronts a different situation from New South Wales, Victoria or wherever. I believe that the responsibility lies with the Government to examine the situation on the eastern seaboard and each initiative being implemented in the other States and to explain to us why those initiatives are not being adopted in this State. For example, in New South Wales - the Premier broadly referred to this subject earlier today - an upper limit will be applied to victims for non-economic loss and lost earnings. I believe that the upper limit is \$350 000. I would be interested to know why WA's approach differs in that respect. The New South Wales Government, in its second stage of legislative reforms, is considering waivers and the voluntary assumption of risk, to which I referred earlier. New South Wales is also going down the path of protecting volunteers under good Samaritan legislation and taking into account drug and alcohol use when assessing the degree of negligence displayed by accident victims.

Hopping across the border, I believe the Victorian Government, in conjunction with the Municipal Association of Victoria, has already implemented a group insurance scheme for community organisations. I alluded earlier to the partnership between state and local government and I am interested to know why this State is not going down that path. In Victoria, a grant will be provided for the development of risk mitigation activities, which is linked to the community group insurance scheme. Another great initiative in Victoria is the provision of \$100 000 to adventure tourism operators to assist them in preparing risk management plans and audits. The member for Nedlands previously referred to the impact of the public liability insurance crisis on people in the adventure tourism industry. I have spoken to a number of people involved in horse riding, trekking, motor

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vehicle hire and so on who are having enormous difficulty getting public liability insurance; and, when they can get it, they must pay hugely increased premiums. Victoria will also introduce measures to provide for waivers, which will allow people to accept responsibility for their own participation in risky activities, such as people attending motor racing activities and the like.

Victoria will also introduce good Samaritan legislation to protect volunteers from the risk of being sued. Interestingly, Victoria will do the same as this State with structured payments, enabling a substantial amount of benefits to be paid in regular instalments rather than as one lump sum. I take my hat off to the Government in this State for going down that path, because it appears that only two or three States have moved in that direction. Victoria will also remove the right to claim damages when an injury is suffered through either criminal activity - which is covered in this Bill - or when a victim is under the influence of drugs. Again, I seek the parliamentary secretary's advice. I would have thought that most people in the community would accept that a person who is whacked out on illicit drugs should not be eligible for the same legal recourse as people who are not influenced in that way.

Let us go to the north east coast and examine a few initiatives there. Queensland has already introduced a number of reforms and has stage 2 of its reforms under way as I speak, including a proposal that the increase in risk caused by taking recreational drugs - that includes alcohol in Queensland - be taken into account as a factor in negligence and should not lead to an increase in the duty of care owed by third parties. Queensland is also heading down the path of waivers and self-assumption of risk, although it will ensure they are subject to suitable safeguards for minors. Queensland is also considering caps on general damages. Again, I would appreciate some actuarial advice on why this State is not heading down the same path. Queensland is considering amending its statute of limitations but maintaining a high level of protection for minors. That touches on the point I raised earlier that Western Australia is going in one direction by extending the statute of limitations, whereas other States are considering winding it back. The national review recommended that in some cases it should be restricted to three years. Again, advice from the parliamentary secretary would be appropriate.

South Australia, as I mentioned earlier, has already made a few reforms in the area of civil liability. It is conducting advisory sessions on raising risk awareness in the field of risk management for tourism groups and will soon provide similar services for volunteer and community groups. That is a tremendous idea and again touches on what I said earlier to the parliamentary secretary: it would be great to see the Government taking a proactive stance and installing a hotline to direct people to either government-funded or government-coordinated risk management courses. The South Australian Government is urgently considering a wide range of reforms, in particular a cap on payouts and self-assumption of risk; that is, a waiver of damages or the disallowance of damages to people injured while engaging in criminal activity or under the influence of drugs. That issue is covered in this Bill. South Australia also supports a review of the law of negligence.

*Sitting suspended from 6.00 to 7.00 pm*

Mr D.F. BARRON-SULLIVAN: Before the break I was commenting on some of the initiatives that have been implemented in other States, and I asked whether the parliamentary secretary would be able to advise to what extent those initiatives had been assessed by the Western Australian Government before drafting this legislation. I got as far as Tasmania. I pointed out that in its 2002-03 budget, the Tasmanian Government announced that stamp duty on public liability insurance policies would be abolished with effect from 1 July 2002. I cannot think of a more direct and meaningful way to relieve the burden on small business and community groups in relation to public liability insurance costs.

[Quorum formed.]

Mr D.F. BARRON-SULLIVAN: That is the second time I have been interrupted while talking about what is happening in Tasmania. The Tasmanian Government decided to abolish stamp duty on public liability insurance policies with effect from 1 July. As I said, I cannot think of a more meaningful and helpful way to assist the community to reduce the costs that arise from public liability insurance. Even the Northern Territory is taking action in this regard.

Although the Western Australian Government has announced what it calls a plan of attack, it has dragged its heels for too long on this matter. A number of States are now in their second phase of legislative reform; yet here we are dealing with the very first measures to be introduced by the Western Australian Government. The Government said that it would limit the cost of the general damages components of awards by bringing them into line with other personal injury compensation schemes in Western Australia. That has not happened. As I said earlier, the Motor Vehicle (Third Party Insurance) Act provisions have not been replicated in whole in this legislation, and it would be interesting to know why. Point one of the Government's plan has not been met.



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The second point was to legislate to allow self-assumption of risk by people who choose to engage in inherently risky activities such as tourism and sports. Of course, that has not been done either, so I look forward to the parliamentary secretary explaining why not. Thirdly, the Government said that it would ensure the consequences of taking drugs were taken into account in contributory negligence. Again, I look forward to hearing from the parliamentary secretary when that will be forthcoming, because it was an initiative that had in-principle support from the Government.

Finally, it is all very well for the Government to draft legislation providing volunteer organisations with qualified immunity. It is all very well for it to bring this sort of legislation before the Parliament. However, at the moment we have no indication whatsoever that it will help drive down insurance industry costs; and, if it does so, there is no indication that the Government has measures in place to ensure that those reduced industry costs will be passed on by way of reduced insurance premiums. There are a lot of initiatives that the Government could have considered - and possibly has - and we, on behalf of the community, want to know why some of those initiatives have not been implemented. The Government owes us an explanation.

I reiterate my call to the Government to provide direct support for small business and community and sporting organisations. Please let us have a hotline, some assistance with risk assessment and some direct action to assist those groups that are caught out by this public liability crisis. We are flying blind with this legislation, and we can have no confidence at the moment that this will achieve the objectives that the Government has set out to achieve on behalf of those affected by the current crisis.

**MR B.J. GRYLLS** (Merredin) [7.06 pm]: I rise to put the National Party's position on the Civil Liability Bill. I start by thanking the member for Mitchell for his very in-depth examination of the issue. It is a complex issue and one that requires a greater amount of investigation by members on both sides of the Chamber. The member for Mitchell should be commended for the amount of work and research he has done to put the Opposition's case. The Civil Liability Bill brings forward some tough issues for Parliament to deal with. The change to the law of torts and the common law as it has developed over hundreds of years requires us to closely examine the Bill.

On the face of it, this legislation looks as though it will have an effect. National Party members have been through it in the party room. The message from our party room is that this is a Bill we can support. At the beginning of the year the National Party put together a comprehensive, Australia-wide plan developed between the National Parties in all States of Australia. The National Party task force called for thresholds, structured settlements and the abolition of no-win, no-pay advertising. This Bill certainly covers some of those. However, the one thing that will be required from the parliamentary secretary during his reply to the second reading debate and at the consideration in detail stage is the assurance that this legislation will lead to a reduction in public liability insurance premiums. If premiums will not be reduced, this sort of legislation should not be attempted. We are changing the fundamental principles of common law, which, as the lawyers in this Chamber know, has been built up over many years. Tonight we are working on a trade-off. We are trading off some people's rights in an effort to reduce the costs of public liability insurance. If the Bill cannot achieve that, not only will it be hard for the Opposition to support it, but also the Government may have difficulty supporting it.

The second reading speech of the parliamentary secretary states -

Tort law reform that creates a fairer and more predictable legislative environment, alongside the adoption of better risk management practices, should improve the cost and availability of insurance.

We are really going way back into history to change these laws. Both the member for Mitchell and I, as well as the National Party, require a little more information and in-depth discussion on the "should" part, because to me should is not good enough. These reforms must reduce premiums. If premiums cannot be reduced, we should not go down this path. The National Party regards public liability insurance as an A-class issue, one that affects every sector of society. Reforms are needed so that people can get back to the way of life they are used to. Increases in public liability insurance premiums have caused unnecessary hardship in so many sectors, and it is incumbent on this Parliament to make the changes that will alleviate this. The parliamentary secretary must outline to the House, with examples and with research, exactly how this Bill will lead to a reduction in premiums.

The Bill does not address the issue of the good Samaritan that the member for Mitchell covered in his speech, and the strengthening of waivers for adventure tourism, sporting clubs and other organisations struggling under the burden of 200 to 300 per cent increases in premiums. Federally, Senator Helen Coonan is addressing waivers through the review of the law of negligence in the Justice Ipp report, which was handed down on 2 September. It is to be hoped that the parliamentary secretary and the Government will look closely at this report. This issue really needs to be dealt with at a national as well as a state level. A lot of work is going into this, and

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it would be crazy if everyone shot off on different tangents and did not take advantage of the large amount of work that has already been done.

I will run through the clauses of the Bill, putting the position of the National Party on each one. Clause 3 defines personal injury damages as follows -

damages that relate to the death of, or injury to, a person caused by the fault of another person, but does not include a sum payable under a superannuation scheme or any life or other insurance policy.

Clause 4 provides for a formula for the indexation of amounts of money set at thresholds. The Bill uses the wage cost index to set this threshold. Clause 5 ensures that the Bill is binding on the State. Part 2 is headed "Personal injury damages". Division 1 of part 2 specifies that the Bill is for personal injury damages; exclusions for damages are motor vehicle third party claims, workers compensation, civil aviation and asbestos diseases. The injury must have occurred after the proclamation of the Act. The member for Mitchell asked whether this Bill would be retrospective. That is something I would like the parliamentary secretary to address, and to produce the figures. This division gets to the nitty gritty of the issue, and we need to know how the figures work and why they indicate that retrospectivity is not necessary. Would retrospectivity influence the insurance companies to produce lower premiums? Clause 7 specifies that a court cannot award damages contrary to divisions 2 or 3, and clause 8 clarifies that this Bill does not give rise to any cause of action to recover damages. The National Party supports all these clauses, but with the proviso that the parliamentary secretary can convince us with strong argument and strong figures that this Bill will have some effect on liability premiums.

Division 2 of part 2 imposes a threshold on damages for non-pecuniary loss. In our meetings with the Insurance Council and many of the interested parties in this issue, it was clearly outlined to us that, from the industry point of view, the explosion in premiums has not resulted from the large landmark cases that we hear about on the news, such as that which occurred at Rottneest Island and the example of the surfer in Sydney who hit his head and sued for \$4 million; rather, it has resulted from all the small cases. If an injured party makes a claim for about \$8 000, it is cheaper for the company to pay that claim out than to fight it in court. That is exactly what has been happening; there has been a proliferation of small claims around that amount, and that has caused the huge increase in premiums. The idea of putting in place a threshold is therefore a good one.

Once again, changes are being made to the common law, and some injured parties will feel very aggrieved about this. I am sure all members of Parliament have received correspondence from the Injured Persons Action and Support Association. That organisation makes some relevant points, one of which is that we are, in passing this Bill, taking away people's rights. We are telling people that unless they are injured to the tune of more than \$12 000, they have no right to seek compensation. This is a course of action that the Parliament needs to pursue, and I am quite prepared to support a threshold of \$12 000. However, I am aware that I am trading off people's rights, and for that trade-off, I want to see reduced premiums. If that is not achieved, the imposition of a threshold is pointless. Clause 9(2) reads -

**"non-pecuniary loss"** means -

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

The threshold is set at \$12 000 for the year ended 30 June 2003. This is also indexed, using the wage cost index. If the amount of non-pecuniary loss is assessed to be less than \$12 000 for the year of assessment, damages are not awarded. The threshold figure and the indexation formula are adopted from the Motor Vehicle (Third Party Insurance) Act 1943. It would be very interesting if, during his reply, the parliamentary secretary could run through the reasons this Act was used, and exactly how the Government came up with the figure of \$12 000.

