

Hon Derrick Tomlinson; Deputy President; Hon Dee Margetts; Hon Barry House; Hon Murray Criddle; Hon John Fischer; Hon Peter Foss; Hon Jim Scott; Hon Ljiljanna Ravlich; Hon Ray Halligan; Hon George Cash

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**VOLUNTEERS (PROTECTION FROM LIABILITY) BILL 2002**

*Second Reading*

Resumed from 16 October.

**HON DERRICK TOMLINSON** (East Metropolitan) [8.04 pm]: The Opposition supports this Bill. In doing so, I want to offer a word of caution about it. The Bill is based very largely on the South Australian Volunteers Protection Act 2001, which is clear in its intent. Section 4 the South Australian legislation reads -

Subject to the following exceptions, a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation.

That is an excellent summary of the intent, function and purpose of the South Australian Act. The exceptions are clearly spelt out. The immunity does not extend to -

- (a) a liability that falls within the ambit of a scheme of compulsory third-party motor vehicle insurance; or
- (b) a liability for defamation.

The Act also states that the immunity does not operate -

if the volunteer's ability to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug.

The South Australian Act pretty well sums up the Western Australian legislation. The WA legislation is not as tidy a piece of legislation as the South Australian legislation because of additional words, but it has exactly the same intent.

To some extent, the real value of this legislation can be recognised only in the context of the Premier's announcement of a five-point plan to deal with what was seen to be a crisis in public liability insurance post-September 11; that is, the problems of reinsurance and the collapse of major international and national insurers which was compounded by increasing litigation and a tendency of courts, and juries in some instances, to make what were deemed to be generous awards. This created the situation in which insurers increased their premiums and were more cautious about the risks they would take. The net result was that community groups, in particular, found themselves either unable to afford the premiums for public liability insurance or could not secure adequate cover for their members.

Western Australia, like the other Australian States, reacted in a multidimensional way. This Volunteers (Protection from Liability) Bill is only one of them. Mr President, I am sure you will pull me up if I contravene standing orders, but it is necessary to refer to other legislation that is currently before the House to understand the full import of the Volunteers (Protection from Liability) Bill.

The three other measures that I am aware of - I have not been able to find out what the fifth measure is; perhaps the parliamentary secretary will enlighten me when she responds - are the Insurance Commission of Western Australia Amendment Bill, the Fire and Emergency Services Legislation Amendment Bill, and the Civil Liability Bill. The first measure was the Volunteers (Protection from Liability) Bill, which simply provides that a volunteer who acts in good faith is exempt from liability from civil prosecution or action. Added to that is the Insurance Commission of Western Australia Amendment Bill, which extends the charter of the Insurance Commission of Western Australia to enable it to offer insurance to incorporated voluntary agencies. On the one hand volunteers are to be exempt or protected from liability, and on the other hand, through the Insurance Commission of Western Australia Amendment Bill, incorporated voluntary agencies will have access to insurance through the Insurance Commission. The charter of the Insurance Commission will be extended to enable access to government-backed insurance by incorporated voluntary agencies. The opportunity for those agencies to have adequate cover and an assurance of the adequacy of that cover comes through government action.

The third measure is the Civil Liability Bill. This Bill is perhaps a little more controversial because it imposes a cap on economic loss or damages at 3.5 times the average weekly earnings, with a threshold of \$12 000 indexed on general damages but no limits or controls on medical costs. I am not sure whether that acts in favour of volunteers or insurance companies. Whenever a threshold or cap is placed on damages, the person who might be injured is disfranchised and the profit of the insurance company is enhanced.

Hon Ljiljanna Ravlich: I think you might be tempting fate with the standing orders here.

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Hon DERRICK TOMLINSON: Yes; however, I have absolute confidence in the Deputy President (Hon Simon O'Brien) because I know that when I do nudge the edge of standing orders, he will pick me up. The parliamentary secretary should have that same confidence in the Deputy President. However, that is a debate we will have at another time. I am illustrating that this Bill must be seen in the context of those other Bills. On the one hand there is a measure to protect volunteers from liability. On the other hand an assurance has been given to incorporated volunteer agencies that they will have access to adequate liability insurance through the Insurance Commission. The third dimension is the cap or threshold initiative through the Civil Liability Bill. The fourth is the Fire and Emergency Services Legislation Amendment Bill. For the benefit of interested parties who might be listening, I draw attention to the Fire and Emergency Services Legislation Amendment Bill.

Hon Ljiljanna Ravlich: It actually wasn't a part of that five-point plan.

Hon DERRICK TOMLINSON: Was it not? The parliamentary secretary can correct me afterwards. The Fire and Emergency Services Legislation Amendment Bill was introduced in the Legislative Assembly on 4 December 2001 and the third reading occurred on 17 April 2002. The first and second readings of the Bill in the Legislative Council occurred on 7 May 2002. The Bill was eventually brought up, at the will of the Government, for debate through the second reading stage on 24 September 2002. It progressed, in committee, to clause 13 on 24 September 2002. The minister in charge adjourned the debate because he felt that it was necessary to negotiate an amendment to section 13 of the Act to accommodate a problem that the Opposition identified, and we have not seen that Bill since. I wait to hear from the parliamentary secretary, because quite clearly she has indicated by interjection that that is not part of the five-point plan. In that case, I have identified only three of the five points, and I would like to hear what the other two are. In that context, the Bill is unexceptionable, and the Opposition will vote for its passage.

One thing that puzzled me requires some elucidation. Members will forgive me for referring to specific clauses in the second reading debate, but the nature of the argument that must be mounted requires a reference to individual clauses. Clause 6 gives volunteers protection from liability. Subclause (1) states -

Subject to subsections (2) and (3), a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.

That is unexceptionable. The matters that -

Hon Ljiljanna Ravlich: Is that unacceptable to you?

Hon DERRICK TOMLINSON: I said unexceptionable; that is, it is something to which we cannot take exception, which means that we will not oppose it.

Hon Ljiljanna Ravlich: I understand what it means. I heard you correctly.

Hon Graham Giffard: I thought he said "unacceptable".

Hon DERRICK TOMLINSON: Did the member think I said that? I do apologise to Hon Graham Giffard. I will raise the volume, project my voice and make my enunciation clear. The word that I used was -

Hon Ljiljanna Ravlich: Shush.

Hon DERRICK TOMLINSON: Now I am being told to be quiet. What do members opposite want? Do they want clarity or do they want me to be quiet? The word I used was "unexceptionable".

Hon Peter Foss: And that is an unexceptionable word.

Hon DERRICK TOMLINSON: Of course it is. Who could take exception to that word? I will get back to the subject.

The DEPUTY PRESIDENT (Hon Simon O'Brien): Order! Hon Ljiljanna Ravlich will not interject again.

Hon DERRICK TOMLINSON: I turn to clause 7. Subclause (1) states -

A community organisation incurs the civil liability that, but for the operation of section 6(1), a volunteer would incur for a thing done by the volunteer when doing community work organised by the community organisation.

In effect, the protection from liability of the individual volunteer is, to use the very good word used by Hon Ljiljanna Ravlich in an interjection, transferred to the organisation; but it is transferred to the organisation by clause 7(4) only if that organisation is incorporated. There is a requirement for voluntary agencies to be incorporated so that they can incur the liability from which the individual volunteer is protected. Does that mean that a volunteer who is doing community work in good faith for an agency that is not incorporated is not protected from liability? The liability for the individual volunteer transfers to the agency on the condition that the agency is incorporated. What will be the consequences if the agency is not incorporated?

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Hon Ljiljanna Ravlich: It does not apply. How would the Act be applied? An incorporated agency would not be -

Hon DERRICK TOMLINSON: Rather than give a hurried response, why does the parliamentary secretary not wait until she has the opportunity to reply to the second reading debate? I know that she will then give a very clear, lucid and full explanation.

I was at first puzzled about the effect of the Associations Incorporation Act 1987 if liability were transferred on the requirement of incorporation. Section 12 of that Act states -

An officer, trustee or a member of an incorporated association is not by reason only of his being such an officer, trustee or member liable in respect of the liabilities of the association.

According to this Bill, the individual will be protected because liability will be transferred to the association, but the Associations Incorporation Act says that the individual is not responsible for the liabilities of the incorporated association. I hope I am right in my interpretation that we are talking about two different things: the liability of the individual, which is transferred to the association; and the liabilities of the association, which cannot be incurred by an individual member. I hope that the parliamentary secretary will also explain that.