Division 3 fixes damages for pecuniary loss. Clause 11 addresses damages for loss of earnings. The assessment of loss of earnings or earnings capacity is limited so as not to accrue at a rate exceeding three times the average weekly earnings. My research shows that average weekly earnings are about \$30 000 a year, so this clause caps the loss at \$90 000 a year. Once again, we are limiting people's rights by putting in a top figure, but we are doing so in an effort to see a reduction in premiums. That \$90 000 is a fair figure. Some people will say they had a greater earning capacity than that figure, if the \$90 000 is correct, but, once again, it is time to draw a line in the sand, to enable the Parliament to provide some relief to the many agencies and groups that are suffering under the burden of the huge public liability insurance premiums. The figure is acceptable, and the National

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Party supports it. Clause 12 restricts the level of damages awarded for gratuitous home care services. No damages are to be awarded if the services would have been provided, even if the person had not suffered an injury. An amount and a formula are supplied to place a threshold and cap on the damages. The threshold is \$5 000, and the restriction on awarding damages is calculated using the average weekly wage, in total or pro rata.

Division 4 of part 2 defines structured settlements. The National Party plan was brought out early this year. I will level one criticism at the Government in this area. These changes to the tort law were spoken about before the end of last year. They have been out there, and other States have adopted them. Although I am glad we are debating it in the Parliament now, it could have been brought forward as a matter of urgency. We have debated a lot of legislation in this Parliament and I would have thought some of these changes would be higher on the Government's list of priorities than they have been.

Structured settlements are a good idea. They give people the ability to negotiate periodic payments rather than one lump sum payment, and they will be a good way of not only helping to limit increases in insurance premiums but also providing more of a structure to the way that people get this money. There are many examples throughout society of people who have not used their lump sum wisely, and it is important for this Parliament to provide the structure for periodic payments. Hopefully, people will utilise that better than they would a lump sum.

I must declare an interest in part of this Bill. My wife is a lawyer and she is not too keen on limiting the ability of lawyers to advertise legal services. This is something we fight about at home, because I am in total agreement with it. The ambulance chaser mentality has come from America and it is disgusting. Recently there has been a proliferation of these types of advertisements on television. Perhaps these lawyers have seen the legislation and they want to get in before it goes through. Many companies are now advertising in this way, and I do not think it sends the right message. Obviously, if people have been aggrieved they have the right to access a lawyer and to expect that lawyer to try to get the best result for them. However, from my research, it seems that these lawyers are convincing people that suing is a good option, and that has led to spiralling public liability premiums. These issues are having a huge impact on all members of society and we need to address them.

In the time I have left I will run through some of the specifics about banning legal advertising. The Bill will place restrictions on lawyers advertising personal injury services. The restrictions apply to many forms of media advertising and advertising around hospitals. Some specified forms of advertising are acceptable. However, lawyers can specify only the practice name and contact details. The important part is the restrictions on the no win, no pay contract. I am sure that if I had had an accident and was in pain, and the first thing I heard when I sat down in front of the TV was some lawyer spruiking the idea of no win, no pay, it would probably look a fairly attractive proposition. This is an important change, and I am sure the Law Society of Western Australia is not overly keen on the idea. As I say, I am sure that my wife's law firm will be giving her a good-natured ribbing when they find out that I have supported this, but it is a necessary change.

If this Bill is passed we will be making major changes to the law. On the face of it, this Bill looks as though it could have some beneficial effects. However, we need to be clear that the purpose of this Bill is to reduce public liability premiums to those people who are affected by the spiralling costs of premiums - increases of 200 per cent and more that are making these premiums unaffordable. We are waiting for the parliamentary secretary to explain how this legislation can guarantee a reduction in those premiums. The parliamentary secretary has the benefit of advisers and people who have done the research, so we look forward to his explaining how that can happen. If the parliamentary secretary can demonstrate to the National Party that premiums will come down, we will be happy to support this Bill. If the parliamentary secretary cannot demonstrate that, we will not support this Bill, because the National Party does not believe in taking away people's rights without some form of benefit in the form of a lower public liability premium.

**MRS C.L. EDWARDES** (Kingsley) [7.24 pm]: In debating this Bill I am adding a few words to the many words that have been reported on at length for some time. Although the debate commenced in some detail in January-February this year, there have been ongoing media reports of awards granted by courts that would appear to the ordinary person in the community to be excessive for what might be frivolous or vexatious claims. Public debate about tort law has never been as intensive as in the past year or so, and there have been a number of media reports on that. An article in *The West Australian* was headed "Slip trip claim seen as slippery". The Insurance Council of Western Australia was reported as saying that a simple case costs up to \$18 000 to get to court before damages are considered and therefore insurers have to make a commercial decision to defend a claim or pay out, and that up to 97 per cent of claims are settled. The Insurance Council indicated that the number of slip and trip claims had risen significantly over three or four years, but the exact figure was not

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available. We had the ludicrous situation of a nurse of 20 years standing being stopped from assisting a person injured in a shopping centre because of the fear of the impact that might have on the centre's public liability insurance. She was trying to help a man who had collapsed and fallen and had a gash on his head. She suspected he had not only concussion but also internal injuries. She was prevented from assisting this man prior to the ambulance arriving. Everybody will agree that it is a ludicrous situation when public liability insurance concerns stop a good Samaritan from helping others. That needs to be very much a part of the debate in the future.

One Australian Competition and Consumer Commission report into the insurance industry was presented in March, and another report is about to be presented. We have had the Trowbridge report; the eminent person's report chaired by Mr Justice Ipp, who is well known and well regarded in Western Australia; and many ministerial council meetings. The first comment on these reports from the Western Australian Government was made by the Minister for Consumer and Employment Protection on 4 February 2002 when it was reported -

... he would have "no problem" participating in a national scheme, so long as the federal Government had "a solid position paper to put on the table".

However, on the next day, he said the Government would attend a proposed forum. I would have thought that the appropriate response, given the nature of the debate in this place, in which this Government had taken part, would be that the Government was happy to attend and it had a plan to put in place. That did not happen, and this Government did not release its plan on what it would do until May, when Cabinet approved the drafting, and then in July it was further highlighted. The legislation was then removed from the Minister for Consumer and Employment Protection and handed to the parliamentary secretary, the member for Rockingham.

One of the areas of concern in this debate is the lack of involvement in the process in those early days of the Attorneys General. The Attorneys General have been talking about tort reform for a number of years, and they had already started some of the preliminary work. They have since become involved in this issue, and the Ipp report has flowed from that. There is some criticism that because they were not involved at an earlier stage, decisions were delayed. It appears that they were not included earlier because they were seen to be too close to plaintiff lawyers. It must be recognised that lawyers also represent defendants. That is the nature of the adversarial task. Mr Justice Ipp was reported in an article on Friday, 5 July - before his report came down - as saying -

... his review of negligence law is about lowering the community's expectations about the size of claims, and he warns that crude measures may be needed to achieve that end.

His view of a crude measure was the capping of damages, which he saw as -

clearly a potential, quite crude, but it may be necessary

In foreshadowing his views on negligence, he said -

There is a general perception in the community that the law of negligence has gone over the top,

That is right. I know there are a few lawyers in this House, and that they understand the law of negligence. I do not think any of us who have been law students would forget Fleming, on which we were brought up. It is very important that before we as members of Parliament start to talk about how we should change the law of negligence, we understand and are able to distinguish what we are talking about. Tort deals with a wrong. In his book, *Learning the Law*, Glanville Williams defines "tort" as being derived from French and -

... signifying any wrong, and itself derived from the Latin *tortus*, meaning "twisted" or "wrung."

It is a wrong. There can be civil wrongs, such as breach of contract, tort or breach of trust. Centuries ago, the penalties or damages for torts were seen to be punitive. As time has gone on - this is the subject of the debate now - the damages have grown to such an extent that some people believe it is very easy to prove negligence, and that the awards that have been granted are far in excess of what the community can pay. Tort can be a number of things, including a trespass, a negligence, a nuisance or defamation. It comprises a large number of actions.

A number of things need to be proven for an action in negligence. People say that negligence is easy to prove, but it has not always been the case. The damages awarded in some cases over the past couple of years have started to highlight that. In a slip-and-trip case, the Western Australian Supreme Court indicated, and upheld on appeal, that the ordinary person should look out when walking on pavement; that pavements will not necessarily be even and steady and that people walking on them should watch where they are going. That is a significant change from the outcomes of similar cases over the past decade or so.

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Necessary elements for an action in negligence include a legal duty on the defendant to use care towards the plaintiff. There must be that connection. There must be a failure of the defendant to perform that duty or, in other words, a breach of that duty. There must be damage to the plaintiff. That is one of the areas about which there is concern, particularly in the carers' area in which there is no outlaying of expenses that have been reimbursed. There must be damage to the plaintiff caused by the defendant's breach of duty, and a reasonable connection between the defendant's conduct and the injury suffered by the plaintiff.

I mention a couple of other related notions, primarily because they are referred to in the Ipp report; that is, contributory negligence and the concept that the plaintiff must not have voluntarily assumed the risk. Other elements include the reasonable man test, the standard of care, the duty owed to a neighbour and the Donohue and Stevenson test, which I will not go through. A good body of negligence law has been set in place. When we were considering the workers compensation changes a few years ago, we queried whether we would also change the definition of duty of care. We decided that if we did, we would change a huge body of law, and that to try to put the concept of a duty of care in writing would limit and/or restrict it. Although the Occupational Safety and Health Act refers to a duty, we felt that to try to codify negligence would be far too restrictive.

There is seen to be a growing trend of the common law courts awarding plaintiffs substantial damages in circumstances that are regarded as trivial. I have highlighted a couple of the cases that have been reported. The issue for us is how Western Australians will be looked after. There is nothing wrong with compensation per se. I do not think we should go down a path that would deny compensation to people who are the victims of some injury. There is an expectation that those who are injured through the negligence of another should be compensated. That applies even to someone who has voluntarily assumed the risk. For instance, bungee jumping is a dangerous and risky sport. I do not think a person should voluntarily assume the risk that staff have not been well trained or equipment has not been maintained or that there will not be proper supervision etc. People are suggesting that a waiver of that right could be acceptable. We need to consider that very carefully because people signing on the bottom line of seven or eight pages of documents before they go bungee jumping would not voluntarily assume the risk of an accident occurring because of improper supervision, inadequate maintenance of the harnesses and the like or improper training of the staff. That is a big issue.

The assumption is that the huge compensation awards made by the courts are being paid by insurance companies. Everybody knows that insurance companies have deep pockets. However, insurance companies primarily get their money from the premiums people pay, and when people are having trouble getting public liability insurance because it is no longer affordable or accessible, it becomes an issue for the community. Small businesses and community associations are already complaining. Mr Justice Spigelman has presented an excellent summary and review of this area in "Negligence: the Last Outpost of the Welfare State". He examines the trend of judicial decisions over a few decades, and states -

There seems little doubt that the attitude of judges has been determined to a very substantial extent by the assumption, almost always correct, that a defendant is insured.

Mr Justice Spigelman states that the long-term trend has been revised, and cites a number of judgments over the past couple of years that are starting to reverse that trend. However, he doubts that Parliaments will have the patience to allow this type of development to work itself out. On page 436 of his paper he states -

Today it is commonplace that claimants with relatively minor disabilities are rewarded lump sums greater than the claimant (or defendant) could save in a lifetime. The generous application of these rules is producing a litigious society and has already spawned an aggressive legal industry. I am concerned that the common law is being developed to a stage that already inflicts too great a cost upon the community both economic and social.

The issue is one of balance. The community does not like seeing large claims being awarded, particularly to frivolous cases. Justice Spigelman also stated -

The nature of the legislative changes that have already been made, and which are now in prospect, strongly indicate that the community is not prepared to pay for the level of compensation which the judiciary, and the legal profession generally, has come to regard as appropriate.

He is basically saying that the community is already concerned about large payments and frivolous claims.

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

Mrs C.L. EDWARDES: Although Justice Spigelman doubts whether legislators will have enough patience, he believes the issue is riding on the community's position. I agree with him. When we realise that, in some instances, the insurance premiums of small businesses, sporting organisations, and groups and associations such

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as the Girl Guides and Blue Light Discos are increasing by up to 500 per cent, we cannot sit back and allow the courts to reverse the trend. What is in the legislation that will change the trend? What difference will the legislation make? I suggest to the parliamentary secretary that one of the biggest issues not being addressed by the legislation is data collection. Data collection is very important because it helps us to grasp the details. The Ipp report refers to figures for Western Australia, and, when I questioned the officers who provided the briefing, I was told that the figures incorporated the personal injuries. There have been a few changes in workers compensation payments in Western Australia, particularly in common law and through the courts. The workers compensation damages claims have not been excluded from the figures. When we were considering the figures for workers compensation, I asked the courts to undertake a physical check of some cases. I suggested that the staff obtain the details from WorkCover because they are readily available. The documents not only identified the analysis but also went through all the representative components; that is, general damages, past and future economic loss, gratuitous services, and the like. The research, as limited as it was, was quite valuable. Far be it from me to say that the research was extensive, because it represented only a selection of cases and was undertaken so that we could determine whether the cap that was being imposed on weekly earnings would be fair. The critical issue was whether the cap would be fair in terms of the damages being awarded in a particular area. The legislation does not provide such information. We do not have any information about the percentage of cases that will be knocked out by the threshold test of \$12 000. We will continue to level that criticism at the Government, at the insurance industry and at those who are involved in regulating the industry. On one of the occasions on which he was asked about the issue, the Premier stated that -

... the onus was on insurance companies to justify massive increases before WA would consider joining a national scheme or reducing the opportunity people had to seek compensation in court.

“We want a justification of these increases and we want to be assured that insurance companies are not using the circumstances that now exist to profiteer and exploit the public of Australia,”

Whatever information the Premier was seeking to obtain at that time has not been put before Parliament. The legislation is seriously flawed because it does not contain that type of detail.

We have received many reports indicating the reasons for the changes. One article states that -

As a result of increasing claims costs, the insurance industry lost \$1.6 billion on public liability from 1998 to 2000. During that time claims numbers rose from 55,000 to 88,000.

Excluding workers compensation - it would be highly unfair to incorporate workers compensation claims because they have been specifically excluded from the legislation - what is the figure for Western Australia? A report on 22 August stated that, after considering the Australian Prudential Regulation figures, there was no substantiation of a claims blow-out. Although the number of public liability claims had increased by six per cent to 69 000 in 2000-01, their value had dropped 14.5 per cent. Such information supports Justice Spigelman's view that there had been a decrease in the trend over the past couple of years. The same report also stated that -

The industry's general insurance profitability was \$1.068 billion in 2000-01, the highest since 1997.

Again, we do not know the figures for Western Australia. We are not in a national scheme. The States are not moving together down the one path; Western Australia is not implementing the same measures as South Australia, New South Wales or Queensland. Each State is creating its own scheme. New South Wales may be doing it harder and tougher than other States, but each State has made certain variations, and we in this Parliament do not know whether the changes we are making will have the desired impact on Western Australians. Further, we do not know if the changes will discriminate against Western Australians because we will have an insurance industry that will operate on a national basis.

I turn now to solicitors' advertising. If the proposals put forward are meant to stop O'Halloran harassing the Premier on 6PR on a Tuesday morning, they will not work, because he is not touting for business. In his workers compensation advertisement that appeared on September 4 he asks -

Why is the media staying silent on Gallop's proposed public liability laws? How's this for a story - everytime someone wins a public liability case in WA, the insurance company keeps the first \$12,000.

He continues -

Come on Perth journalists - you win the case and they keep your money - ask Gallop why?

Not one part of the ad states that a person should ring O'Halloran and that he will help them with their case. It does not state anywhere that he will visit a person's house free of charge. The changes that are being put forward to restrict advertising by solicitors will not stop O'Halloran's ads. If that is what the Government



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intended, it will not be achieved. The provisions in the legislation might prevent a taxi driver from handing over a solicitor's card when he picks up from hospital a person who has been in a motor vehicle accident -

Mr R.C. Kucera: It might be of interest to you to know that this was a national recommendation.

**Mrs C.L. EDWARDES:** The minister does not know what he is talking about. In terms of advertising by solicitors, I know what New South Wales has done and I know what legislation Queensland has had in place for years. This legislation will not stop those ads if that was the Government's target. It will stop the taxi driver from handing over a solicitor's card and it will stop some of the other things at which we screw up our nose. However, it will not stop those O'Halloran ads if that was the intended market.

The Law Society of WA is concerned that this Bill's clauses will have a great impact on their own legal advice service to the public. When people seek legal advice from the Law Society and must then see a lawyer about continuing on with a case, what is the Law Society supposed to do? It will not be able to tell these people who to go to or give them lawyers' names or addresses. It will not be able to tell their clients much at all. However, the client will need to seek out a lawyer by looking in the white or the yellow pages. What will the Citizens Advice Bureau of WA in Joondalup do? The bureau's clients will be able to receive advice, but beyond that the bureau will not be able to tell them where to go. The bureau will not be able to provide their clients with a list of the lawyers who are experienced in a particular area. The Law Society has grave concerns about this legislation because it will impact on those organisations that provide a legal referral service. How will the public get any benefit from the amendments to this legislation? It is of major concern. All those organisations provide referral services to the public in response to queries from the public.

Mr M. McGowan: The point you raise is legitimate and we will amend the legislation to fix the problem.

Mrs C.L. EDWARDES: It is absolutely critical that that is done. These are the critical issues that arise when legislation is rushed through. I will raise a number of other drafting problems when we go into the consideration in detail stage.

Mr M. McGowan interjected.

Mrs C.L. EDWARDES: The member was not listening to what I said. The critical issue is that the Government has taken too long to respond. This Government sits back and waits for somebody else to raise matters. The Premier's performance at question time showed him up. At the end of the day, if he cannot make the decisions and take a leadership role in Western Australia, the job should be given to somebody else. We will take over the job and make decisions about the legislation. Members of the Government cannot sit back on their hands when people are hurting. We have not got any pieces of legislation through on this matter. What happened to the volunteers Bill? The Insurance Commission of Western Australia Amendment Bill will not provide any benefit to volunteer organisations whatsoever. The premiums that they will pay today will be the premiums that they will pay tomorrow, next week, next year and the year after that. There is no benefit to those organisations in going through the Insurance Commission of Western Australia.

The issue of advertising by solicitors must be addressed in this legislation. However, it will not affect the O'Halloran ads. We must go back and examine the words in the legislation very carefully. The unprofessional conduct rules of the Law Society may provide an opportunity and an avenue that can be taken. In re - a Practitioner of the Supreme Court (1927), South Australian State Reports, the definition of "unprofessional conduct", which was accepted in the Kyle v Legal Practitioners Complaints Committee (1999), was stated as the following -

In our view "unprofessional conduct" is not necessarily limited to conduct which is "disgraceful or dishonourable," in the ordinary sense of those terms. It includes, we think, conduct which may reasonably be held to violate, or to fall short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency.

There is no reason for a public statement by a legal practitioner not to be found to amount to unprofessional conduct if it is found to be misleading or inappropriate in its content. This legislation will not deal with the O'Hallorans of this world and the ads in which he attacks the Premier on 6PR on a Tuesday morning.

**MR P.G. PENDAL** (South Perth) [7.55 pm]: In recent weeks we have dealt with two insurance Bills. I was pleased to be supportive of the first Bill because, despite its limitations, it will certainly have an impact on the community based organisations that we heard so much about in that debate. I commend the Government for that. However, I am less confident that this second Bill is worth supporting. I am not sure that it should even be in Parliament in this form. I smell a rat because, in simple terms, we are confronted with customers or clients of insurance companies who are facing sky rocketing premiums in this State and others, and we are legislating to

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reduce the benefits to those consumers. We are getting off on the wrong foot, and it will be a lose-lose situation for insurance clients from the beginning. It is true that a problem arose and it is somewhat ironic that the Government chose to turn to the insurers for advice. That does not seem to be sensible in the light of the fact that this is a problem that is much of the making of the insurance companies.

The problem has something to do with the events of September 11, but I am getting tired of the excuses given in the Australian commercial arena that sheet home the blame for every imaginable shortcoming to the terrorist acts in America on that day last year. We have not seen any evidence - I will get to the point of where is the evidence as I develop my argument - of where Western Australian consumers or, for that matter, Australian consumers have produced the cost blow-outs that we are now legislating to meet. I have not seen any evidence that Western Australia's courts have gone out of control and awarded massive and unreasonable damages to clients and applicants; yet the same people are now having to bear the consequences of what happened because the insurers have not done their job properly. Not one shred of evidence in the form of actuarial or financial data has been presented to Parliament.

In a few minutes I will draw an analogy between today's situation and the position we faced nine years ago with workers compensation laws. I am concerned that we are going down a path that we have gone down before. I went down that path before as member of this place. At that time there was at least some demonstrable evidence available about the workers compensation crisis. However, not one skerrick of evidence has been put forward on an actuarial basis to show that we should be legislating away the rights of ordinary people in the way that we are intending to do tonight. I refer to the parliamentary secretary's speech, which he made on 14 August.

Mr A.J. Carpenter: An excellent speech.

Mr P.G. PENDAL: I did not think it was all that good.

Mr A.J. Carpenter: It was met with some acclaim.

**Mr P.G. PENDAL:** I met the other speech with some acclaim. It bothers me a bit that the Minister for Education in this State thinks that the speech was good enough to interject about, because I do not think that anything in the second reading speech backs up what we are doing. I want the Minister for Education to pay attention.

Mr A.J. Carpenter: You are wrong.

Mr P.G. PENDAL: If the minister pays attention he can then make a decision about whether I am wrong, but he should not do so until he has heard my argument. The second reading speech states -

For about the past decade there has been a steady increase in the number and size of negligence awards and settlements.

Has that occurred in Western Australia; and, if so, where are the figures? None was produced in the second reading speech or the explanatory memorandum to the Bill. The speech continues -

Decisions by the courts have also tended towards an increase in the circumstances in which a duty of care is owed to the public; for example, with injuries occurring at public beaches. The combination of these factors together with the probability that premiums have not been increased sufficiently to match claims costs has further exacerbated the problem.

Where is the evidence? Where is the financial data? Where are the actuarial assessments to demonstrate that that is an accurate statement? The speech continues -

The high rate of return on investment achieved by insurers and the discounting in a competitive market over this period have resulted in a lag in premium increases.

I have not noticed any evidence in any policy of a lag in premium increases. However, if there has been, no evidence has been put to this Parliament to justify that sort of remark. The statement by the parliamentary secretary in the second reading speech that causes me the most concern is -

Insurers have therefore become less willing to accept public liability proposals or to underwrite public liability insurance at the previous rates -

Members should listen to this next bit -

because of alleged losses incurred.

We are now legislating based on allegations and presumption. They are the parliamentary secretary's words - "because of alleged losses incurred". Does that mean that the minister, the Premier or the parliamentary



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secretary can say only that they are alleged losses, because they do not know? They have not asked. I wonder whether they have asked the Insurance Commission of Western Australia, in which I have a bit more faith than private insurers, whether it had been asked to make any actuarial assessment. If they did, no evidence has been put before this House to justify taking away and limiting the rights of ordinary people in the way that this legislation will, yet we are blithely doing this in the name of the policyholder. It simply does not make any sense to me.