Finally, I sound a word of caution. No doubt members have received correspondence from the Injured Persons Action and Support Association, particularly the information that was inspired by a civil litigation lawyer in the community. IPASA presents a very interesting argument that needs to be borne in mind, although I have not been convinced that it applies to this legislative package, which contains five pieces of legislation, three of which I have identified, including this Volunteers (Protection from Liability) Bill. A couple of Bills in this package of legislation will limit the rights of citizens to access to insurance claims for damages to personal property. This Bill states that the individual acting in good faith is not liable but that the liability will transfer to the association, if it is incorporated. We will impose a possible limit on access to an insurance damages claim.

The Civil Liability Bill 2002 provides for a cap to be imposed on economic loss. A limit will be imposed on the damages that an affected or injured person can receive - even if the injury is to his affection! At the same time there will be a \$12 000 threshold on general damages. The threshold will be indexed. A claim must be for more than \$12 000 for a person to be eligible for a compensation payout. The amount of damages will also be capped. On one hand, we are protecting people from liability. In doing that we are restraining claimants from access to damages other than by suing the incorporated agency. On the other hand, we are saying that, if a person is successful in his claim, he will not receive the first \$12 000. A claimant will receive damages only up to 3.5 times average weekly earnings. I understand the rationale. It must be that, in an increasingly litigious society in which the courts are seen to be generous to claimants, the consequential cost to insurers means that insurers have to increase premiums to maintain legal liquidity. Therefore, the control of the cost of insurance must be through caps and thresholds on the liability of insurers. I understand that reasoning. On one level it is sound reasoning; we are regulating access and controlling insurance claims and damages through what is deemed to be a reasonable limit. Reasonable limits were once decided by the courts. Hon Peter Foss taught us that a reasonable limit is that agreed by a reasonable man or woman. It is now not up to the courts to make decisions about reasonable limits based on the circumstances of a case. Legislation will now decide what is a reasonable limit. That is the general thrust of legislation throughout Australia. Western Australia is simply following the model of other States. However, it is fundamental to our economic and social system that when a person owns property and the property is damaged, the person may claim compensation. Alternatively, when a person suffers personal injury of one kind or another he has a legal right to claim compensation. As property owners and as responsible citizens we take out insurance against that in the full expectation that we will be covered against claims. It is also done in the full expectation by the citizen that his right to damages will be assured through legal process and compensation guaranteed by a just legal system.

Because we are following this line of regulating the damages, we are attacking the fundamental principle of our communities. We are walking a fine line. On the one hand, we accept the reasonable argument of containing damages to what is legislatively deemed to be a reasonable limit, and therefore containing premiums and therefore making insurance accessible at a reasonable cost, but, on the other hand, we are limiting the right of the individual to a just compensation according to the nature and extent of the damage suffered. That must be judged on the individual case. It is no good saying that some fellow got \$5 million for something quite trivial. If people understand the circumstances of the case, they can understand the amount of the compensation.

I raise that simply as a caution about the fine balance that we are walking with this package of legislation, otherwise the Bill before us has the support of the Opposition. It is not exceptionable, and apart from the two matters that I have asked the parliamentary secretary to elucidate, we will be supporting the passage of the Bill.

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**HON DEE MARGETTS** (Agricultural) [8.32 pm]: As has been mentioned, the objective of the Bill is to protect certain volunteers from incurring civil liability for injury to a third person or damage to property while undertaking community work for a community organisation. The rationale given is that this is modelled on the South Australian Volunteer Protection Act 2001 and that it is intended that volunteers who act in good faith and in an authorised manner will not be personally liable to pay compensation to third parties to whom they may unintentionally cause harm or damage when undertaking community work. The liability arising out of the acts and decisions of the volunteer will be transferred to the community organisation that organises the community work done by the volunteer. I will speak about that in a moment.

The rationale is also the concern that the increased likelihood of exposure to litigation will affect volunteers and deter them from volunteering. For those volunteers who may be deterred from volunteering on the basis that they might be subject to civil liabilities, this Bill may be seen as a step in the right direction. However, we do not know how many people do not volunteer because they may be personally liable. My colleague Hon Jim Scott is keen to talk about the fact, and I shall mention it, that not a lot of information is available that indicates that individuals in these cases in Western Australia have been so targeted. The Bill will prevent those people from incurring civil liability when undertaking community work that is organised by state agencies, local governments, incorporated organisations and corporate bodies.

However, there are reservations about this Bill. One is that the Bill will shift liability onto community organisations. Many community organisations of which I am aware do enormously valuable work. Many do the kind of work that simply could not be paid for by taxpayers' money. It includes quality oversight, quality input and working with the community to provide many of the services that would not be provided by other means. This legislation shifts the liability onto those community organisations, a number of which do not have the funds to do anything about it. We would not wish them to have the funds simply to lose them, if that were the case. The submission from Surf Lifesaving Australia Ltd to the Senate Economics Reference Committee in May 2002 stated that governments need to go further with legislation to protect the charitable organisations themselves. It is one thing to protect the individual charitable member, but without protection for the organisations, individuals will have no basis upon which they can act in a charitable way. The Bill only applies to certain volunteers, and those associated with incorporated organisations. The proposed legislation will not cover informal or individual volunteers who are not linked to an organisation, or those who may undertake voluntary work for a Commonwealth Government agency. It is not known how many unincorporated associations there are. We understand that 428 600 people over the age of 18 years volunteer in a formal setting. That comes from the explanatory memorandum. We do not know how many of these are in unincorporated organisations. In briefings we have sought and obtained - I thank the minister for this - the Office of Seniors Interests did not know the answer to that either.

There are many unknowns in this area. The Bill alone does not do anything to address the problems of higher premiums that community organisations are experiencing, and if civil liability is transferred from volunteers to the organisations for which they work, there is ironically the potential for those premiums to rise, or for the insurance companies to use that as a reason for those premiums to rise. The Bill will not protect volunteers if they knew or ought to have known that they were acting outside of the community work organised by the organisation. That in itself will create extra work for the organisation, because it will be important for those organisations that involve volunteers to ensure that their volunteers understand the nature and the limitations of the work they undertake. The reality is that, in most cases it is difficult to know how to cover everything for each volunteer. There is often a changeover of volunteers, and people volunteer for a relatively short period from time to time. Other people may volunteer irregularly. It might not always be entirely clear how much briefing is being given to how many people. That makes it extremely difficult, because a lot of the time those voluntary organisations rely on those people to be self-starters. It means that somehow supervision must be organised, often from other volunteers. It can be seen that many difficulties are built into this in making sure that volunteers know what the limitations are. I can see a problem, perhaps, in a volunteer being sued for acting outside the guidelines of an organisation and then trying to sue that organisation for not providing the information about what he was not supposed to be doing. It is mind boggling, but we might see some rather strange things come out of this in the end.

Many organisations simply do not have paid coordinators or administrators who are in a position to do the additional administrative work that may well be required in many instances. Some of them are set up and funded only for one year or for a particular purpose. This will be extremely important when we discuss the need to develop risk management plans when the subsequent Bills that are associated with this Bill come before the House. Members must understand that this Bill is part of a package, but we have only hit the tip of the iceberg of the implications for the groups. Similar to competition policy, once this legislation goes through - which from

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all indications it will - it is likely that we will see the impacts only after people try to work with it. Then we will be back here trying to sort out some of the glitches.

The question is: how much community consultation has been done and what surveys have been conducted into the issue of public liability by the State Government in Western Australia? Although members might say that the Government would say that, in an article in the August 2002 edition of *Brief*, a legal profession journal, the President of the Law Society of WA, Clare Thompson, states -

... WA is a profitable State for the insurance industry and the only evidence we have seen suggests that any growth in claims is in line with population growth and increased insurance coverage over the past decade.

She also says -

The Society's principle concern remains its belief that the justification for the premium and cover problems being experienced needs more thorough examination than it has received so far.

The Greens (WA) certainly agree with that. As I have said, this Bill is the first of a package of Bills that the State Government has introduced in response to the public liability crisis. The other two Bills, which will be before the upper House shortly, are the Insurance Commission of Western Australia Amendment Bill 2002 and the Civil Liability Bill 2002. We need to be able to judge what the whole package of the Government's reforms will do and what it will look like. The piecemeal approach creates problems, risks excluding people and organisations and does not look at the issue comprehensively. It does not seem to take into account the concerns of adventure companies - I am looking at the way the Government will deal with that issue - unincorporated bodies and other ineligible community organisations that are not likely to be affiliated with government agencies.