I mentioned earlier that I had been down this path before. As it turns out, it may have been with some regret. I was shown the figures, no doubt along with many other people around the place, relating to the crisis in 1993. I refer to some figures from the 2000-01 annual report of WorkCover on workers compensation profits made by the insurance industry and self-insurers. One might ask why I am using workers compensation figures from 1993 in a debate of this kind today. I am doing so because we did the same thing in 1993 that we are doing today. It was on the premise that there was a crisis. Therefore, we had to pass on that crisis to policyholders. That is what we are being asked to do today. The 1993 position is relevant to today. In 1992-93, the profit made by self-insurers and the insurance industry for workers compensation was \$8.7 million. One does not have to be an actuarial expert to work out that that was running pretty close to the mark. That appears to have been a justification for the Government of the day to do what this Government is doing today; that is, to find ways to contain costs, jack up premiums and reduce benefits. What was the result? In the following year, the profit went from \$8 million to \$29 million. One could say that this is starting to make some sense, because we were getting out of the crisis. In 1994-95 the profit went to \$40 million; in 1995-96 to \$46 million; in 1996-97 it was \$34 million; in 1997-98 it was \$31 million; and in 1998-99 it went to \$63 million. We went from a marginal situation of \$8 million to a situation five or six years later in which recovery appeared to be at hand. The profit had increased by eight times the original amount. What happened in 1999-2000? The profit was not \$63 million, but \$192 million. In 2000-01, the figure went to \$298 million. In those two years alone the profits returned were in the order of \$490 million, up from the very marginal rate of \$8 million recorded seven or eight years earlier. I can presume what that led to.

If premiums were increased nine years earlier because of a crisis in which the insurers were in a marginal position, why would there not have been a commensurate reduction in premiums for the hundreds of thousands of small and large businessmen who had to create that turnaround? I do not think that has happened. That brings me back to the present situation. We have not learnt anything from that experience. Perhaps a Bill should be introduced in this House to deal with the reversal of what was done in 1993, when the member for Riverton was minister. If there were a financial reason to do that in a crisis, when the profit of the insurers was just \$8 million, surely there is a good reason to introduce a Bill to lower those premiums now that the profit figure is at \$490 million. To be fair, some of that profit would have come from investment portfolios, but I do not know how much of the recovery has come from those investments and how much has been the result of sending premiums upwards and benefits downwards. That is what we are doing now, seven or eight years later. I have no confidence that what we are doing today is right. The insurance companies should be asked - if not here, then in another place - to show cause as to why our laws are being changed to accommodate a crisis that I am not convinced exists for Western Australia, or even for that matter for most of Australia.

There are due restrictions in Australia, one of which is notably in New South Wales, where decisions are made by juries. Juries are notoriously more inclined to spend other people's money. That does not apply in Western Australia. I am not here as an apologist for the courts or for lawyers. However, it is fair to say that neither the courts nor the lawyers in Western Australia have been part of the notion of unrealistic expectations on the part of people making claims, yet we are being asked to carry the can. This Bill, which covers a far wider and broader market than did the Court Government's workers compensation premiums legislation nine years ago, asks the public of Western Australia to carry the can. Why should those people who are urging the Government to take action not be made to show us why action is necessary? I support what the Government did with its first Bill. It made a somewhat politically courageous decision to expand the franchise of the Western Australian Industrial Relations Commission. It might have been -

Mr M. McGowan: The Insurance Commission of Western Australia.

Mr P.G. PENDAL: What did I say?

Mr M. McGowan: You said the Western Australian Industrial Relations Commission.

Mr P.G. PENDAL: I beg the member's pardon. I meant the Insurance Commission of Western Australia - I only said that to see whether he was still alert, and I am pleased that he is.

The Government made a politically courageous decision to expand the franchise of the Insurance Commission against the background of what happened 10 years ago to the old State Government Insurance Office.

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I ask for an extension of time.

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

**Mr P.G. PENDAL:** The principle at stake in making that decision was that if the private sector could not perform, we should find out whether the public sector could. I do not want to dwell on that point, but the Government deserves credit for having done that. It made that decision, and it is interesting that there has been hardly an adverse comment by anyone that a Labor Government should not expand the franchise in the way it did, which is a good thing, because a lot of people will benefit from that decision. However, that does not apply in this case.

There is neither one skerrick of evidence nor any actuarial assessments to show us that we are dealing with a real crisis. Over the past year or two, the newspapers and the financial Press have reported on what has happened with the HIH Insurance catastrophe, for example. However, it seems that ordinary Western Australians - and to a lesser extent people in other States who are part of this national program - are being asked by a Labor Government, no less, to effectively bail out the interests of private insurers. The figures that show that the private insurers are genuinely up against it should be presented to us. If that were done, there might be considerably more enthusiasm for this and sympathy for their alleged plight. On Wednesday, 14 August, the parliamentary secretary said -

Insurers have therefore become less willing to accept public liability proposals or underwrite public liability insurance at the previous rates because of alleged losses incurred.

That is nonsense. We do not and should not legislate on the basis of a presumption, an allegation or because of goading of the parliamentary secretary or because he had an afterthought at a dinner party. We are entitled to legislate on the basis of the best factual, and in this case actuarial, information available. Not only have we had not very much information, we have had not one skerrick of that type of data. On that basis, I think the insurers, and to a lesser extent the Government, should stew in their own juices. They should go back and do the work required of them by Parliament and then people may feel that there is a real justification for this legislation. Under the present circumstances there is no justification; therefore, I will oppose the Bill.

**MR C.J. BARNETT** (Cottesloe - Leader of the Opposition) [8.15 pm]: Although, somewhat tragically, the anniversary of September 11 has come and gone, more than 12 months after that event the Western Australian Labor Government has not made a single, tangible achievement in this area. The reasons for the insurance crisis in Australia are fairly well understood. I have already referred to the events of September 11. Other important factors involved in the insurance crisis include the collapse of HIH Insurance, which had been underselling low premiums to the market at unsustainable prices, the more litigious nature of community, and the propensity of the courts to award increasingly high settlements. Yet, on 17 September 2002, more than a year after the events of September 11, this Parliament, under this Government, stands alone as the only jurisdiction in Australia that has failed to act. That is a fact. Unlike the Governments of Queensland, New South Wales, Victoria and South Australia - I am not sure about Tasmania - this Government has failed to achieve a single thing. That is a dramatic exercise in ineptitude. The Government wants to blame anyone or find any excuse rather than do the job required of it.

This is the most significant issue currently facing business in Western Australia. My definition of business is broad. I include small business, including the tourism sector, adventure activities, retailers and restaurants. All of them have a public liability risk. All community and volunteer organisations face a risk as well.

I will refer to an example given by the member for Moore in a debate earlier this year. He talked about the example of a cake stall at Wyalkatchem that had to be cancelled because it could not obtain public liability insurance. Is there anything inherently dangerous in running a cake stall in Wyalkatchem? This Government has not achieved a single thing. That is a dramatic failure.

Queensland and New South Wales are in their second round of legislative changes. They rolled up their sleeves and made some changes. Although some of those changes might have been a bit rough and ready, they got on with the job and quickly made changes to support their business communities and charitable organisations. Now they are tidying up and improving on that legislation, yet nothing has been done in this State. I have never seen such a lazy Government as this one.

To add insult to injury, a parliamentary secretary is handling the Bill. I do not mean that as personal slight on the Parliamentary Secretary. This is the number one issue confronting the State. Why is a member of the Cabinet not dealing with it in Parliament? This important issue has been handed down the tree to a parliamentary secretary; he is not even a member of the Cabinet. The Premier did not even know about the issue in January. I am not as informed on these issues as many others. However, on 22 January, I commented in a

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press release that the Government had a problem. I said that we had a litigious society, that high claims had been awarded and there were no caps or thresholds on the amount of the claims. I told the Government that it had to do something about it. The Premier issued a press release two weeks later. What a joke. He had not responded in that time at all. Nothing happened until May. The Opposition parties moved a matter of public importance in this Chamber and we debated in more detail what the Government had to do. We described in detail what had happened in New South Wales and Queensland. I give credit to Premiers Carr and Beattie; at least they and their Cabinets acted. The media did not report the debate on that MPI. On the following Saturday, the Premier issued another press release. It took him five months between issuing his first press release and the next. Nothing else happened until the Minister for Community Development finally introduced a volunteers Bill.

Mr B.J. Grylls: Not before the National Party had, though.

Mr C.J. BARNETT: Quite right. Members of the National Party had got off their tractors, knocked up a Bill and brought it into the Parliament. Good on them! They had done something. Indeed, the Deputy Leader of the Opposition had introduced a Bill dealing with indemnity insurance for builders. The opposition parties had introduced legislation. They had limited resources and limited advice, but they had done it. What happened then? Suddenly, there was a flurry of activity, with more press releases and four-point plans from the Government, and finally we saw some legislation on indemnity insurance, which would help only a certain part of the industry, and volunteers legislation, which was inherently weak and limited. When the legislation was introduced, the Opposition insisted that this House sit for another day to debate it. Members opposite wanted to swan off. The Minister for Health was interested only in arranging his holiday in Europe, and other members were drifting off at parliamentary and ministerial expense. They did not want to sit in this Parliament on that Friday to deal with the legislation. It was only at the insistence of the Opposition that this Parliament sat to deal with the Government's own legislation. On the other side, there was absolutely no interest in dealing with the Bill.

The Bill was then sent by the Clerks, by whatever process, to the upper House, but it was not introduced and first read. The lack of interest of Labor members in the upper House was so paramount - they probably had their travel plans in place - that they did not go to the trouble of introducing and first reading the Bill. Recognising that the Parliament had been prorogued, in this House the Opposition offered the Government the courtesy of re-introducing the Bills, with two hours debate on each Bill, so that there would be no constitutional doubt about their validity. The Premier got indignant and said, "No, you don't know what you're talking about. There is no delay whatsoever." Why is it that in the upper House, two weeks further into this session, there is yet to be a ruling on whether those Bills have been validly introduced? We still do not know. Does this Government have any sense of urgency? It has absolutely none. I do not know whether those Bills will be considered valid in the upper House. Who knows? Presumably, the President will rule on that matter at some time. Even so, there may well be some constitutional doubt about their passage. They deal with insurance, liability and life support for people who are injured. The legal issue is significant. We do not want legislation in this area to be questioned in any way before the courts. Therefore, the Opposition made a generous offer; that is, to re-introduce the Bills and to have a two-hour debate on each Bill so that they could be passed and there would be no doubt.

I do not know what will happen. Have those Bills disappeared into the ether or the Milky Way, or will they somehow be reinstated? This Government does not give a rat's. I have not heard the Premier say, "Let's get on with it in the upper House." I have not heard anyone from the Labor Party in the upper House ask, "Where are these Bills? Where is the Bill on indemnity? Where is the Bill on volunteers?" There is no urgency whatsoever. The 12-month anniversary of September 11 has come and gone and this is the only Parliament of any substance in this nation that has failed to enact a single piece of legislation about insurance. I recognise that it is complex in a legal sense and that we will not be able to legislate to solve the problems of the world. However, not even a single Bill has been passed.

What do we find now? The Premier is one of the great indecisive people of this generation. I have known him since I went to university. I have never known him to make a decision. If he played football or cricket and tossed the coin, I bet he could not decide which way to kick or whether to bat or bowl. He would have a committee to think about it. He has 200 already. He can never make a decision. I have known him since I was a teenager. He will never make a decision on anything - bat, bowl, kick left or kick right. Who knows? He will have a committee. He will never make a decision.

What do we hear from the Premier? First, it is the insurance companies' fault. Maybe the insurance companies are at fault to some extent. I will not be their defender. However, the Premier has attacked the insurance companies. Why? It was because some spin doctor in the Labor Party told him to belt up the insurance companies, because the punters - the people with claims and injuries - would think that was good, because everyone likes to hate financial institutions, banks and insurance companies. Therefore, the Premier attacked

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them. Today, he came into this House and, rather stupidly, a dorothy dix question was asked of him about why the insurance companies will not talk to him and negotiate. It is little wonder. He has spent the past six months accusing them of ripping off business, claimants and everyone else. It is little wonder that he has no dialogue with the insurance industry in Western Australia. Premier Carr has a dialogue with the industry in New South Wales, as do Premier Beattie in Queensland and Premier Rann in South Australia. Our Premier in Western Australia has no dialogue. He has no capacity to engage people, in a cooperative way, in a resolution of a significant community and business issue. It just has not happened.

Now we have this legislation. I do not have the press cutting in front of me, but last week the junior minister, the parliamentary secretary, who is a person with some ability - he is ambitious and, frankly, is better than most members of the Cabinet, but he is not a member of Cabinet - had this issue delegated to him. Talk about giving a boy a man's job! Make him a man and give him the real job, and he might do okay. Give him some responsibility, and he might be able to handle it. The debate got going in this place and continued for a while. The Deputy Leader of the Opposition then asked a pretty simple question: will the legislation reduce costs and bring down premiums? If it will not do that, what are we about? An article in *The West Australian* of Thursday, 12 September, is headed "Insurance hopes dashed: Legislation unlikely to lead to lower premiums: MLA". That MLA is wonder boy, the parliamentary secretary. What is he doing? He has been given the job of handling this legislation, which he admits will not do anything to reduce premiums. What is he doing? If this crisis had happened yesterday, I would have some sympathy, but it did not. Its origins go back 12 months, and it was in the public arena, on the front page of newspapers, around January this year. It is now mid September, and the Government still has not done a single thing. It is little wonder that the member for Moore is concerned about his cake stall in Wyalkatchem, and little wonder that every day, every week businesses are closing. Every day, every week businesses are being told that they cannot get insurance, or the premium is so high that they cannot afford it, and they move away or drop that area of business activity.

In this legislation, finally something has been done about tort law. The member for Kingsley and others have raised issues about that. I agree that we must be careful and sensitive, and think through changes in that area. However, the question remains: will this legislation reduce costs to insurance companies; and, therefore, will it flow through to reduced premiums and an increased availability of public liability insurance? If the parliamentary secretary cannot answer that, we are wasting our time here tonight. If, after 12 months, the parliamentary secretary cannot come into this Parliament and put some figures and detail on it, and some meat on the bones, he is wasting his time, my time, this Parliament's time and the time of the people of this State who are being adversely affected.

Where is the Premier? On a weekend, he is terrific at putting out media releases on four-point, five-point, 10-point or zero-point plans, but when does he do anything? Does he ever make a decision or do anything for the people of this State? This issue did not arise yesterday. It has been on the front pages of the newspapers since Christmas nine months ago; yet we have the giggling, silly ministers who are more intent on travelling through Europe, wining and dining at public expense and making personal arrangements than dealing with a fundamental issue.

There are two Bills in the upper House, and we do not know whether they will come back to this place. If they do, the Opposition will cooperate to get them passed. They are limited, but at least they do something. The Opposition will cooperate in passing this legislation. However, it is not unreasonable for an Opposition to ask whether it will reduce costs and premiums. Indeed, a broader question is: has the Government any idea at all what it is doing?

**MR R.A. AINSWORTH** (Roe) [8.28 pm]: I have been listening with great interest to the Leader of the Opposition, who has very eloquently set out the situation as it stands. He outlined precisely what the community is suffering; that is, a huge amount of uncertainty about what the future holds for community organisations because of the absolute inactivity of this Government. It has been all talk and no action. Late last week, I received in my office a circular from my local shire titled "Not-For-Profit Community Groups Public Liability Insurance Facility". Local government has got off its butt and offered not-for-profit community groups a public liability insurance facility through an insurance broking system in Sydney. It is a local government insurance system provided through each individual council for the various organisations we have been talking about at length in this Parliament over many months. I have not yet obtained details of the cost of this insurance, but at least local government has taken some positive action. It is in black and white, and has been circulated to local groups throughout Western Australia, stating that local government recognises that there is a problem. It has not been said in so many words, but the inference is clear that, unlike the State Government, local government recognises the value of these small community groups and has done something about it, by offering an insurance policy. That is far more than this Government has done. That clearly underlines precisely what the Leader of

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the Opposition has just been saying. Despite the ribald laughter that greeted my initial remarks, I notice the government benches have all gone silent because there is truth in what I am saying. The Leader of the Opposition has got it right. Local government recognises it and has done something about it. This Government has done absolutely nothing.

**MR P.D. OMODEI** (Warren-Blackwood) [8.31 pm]: My comments will take up where other members have left off. I find it amazing that the Premier of Western Australia has not taken part in this debate. The carriage of this debate has been given to a parliamentary secretary, and no minister is taking part. These are two of the most important issues facing the people of Western Australia today. Where are the Premier, the Treasurer, and the prominent ministers? They are very few and far between. It is a complex issue, and I find it incongruous that we are being told that the legislation will not reduce premiums while we are still in this place debating it. I have a different point of view. This Parliament should be legislating to place the onus of responsibility on the individual. If the individual wants to take a risk and dive into the ocean at Rottnest when a sign says no diving, that individual should accept the consequences of that action. If a person dives into the ocean at Cottesloe and something untoward happens, that person makes that decision and should accept the consequences. Many of these accidents are acts of God. I hark back to the incident at Gracetown, when that terrible act of God trapped all those people under that collapsed cliff. That issue is still being resolved at the moment. People are saying that a person who walks in the forest and is hit by a falling tree limb, made the decision to walk in the forest in the first place. The other issue has to do with bungee jumping, and the fatigued elastic band. When an individual goes bungee jumping, knowing that WorkSafe has inspected the enterprise and made sure that it is run properly, if the elastic band fails, the person who made the decision to go bungee jumping must take some responsibility. If the onus of responsibility were placed upon the individual, we would not be seeing the massive increases in public liability insurance premiums today. The member for Moore talked about the cake stall in Wyalkatchem. In the debate about volunteers and corporations being covered, we learnt that a whole range of people in the community would not be covered. It is amazing that small organisations, such as the Red Cross and the Country Women's Association, that have served this State for hundreds of years, making scones and lamingtons and whatever, are now being told that they could be sued for public liability if something untoward happened. If that is the case, people should not eat the lamingtons.

The parliamentary secretary laughs, but many people in country Western Australia are very concerned about this issue, and practical people like me are saying that the onus of responsibility should be on the individual. If people choose to walk on the cliff top at Windy Harbour and the cliff top collapses, they cannot expect to be able to sue somebody for it. If people place themselves in those positions, they should take responsibility for their actions. As Parliament considers this legislation, the Premier pretends to be interested but has given the job to a parliamentary secretary. There are two Bills in the Legislative Council, and we do not know whether they are coming or going. The whole State of Western Australia is expected to talk about all the issues in this legislation. It should not be this complicated. If the onus of responsibility were on the individual, we would not need to be debating these issues.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [8.36 pm]: This debate feels a little like an episode of *Blue Hills*; this issue has been dragging on for many months. The slowness of the Labor Government in dealing with the issue of public liability is biting heavily, particularly in rural, regional and coastal Western Australia. I do not know much about the metropolitan area because I do not spend much time in it, but I do know the issue is biting heavily in the rural areas. A long list of community activities are ceasing because people cannot get public liability insurance. A range of issues must be dealt with. One of the serious issues is that of professional indemnity, particularly for doctors, nurse, midwives and other health service providers. Something must be done about them very quickly. I am trying to confirm this, but I would be disappointed if the State Government did not treat country doctors equally, and if it charged different doctors different amounts for their professional indemnity. I do not know whether that is true, but I am making inquiries to find out. Some doctors have told me that they have received no contribution. Over the next few weeks I will collect some data in that area to see how those people are going.

I was in Canberra at the weekend at the National Party conference, where this was a major issue on the agenda. The member for Merredin raised a lot of issues on that agenda, to raise awareness in the federal National Party and then the federal Government, to seek some change. They are far more forthcoming than the state Labor Party. This Civil Liability Bill contains more of the conditions that the National Party is interested in than the previous Bill. It contains much of our rhetoric, but we are talking about effects. I addressed this House on these matters only last week, when I told the House that I attended the Insurance Council of Australia's seminar a couple of weeks ago. The matter of insurance is important, because clear concerns were raised at that seminar about the cost of insurance. As I said last week, the general public is blaming either lawyers, insurance companies, or in some cases private individuals who are suing.



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It was interesting to read in *The West Australian* today that a person has decided to sue Main Roads for not having a sign on the road between Port Hedland and Broome warning that there may be cows on the road. I find this rather incredible. On the other hand, it cannot be denied that an individual has suffered an accident that has left her in a very serious condition. This society loves to ask whose fault it is. Was it the fault of the individual for not paying enough attention as she drove down the road or the fault of Main Roads for not letting the individual know that there could be cows on the road?

Mr R.A Ainsworth: It is the fault of the cow!

**Mr M.W. TRENORDEN:** Maybe it was the cow's fault. I could not work out whose fault it was. We keep hearing the arguments about lawyers, society, and insurance companies. The insurance companies need some focus. I have never worked for an insurance company, although many people on the other side think that I have. I was an agent for an insurance company for many years. I operated between the insurance company and the client. As a result of all those years, I gained an active and healthy distrust of insurance companies and a working knowledge of the industry. The truth is that the insurance companies and the reinsurers lost money last year, and HIH caused enormous problems in the Australian industry because it cut premiums. Part of the evidence is undeniable: the company has gone bust. If the premium rate had been at the right level, HIH would not have gone bust. Insurance companies are a bit like bookies in that they should not go bust except in particular circumstances. The evidence of the Insurance Council of Australia is that premiums have been too low in not only the area of public liability insurance but also across the spectrum. The underwriting losses have been substantial. It was interesting to see the minister responsible for the Insurance Commission of Western Australia, Hon Nick Griffiths, say that that organisation had lost \$26 million but that it was not a problem. He said that competent management had allowed the commission to lose only \$26 million, and that it would be all right. It was a hard argument to follow, and left me speechless for a few days.

Mr P.G. Pendal: Come on!

Mr M.W. TRENORDEN: It was only for a few days, and mainly because I was not in this place. It is remarkable that the responsible minister for a state organisation like the Insurance Commission of Western Australia is saying that it is all right for it to lose \$26 million. Members opposite should not say - the parliamentary secretary might want to take note of this - that it is okay for the Insurance Commission to lose \$26 million but that it is not all right for another company to lose money. If it is fair enough for the Insurance Commission, it should be fair enough for other people. However, I do not believe the minister's argument. There is no reason that the investment loss of the Insurance Commission should be in the order of \$26 million. That is not acceptable. I could understand it if the investment loss were \$3 million to \$6 million, but I cannot understand why it is at that level. It is a substantial amount of money for the tiny fund that the Insurance Commission is. Its track record needs to be examined.

We want to know how the State intends to hold the insurance industry accountable. I concede that an insurance regulator and a corporate regulator operating under federal law watch the insurance companies. Nevertheless, the pressure for the future is for increased premiums, not for reduced premiums or even stable premiums. The State Government is telling our constituency that it will deliver a benefit through insurance premiums, and it needs to demonstrate how it will do that. I cannot see how that can be done. The parliamentary secretary did not have a nice time in the debate last week on the other liability insurance Bill. I felt sorry for him because things went astray towards the end.

Mr M. McGowan: Are you accepting some blame for that?

Mr M.W. TRENORDEN: Yes, I am. I am accepting a substantial part of the blame because I was asking questions that the parliamentary secretary could not answer. That is part of the reason the debate went downhill. Other members on this side asked similar questions that could not be answered. That is why the night degenerated to the state that it did. This is an A-grade issue. We know what happens when the Government starts playing games with people and people's lives, like it did with the fuel debate. It ran its nonsense that it has done something about fuel in the community, and it got a hiding. This debate is the same. Unless the Government can demonstrate to Western Australians that it will make a difference in this area, it will pay a price, and it should pay a price. This issue is affecting the fabric of society. I intend to run an article in my paper that describes the other liability insurance Bill, and what a person must do if he wants to sell a load of wood to raise money for a minor volunteer activity. The article will explain what people must do before and after the activity to account for what they have done, such as convincing the auditors that all moneys have been received and so forth and reporting to Treasury.

Mr B.J. Grylls: It would be expensive wood. I would not buy any.

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**Mr M.W. TRENORDEN:** It is an incredible story. My article in *The Avon Valley Advocate* will say that it is a Monty Python Bill. Only Monty Python's writers could have written that Bill. No-one else could have come up with that formula for community activities. It is amazing. What community group would go through the six stages that were discussed last week?

Mrs C.L. Edwardes: The Bill will make it too hard for volunteers.

Mr M.W. TRENORDEN: The only good value of the Bill is that it will provide people with a lot of humour. They will get a lot of laughter out of it, but it will not fix the problem. The parliamentary secretary has the responsibility of coming into this Chamber and explaining how this will impact on the community.