My colleague Hon Jim Scott has done a lot of work and has taken a great interest in this Bill as well. During this debate I am sure he will fill members in on what he thinks are the shortcomings of not only the Bill but also the information upon which it is based. To say that we wholeheartedly support the Bill would be stating it far too strongly. It is true to say that we have great reservations about whether this Bill will achieve its desired result, which presumably is reduced premiums.

**HON BARRY HOUSE** (South West) [8.43 pm]: This Bill and the associated pieces of legislation give us the opportunity to highlight what volunteer organisations do in our community and how valuable they are to our community. I will say a few words because I have referred to this theme before when talking about health services in the country. I will mention a particular example that I hope this legislation will address. We all know that volunteers and volunteer organisations play an absolutely vital role in our community; they are an essential part of the Australian way of life. It saves Governments of all descriptions throughout the nation literally hundreds of millions of dollars. Most importantly, it is an integral part of community development. Evidence has emerged recently that the number of volunteers in country Western Australia is much higher than it is in the city. I forget the exact figure, but it was larger by a factor of at least five, and it might even have been by a factor of 10. Volunteers in the country are much more an integral part of life than volunteers in the city tend to be. We know that many organisations have been affected by the events that have occurred over the past few years. Those events have come home to roost for sporting clubs. Recently we all received representations from pony clubs. Horse-orientated sports and activities seem to be targeted severely in this case. One example is a horseback adventure business in the central highlands of Victoria that was run for many years by the family of Hon Graeme Stoney, a colleague of ours in the Legislative Council of the Victorian Parliament. The business originally had cattle highland runs, but some of those runs have been restricted over the years. Unfortunately that business closed recently, and that was a great tragedy for not only the family that had built up that business but also the many people who wanted to get away from the standard tourist route and avail themselves of an ecotourism opportunity by partaking in horseback and camping adventure tours. That opportunity is now denied to many people. The primary reason for the closure of that business was the insurance situation. We all know that many other organisations ranging from arts councils to service clubs to fire brigades, which are the very fabric of communities, particularly in country areas, are also being affected by the insurance situation. The end result is that many good people are being driven away from contributing to society through volunteering, and the community both collectively and individually is worse off and is missing out.

I will mention also an example that involves the Margaret River Hospital; and this is where I come back to the theme that I have used previously in some debates. Recently I received a letter from the Margaret River Hospital Amenities Committee. I will quote part of the letter to give members the context -

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We write to acquaint you of problems we face, as a volunteer group, as a result of the excessive rise in insurance premiums. We feel there is an urgent need for Government to protect such groups or face losing the large and valuable contribution they make to community and society.

The Margaret River Hospital Amenities Committee is a small group who raise and spend funds in the hospital. Since the new facility opened in 1990, we have spent about \$70,000.00 on items of medical equipment and on amenities to help make our hospital one of the best-equipped hospitals of its size in W.A. This ensures that the community has access to a high standard of care and comfort enhanced by items not readily available from Government funds - certainly not with the same alacrity.

In 1989, the committee was advised that incorporation would protect members from individual liability so we became incorporated. Now, of course this is no longer the case and, along with this change, the cost of insurance has exploded. We are quoted \$800.00 + to get Public Liability cover for \$5 million dollars. Members are not willing to work to raise such a large sum to put in the coffers of insurance companies.

Investigations reveals that we could be covered, individually, as volunteers by South West Health, but not as an incorporated group. To become 'de-incorporated' we are required to disband and distribute our assets to another incorporated group. This raises 2 points:

1. We have no desire to disband
2. Our assets comprise an investment, which provides a modest but regular income, which boosts our funds and provides a measure of financial stability.

We can also state that none of our fundraising has yet produced a situation that would have resulted in us being sued. Being not in the first flush of youth, our fundraising activities are not such as could be described as rash or adventurous!!

The Department of Consumer and Employment Protection is constrained by laws that allow officers no leeway to accommodate our needs outside these laws, but it was suggested by one officer, that we submit our case for consideration, which we have done. We are also considering going into recess until we can be assured of access to insurance at a reasonable cost, to protect our members in any and all situations arising in the course of reasonable and responsible fundraising activities.

Enough that we make the effort to support our community; we neither need nor deserve this extra worry and hassle. Considering the vast financial support provided to Government by the input of such groups, it seems ludicrous that more is not being done to protect them. One would expect that the value of such good will would be valued and nurtured, as society will surely be the poorer for its loss.

That letter is signed by Mrs Judy Wake, the Honorary Secretary of the Margaret River Hospital Amenities Committee. The letter summarises the issue, which I know most members appreciate exists. The point is that country health services receive a much higher level of community ownership and involvement than do metropolitan health services. That issue was raised earlier this year in debate on a decision by the Minister for Health to unilaterally abolish the south west health boards. Many facilities in country towns exist because of the sheer hard work of many volunteers. These facilities are not only funded and built by volunteer community organisations but also their operating costs are supported by them. For example, the Rotary Club of Margaret River has contributed to the Margaret River Hospital. The *Augusta Margaret River Mail* of 23 October 2002 stated -

A brand new colposcope has arrived at the Margaret River District Hospital, courtesy of funds to be raised at the upcoming Rotary Fun Run.

That run was held on Sunday. The Rotary Club, another voluntary service organisation, contributes to the hospital and health community in Margaret River, as I know rotary clubs in many other communities do. Coincidentally, on the same page of that newspaper another article states -

Insurance hike threatens markets

There are two sets of markets in Margaret River. The article states -

... Margaret River's Town Square Markets are the latest to be hit in the hip pocket due to skyrocketing public liability insurance costs.

The market coordinator approached 20 insurance companies before he was able to secure public liability insurance; then he was only able to do it at a cost of about \$7 000 a year compared with \$1 700 for the previous year.

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Another set of markets that has just got going in the town is related to the Margaret River Regional Food Producers Association - the farmers' market. It has also been hit with the same issue and is struggling to see a way through it.

I sincerely hope that this legislation addresses some of those issues for those voluntary organisations. It must do for the sake of the fabric of many communities right around this State and the nation. This is a vitally important part of our way of life. It should not be sabotaged by the rising costs of these insurance premiums and the increasing difficulties, hurdles and obstacles that are put in the way of volunteers who are prepared to contribute to their communities but also get a huge amount out of it themselves.

**HON MURRAY CRIDDLE** (Agricultural) [8.55 pm]: I wish to make a few comments about the Volunteers (Protection from Liability) Bill 2002. In the other place the National Party introduced an amending Bill to address the issue -

Hon Peter Foss: It was a much better Bill.

Hon MURRAY CRIDDLE: It was a very good Bill, but it did not receive adequate consideration. This Bill would have been far better if some of the provisions of our Bill had been included. We have obvious difficulties with numbers in the other House, so those amendments were not agreed to. The intention of this Bill is to protect people from civil liability whilst acting as volunteers in incorporated groups and other state agencies. The volunteers for small groups present a particular issue in country areas. It does not matter what small club or organisation people belong to in the country, the cost of public liability makes the functioning of those clubs almost prohibitive. The legislation the National Party introduced in the other House addressed those issues. Unfortunately, the Government did not take the opportunity to include its provisions in this legislation or allow it to be debated and passed so that the issues concerning smaller organisations could be addressed. This Bill seems merely to shift the liability from the volunteers to incorporated bodies. The community organisations covered by this Bill include incorporated associations, a local government or other body corporate, a state agency or instrumentality, or a department of the public service. The Bill excludes a person who performs a function for the Fire and Emergency Services Authority, honorary fisheries officers and honorary Department of Conservation and Land Management officers. A number of other honorary people operate in that area; I particularly remember the volunteers who were policing jet skis on the river. When I was Minister for Transport, they carried out some of that work for us and they did a fine job in raising with people on the river an awareness of associated dangers. I would be interested to know if those volunteers, or any others outside the three exemptions I mentioned, were covered or otherwise. This is an important issue for country people and those small organisations, which are vital in country areas. Those people are the heart and soul of the communities and they should be given the opportunity to feel comfortable when carrying out their voluntary work; they should not have to worry about facing the huge expense of these public liability insurance premiums. We should make sure something is done in that area, and done very quickly.

I welcome the Bill as far as it goes. It is part of a tranche of legislation that is coming forward. I reinforce the view that National Party members have expressed in the other House, and ask the Government to address those issues and remove the burdens these premiums are placing on the organisations and the volunteers who work in rural and regional Western Australia.