Mr C.M. Brown: I remember when the workers compensation legislation went through in 1993. Premiums went up by 400 or 500 per cent. That's how good you guys were. There were no impact statements. You were warned about it. It was your actions that put workers compensation premiums through the roof. Now you come in here and lecture us about this. You have no credibility. Your actions raised the premiums. We told you in 1993. The member for Hillarys remembers. We told you that you would stuff it up, and you stuffed it up well and truly. The premiums went up and up and up. Do not come in here lecturing us. You were hopeless.

Several members interjected.

Mr M.W. TRENORDEN: I have eight minutes remaining, and I will use them to talk about workers compensation. I agree that there were two faults with that legislation. I was a part player in that as I did the review for Graham Kierath. Unfortunately, my recommendations were not followed. Other people, including the premium group, made the decision about third-party access.

Mr C.M. Brown: Did they stuff it up?

Mr M.W. TRENORDEN: Minister Kierath must take the responsibility for deciding to put it in the Bill. That kicked open the door to a third party.

Mr C.M. Brown: I am glad you said that so that it is on the record.

Mr M.W. TRENORDEN: That is what happened. A judge kicked open the door for that third-party access, and we all know what happened after that. The group on my left has promised to bring in some changes to workers compensation. They will reintroduce ambulance chasers. During the last election, many ambulance chasers advertised against the coalition Government and demanded access to the workers compensation scheme. In 1992, one legal firm earned \$2 million -

Mrs C.L. Edwardes: And yet on 6PR on Tuesday they were asking where their promised workers compensation payments were.

Mr M.W. TRENORDEN: Exactly. The Labor Party's promised workers compensation gravy train will be trucking into the House sometime soon. The Government will be delivering workers compensation to the lawyers -

Mr R.F. Johnson: Did you know that the Plaintiff Lawyers Association will be conducting a rally outside the Premier's office in a couple of weeks, led by Paul O'Halloran? It is ironic that they are having a go at the Premier.

Mr M.W. TRENORDEN: Be still my beating heart - it bleeds for them!

The Labor Party definitely received votes because it campaigned on the issue during the last election. Indeed, many people spent a lot of money on the campaign, which, to some degree, dented the election campaign of the Court-Cowan Government. The Labor Party jumped on the bandwagon and it will soon come into the House on that bandwagon. Who will pay for its measures? The people who pay the premiums and those who will be affected when workers compensation blows out of control will pay. When that happens, we will have to come back to the Legislative Assembly to consider both ends of the spectrum; that is, a loss of jobs and a loss of benefits. The Labor Party promised a gravy train and now it is trying to find a way to pull on the handbrake. It is very difficult to stop the gravy train -

Mr R.A. Ainsworth: There is too much gravy on the brakes!

Mr M.W. TRENORDEN: It flows over the top and becomes rather messy!

To a greater extent than previous Bills, the legislation covers more of the issues that the National Party wants canvassed. However, in itself, it is not a panacea. Will the parliamentary secretary explain how the legislation will deliver benefits to the people about whom the National Party is concerned? We would like to know if it will deliver benefits in the area of insurance premiums, which, at the moment, requires a miracle.

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**MR M. McGOWAN** (Rockingham - Parliamentary Secretary) [8.53 pm]: I thank opposition members for their contributions to the debate on the Civil Liability Bill 2002, which is an important piece of legislation, and one the Government hopes will progress through both Houses of Parliament as soon as possible.

I am handling the Bill because I am the Premier's parliamentary secretary. The Premier asked me to handle the Bill because, as was the case during the previous Government, it is standard practice for the parliamentary secretary of the relevant minister to handle legislation in Parliament.

Mr B.J. Grylls interjected.

Mr M. McGOWAN: I listened intently to members of the Opposition during their speeches, and I interjected on one or two occasions only when it was necessary to clarify a point that was being made.

The legislation deals with a significant national problem and Western Australia is playing its part in formulating a national solution. The Government recognises that there is a problem and that is why it has introduced three pieces of legislation. In their contributions to the debate, members of the Opposition showed a general tendency to have a foot in both sides of the camp; that is, although they argued that victims suffer, they wanted premiums reduced. We cannot have it both ways. Members can either support or not support the Government's legislation. If they do not support it, they should state to the community that they do not want a solution to the issue. Alternatively, they can be a part of the solution that the Government is trying to achieve.

Mr P.G. Pandal interjected.

Mr M. McGOWAN: I listened intently to the member for South Perth and did not interject when he was contributing to the debate. I will answer the questions asked by the member, during my reply.

As I said in the debate on the Insurance Commission of Western Australia Amendment Bill 2002, the laws of negligence have developed over hundreds of years and it is an area of law that is not easy to change. The member for Kingsley gave a dissertation on the development of negligence laws. As she will be aware, a range of precedents prior to the 1932 Donohue v Stevenson case - a case every law student can quote - developed the area of civil wrongs. The Government has put in place a constructive and sensible part of a rolling series of solutions. Members will also note that the Minister for Consumer and Employment Protection has introduced legislation that is relevant to specific industries in the State, and the Minister for Community Development, Women's Interests, Seniors and Youth has also introduced a Bill which deals with the issue of volunteers, and which is now before the upper House. The Government is introducing a series of rolling reforms to address what is a significant community issue. However, the law cannot be changed overnight. Those who say that because the Government became aware of the problem in January it should now be fixed do not recognise the complexities of the issue. They try to score cheap political points. Such members will be judged on how they vote on the Bill, and how they vote on the Bill will determine whether they want to be a part of the solution.

As I said, I have carriage of the Insurance Commission of Western Australia Amendment Bill 2002 - the consideration of which I hope will continue this evening - and the Civil Liability Bill 2002. Members have asked why the Government has not gone further and carried out measures similar to those adopted in New South Wales. They have asked why the Government has not included good Samaritan laws and measures relating to waivers. They have also asked why reforms in the area of alcohol and drugs and contributory negligence have not been included, and so on. The Government has not ruled out the inclusion of such issues; in fact, it is very positive about them. The federal Assistant Treasurer, Helen Coonan, has commented on this issue, because she has been responsible for the carriage of similar legislation at the federal level. The first volume of the Ipp report has been published and a second volume will be published shortly. Both reports propose further reforms that the States should put in place. The Government is considering the recommendations made in the first volume of the Ipp report. It will consider the second volume when it is released, and will make further decisions in the areas of alcohol and drugs, waivers, proportionate liability and the like. The Government has not rushed through reforms in these areas, because it wants to consider them carefully, and this is being achieved with the approval and encouragement of the federal Government. On 6 September, Senator Coonan was quoted by *The Australian* as saying that -

... it would be "a very good idea" if the states digested the Ipp review before embarking on further reforms.

She also stated that -

... the "pace and commitment to reform varies between the states" but they were all moving on the issue.

That was said by the federal Assistant Treasurer and the Liberal Party member with carriage of these important issues at a national level. She thinks that we should consider these reports before we present changes to the



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Parliament. The first volume of the Ipp report was brought down only two weeks ago. There will shortly be a national meeting of relevant ministers to consider further reforms. However, this Government has a positive attitude to reform in areas such as the good Samaritans. We are willing to consider issues such as waivers and other issues that people have raised in a constructive and sensible fashion, as should be done when considering laws before Parliament.

Today, the Premier raised the issue of insurance companies and I encouraged him to do so. He raised that issue because the Government is acting in good faith. It is proposing changes to the law and there is no getting around the fact that those changes will restrict some people's rights in terms of the damages they may receive in certain circumstances. The Government admits that. However, it is acting in good faith when putting in place these restrictions. We expect the insurance companies and the insurance industry also to carry out their part of the bargain.

Mr P.G. Pendal interjected.

Mr M. McGOWAN: I will wait until I get to the areas of concern for the member for South Perth and deal with them then.

We are seeking guarantees and assurances from the insurance companies because we are carrying out our part of the national reforms agreed to between the States and the Commonwealth, and we expect the companies to do the same. However, the State does not have legislative responsibility over insurance companies and it does not have authority to pass laws in respect of insurance companies. That responsibility rests with the Commonwealth, under section 51 of the Constitution.

In February this year, the Premier wrote to the Prime Minister requesting that the ACCC provide significant monitoring of insurers and a -

... review to ensure that the public liability insurance issue is adequately addressed.

He also said that -

The impact on small businesses and community groups appears to be severe and I would ask that you treat this matter urgently.

We are not satisfied that the Australian Competition and Consumer Commission and the Commonwealth have treated this matter with the urgency that it deserves. We introduced legislative reform and we are the ones coping the heat from the lawyers and other interest groups in the community. We expect the insurance companies and the Commonwealth to carry out their part of the bargain, which is why the Premier raised that issue in the fashion that he did today.

The Government's proposals have gained widespread public support. I have letters from a range of groups - I will not go through all of them - such as Clubs WA, industry associations and other bodies that are concerned with this matter. For instance, the South West Games Management Committee has written that it supports the Government's legislative reforms. I suspect that among community groups across Western Australia, small businesses, or, for that matter, larger businesses, there is widespread public support for this legislation. The general community does not want a litigation culture to develop in Western Australia similar to that in the United States. It wants there to be an emphasis on personal responsibility, at the same time as the rights are protected of the people who suffer significant injury in circumstances in which another party is clearly responsible. The Government wants to ensure that people are protected and it wants to get away from this culture of blame - as has been mentioned by a range of speakers - and encourage personal responsibility.

Opposition members have criticised this Bill. This Government is trying to do the right thing and I suspect this Bill will be agreed to by Parliament. This problem has been developing across Australia over the past 11 years. During that time very few public liability reforms, except those addressing one or two minor areas, were proposed by the Court Government. When members opposite ask why this Government has not acted, yet the coalition Government had eight years in office in which to act, it shows the hollowness of their argument.

The Leader of the Opposition referred to WA's position on this issue in relation to that of other States. I have heard him repeat the same argument on a number of occasions. He said that Western Australia is the slowest of all States. He did not mention Tasmania - he obviously does not consider Tasmania to be a State. He said all the States have acted, bar Western Australia. However, I am not sure what his view is of the constitutional arrangements with Tasmania. Be that as it may, I will outline this State's position in relation to that of other States so that he does not make the same mistake again. New South Wales has passed its first set of reforms. It now has a draft document to consider its second stage of reports. New South Wales has moved more quickly than all other States, but a number of commentators have said that it has caused the problem to the greatest

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degree across Australia because it has developed a culture of litigation. One person has said that its litigation culture is second only to that of California. New South Wales has also used juries to determine liability and payments. That State has had a major problem and historically it has, in many respects, been way behind us on this issue. It has had to play catch-up. Therefore, it has introduced its first set of reforms. Queensland has passed its first Bill on this issue. However, its legislation does not have a threshold and is nowhere near as effective as the WA legislation.

Mr M.W. Trenorden interjected.

Mr M. McGOWAN: The Leader of the National Party made a good point. I have read some of his remarks on that issue in the public domain and I hope he takes them to the next election. We will then see what happens. I said that the Queensland legislation will be nowhere near as effective as the Western Australian laws -

Mrs C.L. Edwardes: How do you know it will not be anywhere near as effective? You have no data.

Mr M. McGOWAN: I will explain that to the member for Kingsley at the consideration in detail stage.

Victoria introduced the first stage of its Bill into Parliament only last Thursday. It is clearly incorrect for the Leader of the Opposition to say that Victoria is ahead of us. Tasmania has not introduced a Bill as yet. South Australia is debating a Bill before Parliament at the moment. In some respects it is similar to our legislation, and in other respects it is dissimilar. The Northern Territory and Australian Capital Territory have no legislative proposals before Parliament. Therefore, who is ahead of Western Australia: New South Wales and Queensland, whose Bills have been passed but will be less effective than ours? The argument that has been put by the Opposition and aired on radio programs is clearly incorrect. If the Opposition wants to run with that argument, it should do its research first.

The member for South Perth made the most constructive contribution about the increases in Western Australia. He has unashamedly taken the view of the plaintiff on this issue, and I respect him for that. He has not tried to have a foot on both sides of the fence. The member said that no actuarial data was available on this issue.