**HON JOHN FISCHER** (Mining and Pastoral) [8.59 pm]: I will make some brief remarks on the Bill. Over 40 000 volunteers give their time to assist people in need in schools and sporting groups. A range of small acts of kindness go unreported and unrecognised and are largely ignored by the average citizen. The least society can do is afford these people protection from litigation. The vast majority of volunteers are motivated only by their desire to help others. For many, it is a way to give something back to society. Numerous volunteers have led busy lives in business and when they retire, they feel the need to repay society or give something back to help their fellow citizens. Many volunteers have young children who participate in sporting ventures. Without the support of a vast army of parents, junior sport would not get off the ground. I could speak for a considerable time about the value of volunteers to society, but I know that I am talking to the converted. I recognise and pay them the respect that they most certainly deserve.

This Bill protects volunteers from liability provided they work for an incorporated organisation. This Bill goes hand in hand with the Insurance Commission of Western Australia Amendment Bill 2002, which will provide cover for not-for-profit organisations provided those organisations are incorporated. Volunteers working for state, local government or corporate bodies will also be covered. This Bill has been a long time coming. When it is passed, more people will be inclined to freely give their time to others in society.

It is a sad indictment on society that any person should consider suing a volunteer, but when people are injured today, they tend to look for someone else to blame. The fact that their actions may destroy a volunteer's life seems to escape them. I do not have figures on the number of volunteers who have found themselves in this

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predicament. However, like most people, I have heard anecdotal evidence about people who have been sued. I heard of a case involving a suburban cricket club committee that was sued when a batsman hit a six into a playground and the cricket ball hit a child on the head. Although the child received nothing more than a bad headache, that did not stop the parents from pursuing an easy quid. The fact that their actions very nearly destroyed the lives of the club secretary and chairman was of no interest to them. This Bill will prevent that type of action from happening. It will provide protection for volunteers who act in good faith in an authorised manner. However, unfortunately, the Bill will not protect volunteers who act outside the normal duties that their organisation provides. As a consequence, the Bill removes a volunteer's right to act spontaneously.

Unfortunately, this Bill does not protect volunteers who work for organisations that are not incorporated and it does not apply to those who work alone. That could apply to a person who mows an elderly person's lawn, for example, which is unfortunate. However, to remedy that situation would require a change to tort law. I understand that this measure might diminish a victim's rights. In the future society may need to address the aspects of tort law that do not protect the innocent. With a small reservation, One Nation supports this Bill.

**HON PETER FOSS** (East Metropolitan) [9.05 pm]: I support the Bill, although it will not achieve what could have been achieved by a Bill such as that put forward by the National Party in the other place. Firstly, it does not help all volunteers. To be protected by the Bill, a person must be a volunteer who works for an incorporated body or state government organisation. The Bill quite rightly protects volunteers from liability. This liability of volunteers is a modern development. When we talk about the rights of plaintiffs and so forth we lose track of the fact that many of these rights are of recent derivation and have been given by the courts without any consent or even input from Parliament; in fact, against the reluctance and upset of the very people who should be making these laws.

It was pleasing that in a recent case the Court of Appeal in New South Wales reversed a decision of the District Court in which a number of people had secured judgments for damages for falling over on public footpaths. The Court of Appeal said that the damage was apparent, obvious and only minor and they should not have fallen over, and that just because they had fallen over and injured themselves it did not mean that they should be able to recover damages from the local council. Not so long ago that was the case in Western Australia and there were varying degrees of liability by occupiers of premises. Strangely enough, the High Court started to change that and this Parliament legislated the Occupiers' Liability Act, which made it statutory. One of the other things we should do is repeal the Occupiers' Liability Act, which is a stupid piece of legislation.

We have moved from the situation in which people had the obligation to pay damages if they failed in a duty they owed to another person. That principle of law has been around for fewer than 100 years. The fact that a person can owe an obligation to someone even though that person had not caused them some form of blow is even less ancient. There has been a rapid development in this area. In fact, in the case of *Wyong Shire Council v Shirt* in New South Wales, which went to the High Court, we virtually ended up with the situation in which, if somebody has been injured, it cannot be said it was not foreseeable because as it happened, it was obviously foreseeable. Some of the protections once available against people being found liable - firstly, they did not owe a duty; and, secondly, it was not foreseeable - have virtually gone. We have almost reached the stage at which if somebody is injured, somebody else is liable.

There was a ludicrous case involving the Rottneest Island Authority employee who stayed over on the weekend, supposedly to help out, and, having drunk alcohol, dived into the Basin and broke his neck. It was held that the authority was liable because it had not put up a warning sign. What a stupid case that was.

Hon Paddy Embry: He was probably so drunk he could not read the sign.

Hon PETER FOSS: I do not know whether he had drunk that much, but the ridiculous thing is that as a result Rottneest is now covered from one end to the other in signs that tell people the obvious: people can be injured in a dangerous coastal area. Everyone knows that!

What about the kids who have been affected by stupid laws? If members have been to a playground recently, they will have seen that they contain nothing that kids would want to play on. Kids like a bit of excitement and danger. However, local authorities are too scared to put any equipment in playgrounds that would give a child the slightest inclination to play on it. Hence, kids do not play there and they find something else exciting and dangerous to do.

Hon Frank Hough: They will go and play on the road.

Hon PETER FOSS: Kids like doing stupid, dangerous things. Being a kid is all about risk taking.

Hon Derrick Tomlinson: It is the same with some adults.

Hon PETER FOSS: It is. That is one of the traits of a childish nature. What good has it done kids? Are they having fewer accidents? No; they are having just as many accidents because they will go off and find something



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dangerous to do. The result is that we are not providing them with proper play equipment and they go and play where we do not want them to play. There has been no public benefit from this development. The courts have been frank in saying that the law has been developed because they know that an insurer will pay. That is nonsense; the insurers do not pay. The people who pay premiums are the ones who pay. The only difference is that if a person is insured, he pays a bit of extra money to the insurer, who has to make a profit for taking on the risk. In the end, that person pays. No-one benefits. We have now reached the stupid situation in which the chance of being found liable and the amount of damages paid are so great that the community cannot afford it. We can see that is happening. Money does not grow on trees; it has never grown on trees. People earn money. They then pay good money, after paying tax, to insurance companies and all sorts of other people - the middle men, brokers, and the Government for stamp duty; everybody gets his cut and in the end it comes out of their pockets. Money does not come from trees but out of people's pockets.

This situation has developed out of the courts; it has gone on and on and is now ludicrous. We have been powerless to stop it. We employ the courts to come up with sensible decisions that strike a proper balance in our society. It is not good for Parliament to legislate on a law of tort. I would not want a law of tort legislated by Parliament. That is not the right way to go. We pay judges to exercise discretion and give us a properly worked out and balanced law. They have gone too far. The first sign of a revulsion against this situation occurred recently in New South Wales. That is probably the reason this piece of legislation is so bad.

The Government could see some problems with the legislation introduced by the National Party, but at least that Bill addressed the problem. This legislation does not address the problem; it does not address the possibility of volunteers who are not associated with an incorporated association being liable. Why do people incorporate associations? They do so to try to protect themselves from liability. The only people this legislation will protect are those who have the money to incorporate an association to protect themselves.

Hon Ljiljanna Ravlich: Who would you sue in terms of an unincorporated organisation?

Hon PETER FOSS: I am now getting to the second point. One does not get rid of the liability; it is passed on to the association. How does that solve the problem? The association still must have the -

Hon Ljiljanna Ravlich interjected.

Hon PETER FOSS: The parliamentary secretary should shut up for a while and listen.

Hon Ljiljanna Ravlich: Hang on, you are not answering my question.

Hon PETER FOSS: The parliamentary secretary should shut up, because I am talking. Has the parliamentary secretary not noticed that I am making a contribution to the second reading debate? Has she considered that? She should listen to me finish my speech.

Hon Ljiljanna Ravlich: I have listened, but I am asking you a fair question.

Hon PETER FOSS: No, the parliamentary secretary has not listened. She will get her answer if she listens to what I am saying. The first point is that this legislation does not get rid of the liability; it passes it on to the association. Why is that a problem? If an incorporated association has insurance, any smart association will insure against the liability of not only the association but also each of its members. It will not cost a cent more if they do that. The only people this legislation will protect are those who do not need that protection. Associations already have insurance. They will still have to pay for that insurance once this legislation is passed. If they do not have insurance, they will still go broke. Who are we protecting? We are not protecting anyone. This legislation does not do anything. If a person works as a volunteer for St John Ambulance, that association will have an insurance policy that extends to all its volunteers. If a volunteer is sued under the current system, the insurer comes in and takes over. What will happen under this legislation? The same thing, except that the insurer will defend the association instead of the volunteer. However, the liability does not go away. The liability should go away; that is what we need. We need to turn the tide of liability. There is not much point in just passing it on to the association, because the cost of insurance will still be there or the association will still go broke. Perhaps the individual volunteer will not go broke, which is nice to know. I suppose that is a small measure of protection. What about those thousands of volunteers who work for organisations that are not incorporated? They will not be protected in any way. The National Party legislation is better than the Government's legislation because it sought to protect those volunteers. I do not think the Government should pass on vicarious liability. That is what the Government's -

Hon Ljiljanna Ravlich: I have to tell the honourable member that the National Party could have introduced the private member's Bill here or could have proposed some amendments.