Mr P.G. Pendal: I did not say that there was no data out there; I said that there was no data in here.

Mr M. McGOWAN: Does the member for South Perth have access to the Internet from his office?

Mr P.G. Pendal: I do.

Mr M. McGOWAN: This report can be found on the Internet. It is the second volume.

Mr P.G. Pendal interjected.

Mr M. McGOWAN: I ask for a moment of the member's time, so that I can explain. The second volume of the Trowbridge report, which I have annotated, is probably about 200 pages long and has all the data on Western Australia. It has the best information that is available on the premium increases in Western Australia. I am happy to provide a copy of that report to the member for South Perth tomorrow.

Mr D.F. Barron-Sullivan: It does not go down to the level of public liability insurance matters.

Mr M. McGOWAN: It deals exactly with public liability insurance matters. I think the member for Mitchell is confusing it with the first volume of the Trowbridge report. I am happy to provide the member for South Perth with a copy of the report tomorrow.

Mr P.G. Pendal: I am not interested in Internet legislation.

Mr M. McGOWAN: All right. The best data available to the State of Western Australia is contained in that report. It sets out that over the past four years, the average growth of public liability insurance premiums has been 11 per cent per annum. During the same period, the consumer price index has been running at three or four per cent.

Mr P.G. Pendal: Why was that not part of your speech?

Mr M. McGOWAN: I am sorry if I offend the member for South Perth, but the information is available to him. I will provide the member with a copy of the report tomorrow. There is a range of other information, but that is basically the most essential statistic that is relevant to this debate.

*Point of Order*

Mr D.F. BARRON-SULLIVAN: I ask that the member for Rockingham table the official document from which he was reading.

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Mr P.G. Pandal: It should not be an afterthought. It should have been appended to the legislation.

**Mr M. McGOWAN:** I was not actually quoting from an official document.

**The ACTING SPEAKER** (Mr A.D. McRae): The standing orders and previous rulings in this place state that if a member uses a government document that has been prepared in a formal sense as an explanatory document or a document of analysis on the matter being discussed, and from which the member is quoting, he is required to table the document. If the document has been prepared by the member for the purpose of progressing each item that is to be debated, it is considered to be the member's personal notes. Was it a formal document or a personal document?

Mr M. McGOWAN: The latter, Mr Acting Speaker.

The ACTING SPEAKER: There is no point of order.

*Debate Resumed*

Mrs C.L. Edwardes interjected.

Mr M. McGOWAN: Has the member for Kingsley never typed a document?

Mrs C.L. Edwardes interjected.

Mr M. McGOWAN: All right. I will quickly try to go through the questions raised by members opposite. I have answered a number of them already. The Deputy Leader of the Opposition asked a number of questions, one of which concerned the information available to small business. The Small Business Development Corporation runs a hotline, which small business operators are welcome to call to ask questions on this matter. Community groups can seek information on this matter from the Department of Sport and Recreation.

The member for Mitchell also asked what impact the amendments concerning motor vehicle accidents, which were put in place in the early part of the last decade, have had upon claims. There has been a halving of the number of claims over that period, because of the threshold of \$12 000. In effect, that means that for any claim over \$12 000, the \$12 000 amount is deductible. Any claims that are above \$12 000 are for more significant injuries, so people are able to claim. The number of claims of that kind has halved.

The Deputy Leader of the Opposition asked why there was no cap on general damages. New South Wales put a cap on general damages, but the generally agreed cap in that area is \$350 000. The highest payout the Government has been able to determine in Western Australia was for a person who became a tetraplegic. He was awarded \$275 000 in a negligence case. A cap of the nature put in place in other States would be completely ineffective in Western Australia.

The Deputy Leader of the Opposition asked about a statute of limitations. The Government will consider that issue as part of the Ipp proposals. The member asked why we do not have good Samaritan legislation. The Government will also consider that as part of the Ipp proposals. As I said before, the Commonwealth has encouraged Western Australia to work with the other States and not to rush reforms into the Parliament.

The member for Merredin wanted a guarantee that insurance premiums would go down. Through these reforms, the Government is putting in place something that will stabilise the market and reduce cost pressures on insurers. Substantial measures are being put in place to encourage insurers back into the marketplace. When insurers come back into the marketplace, market forces will ensure that premiums stabilise and, hopefully, reduce. The only way that anyone can absolutely, 100 per cent guarantee that prices will go down on any product, whether it is the sale of vehicles, fuel, or whatever, is to impose price controls. If members opposite want to suggest that, they should go out and do so. There is every likelihood that the situation will stabilise. Hopefully, as more players enter the marketplace, premiums will be reduced. The Government is reducing the cost pressures on insurers. That is occurring in every other State and has been agreed with the Commonwealth.

Advertising controls would have widespread public support. If the member for Kingsley thinks that the Government's motivation is to somehow strike out the ads of a well-known lawyer, she is not correct. The member seemed to be encouraging the Government to do that, and suggested that it was unprofessional conduct on his part. Those ads will probably receive the Theophanous defence following a High Court case - although it might not be the Theophanous defence. A ruling was made in a political advertising case in 1994 that anyone who wanted to make a political advertisement had a constitutional protection to do so.

Generally, I have answered the other concerns of members. I am sure that many queries will be raised during the consideration in detail stage of the Bill. As I said before, the Government is legislating as part of a national response to this issue. We are going further than some States but not as far as others. New South Wales had to go further because it was the principal cause of the problem. In some cases, I am amazed at the concern shown

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for that segment of the population that has an insurer to pursue. However, 95 per cent of people who suffer injuries have no-one to pursue. That proportion of the population is often forgotten. I note that the Premier of New South Wales has thrown open for discussion cases in which people who are catastrophically injured have no-one to pursue. What about them? They live in little flats. They might be paraplegics or tetraplegics and have no-one to pursue; it seems that no-one cares for them.

Mrs C.L. Edwardes: What are you doing for them?

Mr M. McGOWAN: That is a good point and Governments must address that issue.

People in the legal profession and so forth who criticise the Government on this Bill are merely dealing with that five per cent of the population. The other 95 per cent of the population also deserve some consideration. The Premier of New South Wales has proposed a good idea and Parliaments across Australia should consider it.

I look forward to the Opposition's support on this Bill. This Government is part of a national solution to the problem. We have introduced some very sensible and reasonable proposals.

Question put and passed.

Bill read a second time.

*Referral to Economics and Industry Standing Committee*

**MR D.F. BARRON-SULLIVAN** (Mitchell - Deputy Leader of the Opposition) [9.23 pm]: I move -

That the Bill be referred to the Economics and Industry Standing Committee to determine -

- (a) if the Bill, when enacted, would have the effect of reducing costs to the insurance industry;
- (b) whether the State Government has adequate measures in place to determine to what extent the insurance industry passes on any reduced costs in the form of lower insurance premiums to community groups, sporting associations and small businesses;
- (c) the true impact on accident victims arising from the provisions of the Bill; and
- (d) any other matters necessary to assess the potential impact of this legislation,

and that the Committee should consider this matter urgently and report back to this House no later than 15 October 2002.

We would not have moved this motion had the parliamentary secretary given us an adequate explanation of the likely impact of this legislation. He should have provided us with the information that formed the basis for his claims that this legislation will have a beneficial impact on insurance premiums in this State.

For a short time, we heard a diatribe and rhetoric from the parliamentary secretary about what is happening at the commonwealth level and the need for a national solution. However, he did not provide us with any facts or figures. More to the point, when he referred to a document that supposedly justified this legislation and the benefits that would accrue from it and was asked to table it, he shied away. Either he does not have a clue what is going on in this field or, alternatively, he is worried that that documentation might give the game away. It might show that this legislation will not do a thing for insurance premiums in this State. Perhaps there is something in it that he does not want us to see. What is he so worried about? Why did he not instantly table the Trowbridge report or the advice he has? I would be grateful if the parliamentary secretary tabled that report. This is what this debate has been about. We have tried to prise information from him to find out what the impact of this legislation will be.

Last week when we dealt with legislation, the parliamentary secretary berated those on this side of the House for daring to ask questions about some criteria that we had asked him to provide and that he had quite rightly tabled. He tried to imply that we should not ask questions about that.

Mr M.W. Trenorden: He did not know the answers.

Mr D.F. BARRON-SULLIVAN: As the Leader of the National Party said, the parliamentary secretary does not know the answers. I have a great deal of respect for the member for Rockingham and everyone on this side is utterly convinced that he will be in the Cabinet before too long. However, the Treasurer should have dealt with the Insurance Commission of Western Australia Amendment Bill and the Premier should be here to handle this legislation. If the people in the street were asked to name the five most important issues in this State, just about all of them would refer to public liability. Community and sporting groups and small businesses are all suffering. The Premier has taken it upon his shoulders to come up with a solution to their problems. He has made a number of announcements about five-point plans and has given in-principle support for this and that; however, he is not here

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tonight and he was not here to debate the Insurance Commission legislation. The Premier has left it to the parliamentary secretary who has been inadequately briefed and has been unable to provide us with the detailed and objective data we need to determine the impact of this legislation.

We are in a difficult spot. We want to support measures to reduce public liability premiums in this State. People in our electorates are screaming about the problems they are suffering. As the Leader of the Opposition and other members have pointed out, this did not happen in the past fortnight or last month; it happened after the collapse of HIH Insurance in March last year. We have raised this matter in this House on numerous occasions, yet it has taken until now for the Government to introduce constructive legislation into Parliament. Now that we have asked the Government the impact this legislation will have, we cannot find out. We have not been given any actuarial figures and the parliamentary secretary has hidden the only documentation he has to justify the legislation. We are blindfolded, yet we must judge the legislation.

Should we oppose the legislation on the basis that we do not know what the impacts will be? We will rip off benefits from people who, for example, might be eligible for a \$10 000 payout for an accident. By voting in support of this legislation I am denying those people their benefits. However, I cannot look them in the eye and say that I am certain that this legislation is in the public interest and that, therefore, I must deny them that compensation payment. On the basis of the information the Government has provided to us, I do not know that for certain.

We must fly blind and trust in the so-called policy decisions that the Government has made to justify this legislation. If we oppose this legislation, the community will berate us. We will be asked why we did not support the Government's measures to do something to assist with public liability insurance. Most of those people have not been here and have not listened to the debate or witnessed the feeble excuse for an explanation that the parliamentary secretary has just attempted to give us.

The parliamentary secretary is very keen to quote Senator Helen Coonan. Information provided by the Commonwealth, which gives a very good summary of what the States are doing, indicates that Western Australia had announced in-principle support for tort law reform, including limiting the cost of the general damages component of awards by bringing them into line with other personal injury compensation schemes in Western Australia. That has not been done. The parliamentary secretary was asked by a number of members on this side to consider the Motor Vehicle (Third Party Insurance) Act and the \$12 000 limit in it, and to demonstrate what that had done for insurance. He said that it had halved the number of claims or something like that. I interjected and asked what was the value of that. I did not get a response. What is the impact on premiums? I do not know. That was only on the threshold. There is also under that legislation a capping provision, and the Government has not included that in this legislation. I have not heard a reasonable explanation of why it has not done so, or what the calculated benefits or disadvantages of introducing a capping system would be. That is one item of in-principle support that the Government has not lived up to.

The second item was legislating to allow self-assumption of risk by people who choose to engage in inherently risky activities, such as tourism and sports. The State Government has told the Commonwealth and the other States that it has given in-principle support for this; yet tonight the parliamentary secretary said, in response to questioning from this side, that the matter is under consideration, and the Government will wait for the second Ipp report and so on. However, previously the Government has said that it was gunna do it.

The third example of "gunna" politics in this case is that the Government said it had given in-principle support to ensuring that the consequences of taking drugs were taken into account as contributory negligence. I indicated earlier that at least two other States are already acting along those lines. Here we have it. The State Government told the Commonwealth and its state counterparts that it would do this; it was giving it in-principle support. Yet the parliamentary secretary hopped to his feet today, trembling at the knees, and said, "I'm not really sure. Maybe we'll look at it; and, don't forget, we're doing far more than the other States anyway." That is not true. He did not even respond to the suggestion that the Government could give stamp duty relief to the private sector or to community groups. He did not respond to the fact that on 1 July lonely little Tasmania gave real dollar relief to the small business sector involved in adventure activities, tourism and so on. The Opposition asked a range of questions and, in a very short response, we did not get the replies; hence the need for this motion.