Hon PETER FOSS: The Government did not do anything with that Bill in the Legislative Assembly! If it will not debate that Bill down there, why debate it up here? The Government made its views pretty clear in the other

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place. If the Government is prepared to withdraw its Bill and instantly accept the National Party's Bill, I will accept the National Party's Bill any day. Is the Government happy to take the National Party's Bill instead?

Hon Ljiljanna Ravlich: No.

Hon PETER FOSS: What are we worrying about then? There is no point our debating it in this place, sending it to the other place and the same thing happening to it in the other place as happened to it before. If the Government says right now that it will support the National Party's legislation, I will sit down, shut up, and let us go. The Government can withdraw its Bill and we can get going on the National Party's Bill immediately.

Hon Murray Criddle: That is a good idea. We will do it tomorrow.

Hon Dee Margetts: I must have missed that briefing on the National Party's Bill because it did not talk to us about it.

Hon PETER FOSS: It was in the other House; it did not reach this place.

This Bill does not tackle the problem. It is a mealy-mouthed attempt to do so, because it does not deal with the very problem that has been at the base of all this, which is the extraordinary way in which the courts have developed the law of liability in the past 10 to 15 years. That is the real problem. I do not mind a small amount of development, but it has got to the stage now that the law has these inadequacies: first, it does not require that one find a duty in a person before he or she is found liable. It virtually works the other way around. It finds somebody who has been injured and then looks for someone to blame. Secondly, it does not give a clear and distinct thing that people can do to avoid liability. That is one reason that people get insurance; that is, they do not know what they must do in order not to be sued. Once upon a time people could go to a lawyer and say, "What do I have to do so as not to be sued?" If people go to a lawyer now, he will say that he does not know, because people will virtually find out what the High Court will say after they have been sued. All the judgments seem to be post hoc. There is no principle that can be used in advance. One never knows when the High Court will come out with another decision in which it says, "Don't pay any attention to anything we decided before. Here is a new lot of laws." *Nagle v Rottneest Island Authority* (1993) 177 CLR 423 was a classic case in which one would not have guessed until afterwards who would be found liable.

There have been a number of leading cases of that nature in which people were totally taken by surprise when they found what the decision was. They had no idea what they would be faced with. That is the area of law that the judges will have to deal with. I have looked at various ways of trying to reverse that tide without taking on the responsibility for setting up a law of tort. I really do not think that Parliament can do that. I do not think the Parliament can do other than set broad principles of tortious liability. This is the classic area in which a proper exercise of judicial discretion is the proper way to go in this law. The problem is that judges have abdicated proper responsibility in this area.

I am not referring to state judges. I must say that state judges in all States have tried to stem the tide. However, the High Court seems to be totally separated from all reality. I am not surprised, because the judges live in Canberra, and nobody is of equivalent status to them. Hon Dee Margetts might be able to tell us about this. In Canberra, people can talk to those who are at the level above and the level below them, but they cannot talk to anybody else. As nobody is on the High Court judges' level, nobody talks to them. Not surprisingly, they all become totally disconnected from reality in life, and they end up giving us the most extraordinary decisions that only a person who has no connection with life could possibly give. The Supreme Court judges do not seem to be quite so disconnected from life. I must confess that the life of Supreme Court judges is a little rarefied, but they seem to be a bit closer to reality; and District Court judges show remarkable commonsense.

One of the problems of our legal system is that it is totally disconnected from reality. We have ended up with this situation that everyone wrings their hands over and asks what we should do about it. We get useless bits of legislation brought in by this Government, better bits of legislation introduced by the National Party, and then we must try to work out what we will do about it. In the end, all we can do is support this legislation as at least it is doing something. I do not envy the Government in its efforts to find a good solution. I am not totally criticising the Government, other than that I think it could have put forward what the National Party put forward. It is not easy because of the courts abdicating their proper role. We must do something. This is better than nothing, and therefore I support it.

**HON JIM SCOTT** (South Metropolitan) [9.19 pm]: My colleague Hon Dee Margetts pointed out that I have some interest in this and the other tort reform legislation. I know that this is probably not an appropriate Bill to hold up for very long because of the great concern for volunteers in this State. However, one small principle that has been continually overlooked in the debate on tort reform is the real reason for the increasing cost of insurance. It has been attributed to the greater amounts of litigation, but that does not stand up when the figures

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are considered. There are certainly more payouts. The insurance industry is talking about a doubling of the payouts; however, in that same period the premiums have tripled.

Hon Peter Foss: It is partly because the legal costs have also increased. Once upon a time it was very simple to deal with negligence cases. The lawyer could easily decide if there was a case. Most were settled and only a few were litigated. The problem is that now when somebody sues, those involved do not know whether they are liable. That is found out only when the case goes to the High Court. That has massively pushed up the legal costs.

Hon JIM SCOTT: Part of the problem is the incredible complexity of some of the legislation that has gone through this place in recent times. Even magistrates and High Court justices have difficulty understanding what it all means.

Hon Peter Foss: Tort does not have much to do with legislation.

Hon JIM SCOTT: Legislation is highly complicated, and it is completely beyond the ability of the average person to understand what the sections mean.

Hon Peter Foss: There is very little legislation on this subject. That is nonsense.

Hon JIM SCOTT: It is not nonsense.

Hon Peter Foss: What legislation is there?

Hon JIM SCOTT: Plenty of lawyers have told me that the legislation is getting more complicated.

Hon Peter Foss: It is, but that has nothing to do with tort. We do not have tort legislation.

Hon JIM SCOTT: I know I am talking about a different area. I recently read an interpretation of the workers compensation law. A District Court judge said that the workers compensation legislation no longer ensured that workers received compensation. He thought that it had been amended so much that it is now designed to prevent workers from receiving workers compensation after they have been injured. He was talking about legislation that passed through this House. When that sort of development occurs, we are in trouble. Much of the time the trouble stems from this place not conducting a proper analysis of these cost increases. For instance, we should look at the internal costs of the insurance companies. I am not talking about the claims they are paying but their running costs. They have become huge, monolithic, inefficient, bureaucratic companies, and as a result we are seeing very poor claims management and huge costs in the running of insurance systems. No Government has yet had the guts to demand an open and accountable system for examining not only the financial aspects of these companies but also the efficiencies and inefficiencies in their operations. That has been a huge failing.

That was promised when Hon Peter Foss was a minister. He promised there would be further investigation into our insurance system and that the workings of insurance companies would be examined. That did not happen and it has not happened under this Government. I am rather surprised by that. As soon as there is some bad investment and bad takeovers by insurance companies, they run to the Government for tort reform so that they can get their hand in the till again. It is about time that this Government - especially as it is a Labor Government - took on the insurance companies and started examining the issue in depth. In the debate so far, members have said that it is bad that volunteers are affected by this legislation. It does seem harsh; however, if a person is injured through someone's negligence, that is also harsh. Volunteer firefighters in this State have started fires so that they could report them and play a role in putting them out. If those people caused a loss of life, family members of the victims would want compensation. Volunteers are generally people of very goodwill who do fantastic work in the community. If a person is injured through the negligence of a volunteer, he needs some legal protection. If there is no protection, compensation has to be paid from somewhere. If people are no longer able to work, they will end up being supported by the taxpayer. The Government should play a much larger role in paying for insurance for volunteers because it is by no means the largest area in the insurance industry. The Government should call the bluff of the insurance companies, let them vacate the field, and take it over itself. Obviously, that takes more planning than the quick reactionary way in which things have happened up to now. It requires a lot of budgeting to achieve. Governments are capable of doing that and it is about time it happened. If we keep talking about how awful it is that people sue when they are injured, whether it is through the actions of volunteers, at work, or a matter of public liability, and there is no liability, there will be no need to ensure safe practices, workplaces and recreational areas. The cheapest way to avoid liability is to create a safer environment. As Hon Peter Foss said, we can never have a perfectly safe environment. Many accidents are caused through a lack of application and commonsense. If we keep rewarding insurance companies and people who are negligent, we will get ourselves in a bigger mess and not be able to get out of it. I intend to say a lot more when the House deals with other areas of insurance. On this occasion, I support the Bill, but I have large reservations about the direction in which we are going.

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**HON LJILJANNA RAVLICH** (East Metropolitan - Parliamentary Secretary) [9.30 pm]: I first put on record my thanks to those members who have contributed to the second reading debate. The debate went as I had anticipated; that is, there was a general focus on the questions of rising insurance premiums, who is to blame and what is to be done. As is usually the case, everybody has a different view of what is the best way to tackle the problem.

Insurance premiums are a growing concern within the community. In preparing for this Bill, I decided to do a little bit of general reading on the insurance industry. I picked up a recent report by the Australian Competition and Consumer Commission on the insurance industry market pricing review. The report was released in March of this year and makes for quite compelling reading when dealing with some market pricing issues. Hon Peter Foss said that two of the drivers of increasing premiums are the awards by the courts and the increasing amount of litigation in the community. There are other cost drivers. The lack of competition in the insurance market is one matter that has been blamed for the lack of price competition and, therefore, a lack of any reduction in premiums. It is interesting to note that the top 10 insurance companies wrote business for 71 per cent of premium revenue. Page 5 of the report states -

Although the APRA recorded 156 private sector insurers as at 30 June 2001, the industry is dominated by less than 10.

I will be happy to table the report, which contains a table listing the top 20 conglomerates according to premium revenue. It shows that they wrote 83 per cent of all business, with the top 10 writing business for 71 per cent of premium revenue. The top 20 conglomerates accounted for \$14.9 billion, whereas the industry total was \$17.9 billion.

Hon Peter Foss: Is that taking account of reinsurance, because I think the figure would be even smaller with reinsurance?

Hon LJILJANNA RAVLICH: I do not think it does take account of reinsurance.

It is a complex issue. There are a number of reasons for costs continuing to escalate. I have noted with some interest that the Commonwealth Government has included some measures for new prudential standards, which are long overdue. For example, the Commonwealth Government has set out the minimum capital requirement for general insurance companies. It has introduced a number of other prudential measures that hopefully might provide some regulation in this industry and some relief for Governments and the general population. As it is a very complex issue, I would have liked more time to go into the generalities, but time does not permit.

It is not a simple issue to address. It is not fair to level criticism at this Government by saying that it might be doing something but what it is doing is clearly not enough. I refer members to the workers compensation legislation that was dealt with in 1998. I can remember that we were told when we were in opposition that the legislation would need to be supported, because unless it was supported, the whole workers compensation system would collapse. We were promised there would be a 10 per cent reduction in workers compensation premiums.

Hon Peter Foss: You were told there would not be a big increase.

Hon LJILJANNA RAVLICH: Let me finish. The Premium Rates Committee recommended to the insurance industry that there be a 10 per cent reduction in premiums. The insurance industry blew a raspberry and said that it could take the advice but it was under no legal obligation to effect any 10 per cent reduction. The 10 per cent reduction was never realised. We now find ourselves with escalating workers compensation premiums. It is not as simple as saying that the costs are driven by the courts, the insurance companies, or a range of other factors. These are very complex matters which need to be looked at in terms of -

Hon Derrick Tomlinson: Holistically!

Hon LJILJANNA RAVLICH: Absolutely; holistically!

I will now make some comments on the matters raised by members during the debate. A number of issues were raised by Hon Derrick Tomlinson, and as usual he was very eloquent and knew his stuff. He is quite right -

Hon Peter Foss: Stop sucking up to him!

Hon LJILJANNA RAVLICH: It does not happen very often!

He is quite right in saying that this volunteer legislation is part of a five-point plan by the Government. He was quite wrong in saying that the Fire and Emergency Services Authority legislation was a part of that plan. The Civil Liability Bill 2002, which has not yet come to this place, will aim to reduce public liability insurance exposure or risk and improve insurance costs and availability. The Insurance Commission of Western Australia Amendment Bill 2002, which also has not reached this place as far as I am aware, will enable the Government to provide insurance cover for not-for-profit groups that are aligned to the Government. I note that Hon Barry

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House spoke about a hospital auxiliary in his electorate. That organisation may be in a position to qualify for the provisions under this Bill.

The third measure is the Volunteers (Protection from Liability) Bill 2002. These are the three Bills in this five-point package, but there is also a risk management and public safety awareness campaign, and another initiative that is helping businesses and community groups achieve bulk buying power through pooling. This will allow not-for-profit groups or community organisations to group together to purchase a single public liability insurance policy at an affordable price. That is the Government's five-point plan released in August this year.

One of the assumptions made by members about this Bill is that it will drive down premiums. That was not the intent of the Bill. This Bill basically recognises the contribution of volunteers, of which there are nearly half a million working across a range of areas and delivering all sorts of services. I am told that last week, for example, 500 volunteers were involved in a conference on the ageing. That number of volunteers in the establishment of one conference is quite significant, and demonstrates the preparedness of people to get involved with community and civil work, and to make a contribution. This Bill aims to protect volunteers from incurring civil liability when doing community work, and it also aims to provide for community organisations that organise voluntary work to protect their members from civil liability. The Bill will therefore protect volunteers who work for community organisations from incurring civil liability. This liability will be transferred, as Hon Derrick Tomlinson rightly pointed out, to the organisation, so that the volunteer is protected, provided he or she has acted in good faith, but the injured party can still seek compensation.

I have a differing point of view from that of Hon Peter Foss. He said that we should have legislation to protect unincorporated organisations. I do not know by which mechanism that could be done, and I do not think a mechanism whereby each individual of an unincorporated organisation is insured individually will be satisfactory.

Hon Peter Foss: That is the point. You keep wishing to pass on vicarious liability. I am saying that you should abolish it altogether. That is why it will not have any effect on premiums; you will still have to insure.

Hon LJILJANNA RAVLICH: I take that point on board. However, given that the current laws limit what we can do and given the legislation that has been drafted, we are not in a position to do that.

Hon Peter Foss: We can't change it now. You should have picked up Hon Murray Criddle's party's Bill.

Hon LJILJANNA RAVLICH: We have accommodated a number of amendments that were moved in the Assembly.

Hon Murray Criddle: One.

Hon LJILJANNA RAVLICH: There were two amendments. This Bill is not designed to reduce premiums. The intent of the Bill is straightforward.

Hon Dee Margetts raised the issue of surf lifesavers. The Volunteers (Protection from Liability) Bill will provide protection for volunteers involved with incorporated community organisations. I understand that Surf Life Saving Western Australia is an incorporated body and the liability of volunteers will be transferred to that organisation. They will be covered.

Hon Dee Margetts: Only individuals will be covered, not the actual organisation.

Hon LJILJANNA RAVLICH: It is an incorporated organisation -

Hon Dee Margetts: That does not help it as an incorporated body.

Hon LJILJANNA RAVLICH: That is the other issue the member has raised. The member is looking at it in isolation of what may be provided through the Insurance Commission of Western Australia Amendment Bill, which, as I have already said, is designed to provide insurance cover for not-for-profit groups that are aligned to government, so that there is some protection and assistance for groups such as those mentioned by Hon Dee Margetts. I think a couple of other members also mentioned it as being of concern. I am of the understanding that that legislation, which has not come into this place yet, should provide some comfort -

Hon Derrick Tomlinson: Which Bill was that?

Hon LJILJANNA RAVLICH: It is the Insurance Commission of Western Australia Amendment Bill 2002.

Hon Dee Margetts also asked who has been consulted. I understand that Volunteering Western Australia, the Western Australian Council of State School Organisations, the Western Australian Sports Federation, the South Australian Office for Volunteers, the Western Australian Crown Solicitor's Office, the Insurance Council of Australia Ltd and the Australian Plaintiff Lawyers Association have been consulted about this legislation. In addition, I am told that the Department for Community Development has consulted the Department of Sport and

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Recreation and RiskCover about a community education program on the proposed legislation, as well as the Department of the Premier and Cabinet and Treasury about general issues relating to public liability insurance. I do not know whether that list is to the member's satisfaction. All I can say is that there have been consultations. One might argue that those consultations have not been extensive enough. In the event that that is the case, all I can say is that, as Hon Derrick Tomlinson pointed out, similar legislation has been in operation in another jurisdiction, and I imagine that some broader feedback might have been received from that jurisdiction.