The motion is self-explanatory. We believe that the best way to find out what we want to know is through a referral of this legislation to the Economics and Industry Standing Committee, which would have the authority and power to examine some actuarial figures and to talk to the Insurance Commission of Western Australia and people with experience in the insurance industry to determine conclusively, or certainly more conclusively than we have been able to determine tonight, whether this legislation will have the effect of reducing costs to the insurance industry. Of course, that is only half the equation. Once we determine that this legislation will reduce

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costs to the insurance industry, if that is the case, we will need to know whether those cost reductions will flow on to reduced insurance premiums.

The parliamentary secretary was probably quite correct when he said that, strictly speaking, the State does not have any overarching power to impose these sorts of requirements on the insurance industry, but how will we determine whether the insurance industry is doing the right thing in the first place? In 12 months, shall we be wondering how things are going in the community and assume, because we have not had as many complaints as before, that things are getting better? Alternatively, will the Government be proactive and get some people with actuarial experience to monitor what happens in the industry, and to examine the records of the insurance industry to ensure that public liability premiums in this State are reduced, or at least contained, specifically as a result of this legislation? In other words, we are told we are passing far-reaching legislation. Let us see whether it will work and reduce premiums.

The other half of the equation rests as well. As other members have pointed out, this is a question of balance. People will be denied their current rights under the laws of negligence, and the payouts to people who have accidents will be reduced. People will be worse off. I want to know that that will be massively in the public interest. I want to be able to lie straight in bed at night. Therefore, I want to know what will be the true impact on victims as a result of the provisions of this legislation. We now know that the Premier will be the target of a campaign by people who support accident victims' rights. I am sure the Premier would like to be given a true assessment of the impact of this legislation on those victims so that he can talk to those lobbyists and explain that the legislation is warranted for a number of reasons, and tell them that perhaps the impact will not be as bad as they had thought it would be. However, at the moment we do not know, and the parliamentary secretary was not able to give us that information. The committee might want to investigate other matters as well.

The Opposition does not want to hold up this legislation. That is why we have said that this matter should be considered urgently and suggested that the committee report back to the House by 15 October. As members know, the reality is that this legislation has a snowball's chance in hell of being considered and voted on in the upper House by that date, even if it were passed by this House this very night. Therefore, we will not slow down the process of this legislation through the whole Parliament. In fact, I could argue that we might speed up the progress of this legislation. I say that because I would bet Sydney Harbour Bridge to a brick that someone in the upper House is likely to move that this legislation be referred to a legislation committee in that Chamber. Consequently, if we do the work in this place and are able to produce the right sort of report, it will assist not only this Chamber but also the upper House in determining which way to go with this legislation. Therefore, in no way would the passing of this motion delay the progress of this legislation through the Parliament as a whole.

All we want to know are the facts. We want to know what the impact of the legislation will be, both positive and negative. We are not happy with the explanations that have been given to us by the parliamentary secretary, or with the total paucity of information provided by the Government to back up what it is doing. We are not happy with the lack of explanation of other initiatives taken by other States, which this Government has so far failed to consider or on which it has failed to explain its position in any detail. The only way in which to sum up this whole situation is to say that we are dealing with the sort of legislation that the Labor Party used to bring to this Parliament when in opposition. It would introduce something so that it would be seen to be doing something. In this case, as with others, we remain to be convinced of what the impact will be. We told the Government when it introduced its 50-50 legislation that it would not work. The Government rushed it through and did not listen to us, and, lo and behold, that legislation has not worked. When the volunteers legislation was introduced, we supported it, but we said that volunteer organisations were telling us that it would not work. It was a nice, soft cushion with which one could make oneself feel warm in the tummy, but it will not provide any definitive benefits for volunteer organisations. I believe that this is the same thing. The parliamentary secretary will end up with the sort of headline he received on the last Bill: "Insurance hopes dashed". I do not think he can expect very much from this legislation.

Let us approach this in a constructive way. I am prepared to kick the Government when necessary, and I suppose just now I raised my voice a bit and got stuck into the parliamentary secretary. However, the reality is that earlier on we raised a number of issues in a positive and constructive way. We said that we wanted to work with the Government to find the best possible solution to the public liability insurance crisis that confronts this State. We are still prepared to do that. This referral to a committee offers us an opportunity to do so. Members from both sides of this Chamber are on that committee. We are able to look at the whole matter and, if we need to, we can make changes to this legislation to make it more effective, or to reduce the impact on victims, if that were deemed necessary as well. I ask that we approach this in a constructive way and get this matter off to the committee. Let us see the Government not just talking the talk, but walking the talk. That is an expression the Premier used a few times, but we are not seeing that at all.



Mr Dan Barron-Sullivan; Mr Brendon Grylls; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr Colin Barnett; Mr Ross Ainsworth; Mr Paul Omodei; Mr Max Trenorden; Mr Mark McGowan; Acting Speaker; Mr John Kobelke; Mr Clive Brown

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This new committee structure was formed a while back, for exactly this purpose - to deal with complex matters of legislation while the Parliament gets on with other issues at hand. The Opposition is not just testing the Government on its resolve to address the public liability insurance problems in this State but also its resolve to use the parliamentary process properly. We are not doing this to delay the process. We have indicated that we are taking a constructive and positive approach to this legislation. If this legislation is referred to the committee, it can only be a good thing for the parliamentary process, and for the people of Western Australia.

**The ACTING SPEAKER** (Mr McRae): I draw the attention of members to the first line in the motion that is before the House. It makes reference to an Economics and Industry Select Committee. I direct that the Clerks amend that to the Economics and Industry Standing Committee.

**MR J.C. KOBELKE** (Nollamara - Leader of the House) [9.41 pm]: I thought the Acting Speaker was starting my speech. That was one of the first points I intended to make.

The Government will not agree to this motion, which is a further delaying tactic by the Opposition. The Opposition seeks to delay good government, and good legislation, because members opposite do not want to see anything good happen in Western Australia while they are in opposition. They are totally negative in so many areas that it is unbelievable. While the Opposition retains that attitude, the Government will remain in power, so it is not a problem for the Government. The Opposition has a problem in being so negative on so many good things happening in this State, and on things that need to be done, such as this legislation. Just to show how insincere the Opposition is in this delaying tactic, as the Acting Speaker quite rightly pointed out, it could not even get the title of the committee correct. It is a standing committee, not a select committee.

I could go on with case after case of statements made by members opposite. Some positive things were said by members opposite on important matters, because there is a range of important matters in this legislation, but the overwhelming contribution of members opposite was to show how negative they are, and what a total lack of understanding there is on the opposition side for the issues involved here. While the parliamentary secretary has done a very good job in trying to explain matters, there has been such an absolute dearth of understanding from most members opposite that what he has said has fallen on barren ground. I will provide some examples.

The Deputy Leader of the Opposition said that the State Government should do something about actuarially monitoring the insurers; that the Government can hold insurers to account by sending actuaries out there to monitor them. That is just a total, absolute nonsense. The insurance companies are regulated by federal legislation. The Opposition does not want to attack the Howard Government. The Howard Government could do the worst thing in the world to Western Australia, and this Opposition would ask it to come back and do it all again. The Opposition will never stand up for Western Australia. The Deputy Leader of the Opposition has made this ludicrous claim that Western Australia can take over the commonwealth legislative responsibility, screw down on the insurers and get something out of it. When the Premier and others call on the Commonwealth Government to do a proper job, the Opposition accuses them of passing the buck. It is commonwealth legislative responsibility, and the Opposition cannot even accept that. That shows the absolute dearth of understanding we have from the Opposition. Members opposite are missing in action. They do not have a clue what the issue is about. I pity the poor parliamentary secretary, in casting his pearls before the swine, trying to get the Opposition to make any sense of the issue. He has done a very good job, but, unfortunately, there are very few on the other side who have any understanding of this issue at all.

The Leader of the Opposition said several times that this Government had done absolutely nothing since the collapse of HIH and the 11 September terrorist attacks last year in the United States. It has done absolutely nothing except enact the Employers Indemnity Supplementation Fund Amendment Act, which fixed up the \$100 million hole left by HIH. It has done absolutely nothing except put in place the Workers Compensation and Rehabilitation (Acts of Terrorism) Act 2001. Western Australia is the only State in Australia that has provided any coverage for workers injured at work by acts of terrorism. The Commonwealth Government is still thinking about it. The Gallop Government has done nothing except put through a Bill on home indemnity insurance. There is also the Volunteers (Protection from Liability) Bill 2002. So the Government has done absolutely nothing except the volunteers Bill, the home indemnity insurance Bill, the Workers Compensation and Rehabilitation (Acts of Terrorism) Act 2001, and the employers indemnity legislation. It has passed those four pieces of legislation, and now another two are being debated by the House - and the Government has done absolutely nothing!

What can be easily seen is that there is an absolutely pathetic Opposition with no grasp of the important issues facing the State. It therefore seeks to hide its total incompetence by sending this Bill to a committee. It is too hard for this House, so it must be hidden. Opposition members do not want to allow the Government to do something that has to be done, because their approach, over and over again, is to be knockers and not to let good

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things happen or do things that must be done. They will not allow these things to be done, because then people might realise that the Gallop Government is actually addressing the needs of Western Australians. The whole response of the Opposition is not to give alternatives, but to knock, knock, knock. Nine times out of 10 the Opposition can be guaranteed to knock anything that is good for Western Australia.

This legislation is important. The House sat extra time last week so it could deal with these matters. They must be proceeded with, so the Government is allowing plenty of time for debate, but it will not countenance these simple delaying, time-wasting tactics, which is all this motion is about. On that basis the Government will not support this referral to a committee.

*Question to be Put*

**Mr C.M. BROWN:** I move -

That the question now be put.

Question put and a division taken with the following result -

Ayes (23)

Mr J.J.M. Bowler	Mrs D.J. Guise	Mr M. McGowan	Mr E.S. Ripper
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr J.C. Kobelke	Mrs C.A. Martin	Mr D.A. Templeman
Mr A.J. Dean	Mr R.C. Kucera	Mr M.P. Murray	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mr A.P. O'Gorman	Ms M.M. Quirk ( <i>Teller</i> )
Dr J.M. Edwards	Mr J.A. McGinty	Mr J.R. Quigley	

Noes (18)

Mr R.A. Ainsworth	Mr B.J. Grylls	Mr P.G. Pendal	Ms S.E. Walker
Mr C.J. Barnett	Mr M.G. House	Mr D.F. Barron-Sullivan	Dr J.M. Woollard
Mr M.F. Board	Mr R.F. Johnson	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )
Mr J.H.D. Day	Mr B.K. Masters	Mr M.W. Trenorden	
Mrs C.L. Edwardes	Mr P.D. Omodei	Mr T.K. Waldron	

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Pairs

Dr G.I. Gallop	Ms K. Hodson-Thomas
Ms A.J. MacTiernan	Mr A.D. Marshall
Mr P.B. Watson	Mr J.P.D. Edwards

Question thus passed.

*Motion Resumed*

Question put and a division taken with the following result -

Ayes (20)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr B.K. Masters	Mr M.W. Trenorden
Mr C.J. Barnett	Mr J.P.D. Edwards	Mr P.D. Omodei	Mr T.K. Waldron
Mr M.J. Birney	Mr B.J. Grylls	Mr P.G. Pendal	Ms S.E. Walker
Mr M.F. Board	Mr M.G. House	Mr D.F. Barron-Sullivan	Dr J.M. Woollard
Mr J.H.D. Day	Mr R.F. Johnson	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )



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Mr J.J.M. Bowler	Mrs D.J. Guise	Mr M. McGowan	Mr E.S. Ripper
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Pairs

Ms K. Hodson-Thomas	Dr G.I. Gallop
Mr A.D. Marshall	Ms A.J. MacTiernan
Mr W.J. McNee	Mr P.B. Watson

Question thus negatived.