Hon Murray Criddle and Hon Peter Foss raised the issue of the National Party Bill. Unfortunately, the National Party Bill did not make it as far as this House; therefore, I am not privy to the detailed content of that legislation and I do not profess to be an expert on it. However, the information I have at hand may provide the member with at least the Government's argument as to why that legislation was not embraced. I am advised that although the intent of that legislation was to protect all volunteers from personal liability, the legislation would deny an injured or aggrieved person any legal recourse. The strength of the Government's Bill is that it achieves the correct balance between protecting the volunteer while at the same time retaining the victim's right to seek legal compensation. In addition I am told that the National Party Bill risks the possibility that, following a negligent act, questions may arise about whether the individual involved was acting in the capacity of a genuine volunteer.

Hon Peter Foss: You always have that problem. You have that problem in your legislation too.

Hon LJILJANNA RAVLICH: I have not seen that legislation. I am just putting that on the record because it is a matter that members opposite have raised.

The other question that members opposite have raised is why the Fire and Emergency Services Authority of Western Australia, the Department of Conservation and Land Management and the Department of Fisheries have been excluded from the Bill. Various categories of people are excluded from the definition of "volunteers", such as those who perform emergency services functions as defined by the Fire and Emergency Services Authority of Western Australia Act 1998, honorary fisheries officers within the meaning of the Fish Resources Management Act 1994 and honorary wildlife officers and honorary forest officers etc. This is to ensure that there is no confusion about which Act is the primary Act and which provisions, and therefore which protection, will apply.

Hon Murray Criddle: It may be a grey area and someone may seriously miss out. I remember that a fire officer was caught up in an unfortunate incident and all sorts of ramifications flowed from that.

Hon LJILJANNA RAVLICH: The fact that these people will be excluded will ensure that there is no confusion, because their protection is provided for under the primary Act. These statutory provisions do not operate in the same way as the Volunteers (Protection from Liability) Bill in that there is no transfer of liability; therefore, they will be exempt from this legislation.

Hon Derrick Tomlinson: Will they be covered under the FESA legislation? Will the liability be transferred to FESA as a personal liability?

Hon LJILJANNA RAVLICH: I am not sure about that. That is something that can be raised during the debate on the FESA legislation.

Hon Derrick Tomlinson: We will deal with that when we get to it. We are waiting for it.

Hon LJILJANNA RAVLICH: Once again I thank members for their contribution and for their support for this legislation, and following the vote on the second reading I would like to proceed into committee.

Hon Derrick Tomlinson: You do not have much choice now!

Hon LJILJANNA RAVLICH: I put on the record that I do not have my advisers with me, and I understand there is an understanding with regard to that.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chairman of Committees (Hon Jon Ford) in the Chair; Hon Ljiljanna Ravlich (Parliamentary Secretary) in charge of the Bill.

#### **Clause 1: Short title -**

Hon DEE MARGETTS: It has come to my attention that one group of people was not discussed and I would like a response from the parliamentary secretary about that group. I refer to a range of professionals who may work during the day with private companies or government departments and who provide an enormous amount

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of assistance from time to time to volunteer groups. The groups might be incorporated; however, I can think of an enormous number of occasions when community organisations call on professionals in the community who work for departments and who volunteer their professional advice to those groups in their own time. It appears that those people fall between the cracks in this legislation.

Will the parliamentary secretary assure members, either in this legislation or in a package of legislation that we are likely to see come into the Chamber, that this important issue will be addressed? I had not previously thought of that issue but it is a very important concern.

Hon LJILJANNA RAVLICH: They will be covered, provided they are working for a voluntary organisation, they are acting in good faith, they are not being paid for the work and they are providing it in a voluntary capacity. Is the honourable member talking about professional people who carry out voluntary work on Saturday or Sunday?

Hon Dee Margetts: I am not talking about members of an organisation. I am talking about people from whom an organisation might seek help.

Hon LJILJANNA RAVLICH: They would not be covered if they were not members of the voluntary organisation.

Hon Peter Foss: If they were working for the organisation, they would be covered.

Hon LJILJANNA RAVLICH: That is correct.

Hon Peter Foss: They would have to be members of the organisation for which they were working.

Hon LJILJANNA RAVLICH: Hon Peter Foss is correct. They must either be working for or be a member of the organisation. Can the member describe a situation that she has in mind to clarify exactly what she is getting at? If the member is asking me whether a person who works for the Department for Community Development would be covered by this Bill if that person went out and incurred a civil liability, the answer is no.

Hon DEE MARGETTS: Perhaps I can think of an enormous number of examples because of the organisations I am involved in. I can think of examples of communities with which I have communicated, for example, about the Esperance jetty, and scientists I have talked to who have been asked to visit a community to do a weekend's volunteering. They are not members of that community group but have been asked by the group to do something. If they agree to do the work, they will be doing a service but they will not be members of the group. They might simply give advice on a voluntary basis, which could be legal advice. It could be other professional advice, such as advice from a hydrologist. I can think of a range of examples in my electorate in which a professional hydrologist's advice was sought by people who were having a range of problems. They might belong to a community group but do not actually join the group or do a lot of work for it; they are simply asked for advice. I do not think that situation is unusual; it is fairly common, and it is very unclear.

Hon LJILJANNA RAVLICH: I do change my response now that the member has clarified the situation. My understanding is that if they are, say, invited into the Esperance jetty group or whatever and that group is an incorporated association under the Associations Incorporation Act, and if they work at the invitation of that group and under the instructions of that group and act with good faith in whatever they do, then, yes, they would be covered. The group must be incorporated. They must act at the invitation of the group and not just do something off their own bat; they must act in accordance with the group's instructions. If they were told to go to X, but they went to Y and got themselves into a spot of bother, they would not be covered; if they went where instructed, there would not be a problem.

**Clause put and passed.**

**Clause 2 put and passed.**

**Clause 3: Interpretation -**

Hon LJILJANNA RAVLICH: I move -

Page 2, after line 21 - To insert -

- (d) for the purpose of caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition;

By way of explanation, during the second reading debate I mentioned that a number of amendments were agreed to in the Legislative Assembly. The member for Merredin thought it would be appropriate for this definition of community work to be an addition to the list. This is a fairly straightforward amendment to be inserted between paragraphs (c) and (e).

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**Amendment put and passed.**

Hon LJILJANNA RAVLICH: I move -

Page 2, after line 23 - To insert -

(e) for the purpose of promoting or preserving historical or cultural heritage;

As with the previous amendment, this amendment was an undertaking given in the other place to increase the range of definitions of community work and it has a direct application for preserving historical and cultural heritage sites. I seek members' support for it.

Hon DERRICK TOMLINSON: I support this amendment and I accept that it is a carryover from an undertaking given in the other place. One could go on forever interminably adding definitions, because the definition is constraining. However, clause 3(1)(i) states -

For a purpose prescribed by the regulations,

How long is a piece of string? By allowing clause 3(1)(i), the definition becomes unlimited. It can be amended at any time by regulation. Although I accept that the parliamentary secretary is adding this amendment in good faith, in my opinion it is an unnecessary amendment; however, I do not oppose it.

Hon MURRAY CRIDDLE: What is the status of the regulations?

Hon LJILJANNA RAVLICH: The regulations have not been drafted. I do not know whether it is the usual practice to draft regulations prior to the legislation being enacted.

Hon RAY HALLIGAN: I understand what the parliamentary secretary is saying. However, the amendment gives the minister enormous opportunity to not only include different types of work prescribed under the regulations but also exclude them. Therefore, the amendment provides an enormous scope. Although I understand the parliamentary secretary's explanation that the regulations have yet to be drafted, it would be interesting to know whether the Government had anything specific in mind or whether it was hoped that certain things might come to mind as the regulations were being drafted.

Hon LJILJANNA RAVLICH: I would like to think that we have provided a comprehensive list. The argument about including these definitions and that the Government might exclude some definitions or include others in the future is a nonsense argument because this is no different from other legislation. Other legislation provides that regulations can be made. All members, particularly members of the Delegated Legislation Committee, know how regulations are made and how this place can disallow them. Therefore, this place will provide the checks and balances in due course. As far as I am concerned, the list provided is the comprehensive list at this stage. I am not giving an ironclad guarantee that a definition might not be excluded or included in due course; that is at the discretion of the House.

Hon DEE MARGETTS: A range of questions have been asked in the committee stage. Earlier this evening, when we were asked, with very little notice, whether we would go onto the committee stage, I indicated that the Greens (WA) did not know that it was going to happen. I am a little surprised that, given we were asked whether we were ready to go to the committee stage, no advisers have been provided to the parliamentary secretary for this committee stage. Questions on such things as liability are very important in interpretation in a court of law. If the Government says it is ready to go to the committee stage, it should ensure that advisers are available in case there are issues that need clarification. With no disrespect to the parliamentary secretary, the committee stage can be extremely hair-raising. Who knows what kind of complex questions will be asked in the committee stage. In issues of liability it is extremely important that we have the best advice available. It is unfair to put us and the parliamentary secretary in this situation.

Hon Kim Chance: That is precisely why I asked everybody if they were prepared to continue through to the committee stage. Nothing had come up in the second reading debate.

Hon DEE MARGETTS: It is not a matter of whether the Greens are prepared; it appears that the Government is not prepared, and that is not fair to any of us, including the parliamentary secretary.

Hon Kim Chance: No. If Hon Dee Margetts had said she was not ready to proceed through to the committee stage without an adviser, I would not have brought on the committee stage.

Hon DEE MARGETTS: I might have missed something, but I was not aware from anything that was mentioned earlier tonight that no adviser would be present.

Hon Kim Chance: I spoke to Hon Dee Margetts about it before the committee stage started.

Hon DEE MARGETTS: I must have missed the bit about no advisers being available.



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**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 4: Meaning of “volunteer” -**

Hon LJILJANNA RAVLICH: I move -

Page 3, line 18 - To insert after "*Services*" the word "*Authority*".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 5 put and passed.**

**Clause 6: Protection of volunteers from liability -**

Hon RAY HALLIGAN: I am interested in subclause (3)(b) which states that protection does not apply to a volunteer -

whose ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.

Who will determine what is or was significant and what is the relevant time, and how will we determine the significance of the alcohol or drugs at that relevant time?

Hon LJILJANNA RAVLICH: That was a very good question from Hon Ray Halligan. I expected a very good question from him. My only response is to ask how we currently determine whether somebody is significantly impaired by alcohol or drugs. If someone is impaired by alcohol or drugs when driving, there is a high risk that he will be picked up by the police, and a certain standard or level of impairment has been set. I guess that, at the end of the day, it is a judgment call. If the honourable member is asking who will make that call under this legislation, it may be one area that will be prescribed by regulation. To be honest, I am assuming that it will be prescribed by regulation. As I have said, I have not seen the regulation.

Hon RAY HALLIGAN: I thank the parliamentary secretary for the answer. I understand the difficulties associated with providing that answer. Unfortunately I can see no suggestion in that clause, as I can in other clauses of the Bill, that it will be prescribed by regulation. That may well be the case, but then again it may not. It appears to me, and I am no lawyer, that this provision could create significant problems in the future. This subclause proposes to exclude a volunteer from the protection of the legislation should he not have the ability to do community work in a proper manner; that is, should he be significantly impaired. We are talking about a person who causes an action for civil liability seeking the protection of this Bill. This subclause could create enormous problems.

Hon LJILJANNA RAVLICH: I take on board the honourable member's concerns. They are legitimate concerns. There is a general provision on regulations in clause 9, which states -

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

The fact that no specific mention is made of the regulations in clause 6(3)(b) does not preclude regulations from being drawn. I give the honourable member an undertaking that the Government will consider his concerns very seriously, because, now that he has pointed them out, I share those concerns.

Hon DERRICK TOMLINSON: I would have thought that the point at which a decision is made about a volunteer being significantly impaired by alcohol or drugs is the point at which the insurer makes a decision about whether to accept the claim. We are talking about a claim by a person who is injured or who suffers property damage as a result of the actions of a volunteer who otherwise acted in good faith under all the other requirements of the Bill. The Bill provides that that action for damages is then transferred to the incorporated association.

The incorporated association's insurer would then make a decision whether to accept the claim, and surely an inquiry would be made about the state of the volunteer at the time of the incident. If the plaintiff wanted to pursue the matter, the plaintiff would have two options. One would be to accept the decision of the insurer that it is not liable because of the significant state of intoxication of, or the effect of a drug on, the volunteer at the time of the incident. Therefore, the plaintiff would have to sue the volunteer, who would be liable by virtue of his state. The volunteer must then demonstrate in a court of law that he or she - probably she - was significantly impaired - so there is a legal question - or challenge the insurer's decision that it is not liable. A seemingly

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simple protection from liability then turns into an awful legal squabble. It will ultimately be decided only at law, through law, and not by regulation.

Hon LJILJANNA RAVLICH: It is not dissimilar to a situation in which somebody is drinking in a workplace and finds himself involved in an industrial accident or whatever. A similar process would follow as to whether the worker or a third party is liable, and whether the insurer will pay out, support the claim or whatever. The situation would be similar to that.

**Clause put and passed.**

**Clause 7: Liability of community organisations -**

Hon DERRICK TOMLINSON: I do not recall the parliamentary secretary responding to a question that I asked of her in my second reading presentation. The principle of this Bill is that the liability of the individual volunteer is transferred to the incorporated organisation. For that protection to operate, it is necessary that the organisation be an incorporated organisation. Many voluntary agencies are not now incorporated associations, and if they want to protect their volunteers, they must apply for incorporation. The question that I asked was: if the volunteer was doing work organised by the community organisation and the community organisation was not an incorporated organisation, would that volunteer be liable if the association was not incorporated?

Hon LJILJANNA RAVLICH: If the organisation was not incorporated, the volunteer would be liable. The Bill protects only volunteers who are working for an incorporated organisation, under the instruction of that incorporated organisation, and also are acting in good faith.

Hon DERRICK TOMLINSON: I was hoping that the parliamentary secretary would give that answer. An organisation must have a minimum of six members to be incorporated. What would be the effect on the liability of an individual volunteer if at any time the membership of the association fell below six?

Hon LJILJANNA RAVLICH: That is a very interesting question. I think -

Hon Peter Foss: Do not look to me for an answer.

Hon LJILJANNA RAVLICH: I am not looking to the member. I think that, logically, if the membership of an incorporated organisation fell below six, which is the minimum number required for incorporation, that incorporated organisation would at law not be an incorporated organisation, thereby leaving the volunteer in a very vulnerable position.

Hon GEORGE CASH: I realise that the parliamentary secretary does not have the advantage - or disadvantage - of an adviser, but that last question is very important, and there will be significant ramifications if the parliamentary secretary's answer is wrong. I think it would be in the interests of the Committee if in due course the parliamentary secretary reconfirmed her answer. Some people could be put in a very dangerous position if what she said was not correct. My understanding is that her answer was not necessarily right.

Hon LJILJANNA RAVLICH: I put on record that I am not 100 per cent sure of the legal status of an organisation that failed to maintain the requirements that were necessary for it to become an incorporated association. It is a very interesting question, and I am not convinced that anyone in this place knows the answer to it. I have a feeling that a question of this nature may need to be determined at law.

Hon Kim Chance: Do you want to seek leave to report progress and sit again?

Hon DERRICK TOMLINSON: Rather than delay this Bill over what is a technical question that will be tested elsewhere, I will accept an undertaking from the parliamentary secretary that she will give advice to the House when she has been able to get it from probably Crown Law.

Hon PETER FOSS: I have not had an opportunity to consider the matter, but my instant reaction is that the association would remain incorporated until it was dissolved. The fact that the number of members had fallen below six may be a ground for dissolving it, but I do not think it would be an automatic result. It would be most unusual if an incorporated body ceased to exist simply because its membership fell below a particular number. I am flicking through the Associations Incorporation Act, and I would very surprised to find that the corporate body disappeared other than by order of the court, voluntary winding up or cancellation. Section 35 of the Act states -

- (1) Where the Commissioner has reasonable cause to believe that an incorporated association -
  - ...
  - (b) has fewer than 6 members;
  - ...

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the Commissioner may send, by certified post addressed to the association at the address which appears to the Commissioner to be the address of the association, and may, if he considers advertisement to be desirable, cause to be published in a newspaper circulating generally in the State, a notice stating the ground or grounds on which it is proposed to cancel the incorporation of the association and stating that, if a reply showing cause to the contrary is not received within 2 months after the date on which the notice is sent or published, whichever is the later, the incorporation of the association will be cancelled by the Commissioner under this section.

My view is that until such time as it has been cancelled by the commissioner, the corporate body continues to exist. The fact that it has fewer than six members would not alter that.

**Clause put and passed.**

**Clauses 8 and 9 put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

Leave granted to proceed forthwith through remaining stages.

*Report*

Report of Committee adopted.

*Third Reading*

Bill read a third time, on motion by Hon Ljiljanna Ravlich (Parliamentary Secretary), and returned to the Assembly with amendments.