

LEGISLATIVE ASSEMBLY

Wednesday 30 October 2002

Mr Speaker (The Hon. John Henry Murray) took the chair at 10.00 a.m.

Mr Speaker offered the Prayer.

OFFICE OF THE OMBUDSMAN

Report

Mr Speaker announced the receipt, pursuant to section 31AA of the Ombudsman Act 1974, of the report entitled "Annual Report 2001-2002".

Ordered to the printed.

BILL RETURNED

The following bill was returned from the Legislative Council with amendments:

Food Bill

Consideration of amendments deferred.

STRATA SCHEMES MANAGEMENT AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr AQUILINA (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading) [10.04 a.m.]: I move:

That this bill be now read a second time.

This bill makes some significant refinements to the New South Wales strata schemes management laws that will have a beneficial impact on strata lot owners and owners corporations generally. New South Wales pioneered the concept of ownership of individual parcels of floor and air space in high-rise buildings in 1961. Before then the only way to have any form of possession of an apartment-type accommodation was to own shares in the company which owned the company title building. This gave rise to a right of occupation of a unit in the building. The New South Wales strata system has since been adopted around Australia and in a number of other countries. Even today, delegations from overseas come to New South Wales to examine our strata system to see how it may be used and adapted for their own situations.

In 1973, management and dispute resolution provisions for strata schemes were passed by Parliament enabling the more efficient administration of strata schemes to take place. The Strata Titles Act 1973 stood the test of time as strata schemes continued to appear across the State and a great variety of strata complexes were developed. The original drafters of the legislation had in mind fairly standard three or four storey red brick blocks of flats but it did not take long for a wide range of strata developments to appear in our city and regional areas. While high-rise residential schemes are still the predominant form of strata scheme, other forms like townhouses, villas, simple two-lot schemes, commercial, industrial and retirement village developments have also arisen.

There are now in excess of 62,000 strata schemes in New South Wales and between 40 and 45 new ones are being registered every week. It is estimated that one in four of the State's population is connected with strata schemes through owning a lot or by working or living in a strata scheme. It is certainly a major form of building development in Sydney. The strata laws were continually updated to take account of new issues, and in 1996 a total overhaul took place with the passing of the Strata Schemes Management Act 1996. This latest

round of amendments has arisen following a national competition policy review of the legislation. The review, which found that the small number of anti-competition provisions of the Strata Schemes Management Act were justified and that the benefits of the legislation outweighed the costs, also enabled a number of emerging trends and concerns in the strata scheme area to be examined.

This bill comprises stage one of the recommendations that arose from the national competition policy review. Stage one is limited to the more pressing matters associated with caretaker management contracts and proxy and priority voting arrangements. Stage two will cover a wide range of miscellaneous management matters that became evident during the public consultation process associated with the review. The Government proposes to introduce a bill comprising the stage two reforms in 2003.

I wish to move on to the specific detail of the bill. The bill will, for the first time, ensure that strata building caretaker management rights, often sold by developers, are regulated, as will be the associated contractual arrangements. Concern has arisen over the fact that owners corporations are sometimes tied up for 25 years to a contract entered into by the developer before there were any other individual owners in the scheme. A number of provisions are included in the bill to provide some relief to owners corporations in situations where they are not satisfied with the contracts they have been locked into by the developer.

While it is recognised that many on-site caretaker managers, some of whom also have the rights to the letting of units owned by investors, conduct honest and appreciated businesses, a minority of them are the cause of much unhappiness among owners. This area of caretaker management rights is a relatively new activity attached to some of the more recent large strata developments in Sydney and the North Coast. It is particularly common in developments where the majority of units have been bought by investors for letting either to tourists, perhaps as serviced apartments, or for longer-term occupation. While the caretaker manager industry has existed in Queensland for a number of years, its emergence in New South Wales has been more recent.

It is important to recognise that this bill's provisions directed towards caretaker managers are not referring to the role and responsibilities of strata managing agents. Licensed strata managing agents may be delegated either some or all of the financial and administrative functions of the owners corporation. In other words, they stand in the place of the owners corporation to the extent of their delegation. Caretaker managers cannot be given such extensive powers nor is that the purpose of their existence. This group of people are in fact engaged to assist the owners corporation in its oversight of common property, and in repairs to and maintenance of common property. Cleaning, garden and grounds maintenance, acceptance of deliveries and security functions are the types of functions carried out by caretaker managers. They help to oversee the operation of the scheme and use of common property but in a clearly limited way. They have no power to handle owners corporation financial matters or enforce by-laws. While there are some caretaker managers who also hold strata managing agents' licences, I understand that this is not customary.

Caretaker managers usually own a lot in the scheme. They may have exclusive use of some part of the common property for the purpose of an office in the foyer. They are on site to deal with issues as they arise, from co-ordinating the maintenance of contractors carrying out work on the lifts or the swimming pool to giving access to owners who have lost their keys, and receiving deliveries from suppliers. Caretaker managers do all of these things but again, I stress, they are not strata managing agents. The bill goes a step further than the 1996 legislation in clearly separating the role of the strata managing agent from that of a caretaker or building manager assisting in the carrying out of certain owners corporation functions.

The main concern that has arisen over the appointment of caretaker managers by developers is that an owners corporation may be tied to a 25-year contract with little opportunity to challenge its terms. The developer has in effect decided, before there are individual owners within the scheme, what is in the best interests of the owners for the next 25 years. However it is the developer who has received the financial benefit, as the sale of caretaker management rights can be quite a lucrative transaction. The bill provides that no future caretaker management contract will be able to exceed a total period of 10 years. Contracts already in existence, which may have periods in excess of 10 years to go, will be allowed to run their course but from the day this bill becomes law 10 years will be the maximum contract period for new arrangements. If after the 10-year period the parties wish to renew for a further 10 years, that is in order. The important thing is that it will be the owners corporation, with input from individual owners, both investors and owners-in-residence, making a decision on what is desirable rather than a developer with little ongoing interest in the operation of the scheme.

A major feature of this bill is the provision included for review of caretaker management contracts where a dispute arises over its harshness and fairness. The bill provides that in such circumstances an owners

corporation may make an application to the Consumer, Trader and Tenancy Tribunal for review of the contract. The tribunal will have a range of powers to deal with the contract ranging from cancellation of a contract or nullifying of individual clauses to variation of the contract or confirming its existing terms. This provision provides the circuit breaker that aggrieved owners corporations have been looking for. No longer will they have to endure another 15 or 20 years of a contract they believe is not in their interests. There will be a very accessible and low-cost opportunity for review through the tribunal. As this is new territory and as complex contractual arrangements could be under challenge, the tribunal may decide to have a panel of up to three tribunal members hear the case or utilise the tribunal's powers to have expert assessors assist it in its deliberations. Depending on the nature and outcome of the case, the tribunal will have the power to award compensation to either of the parties involved.

Applications to the tribunal will only be able to be made by the owners corporation concerned, and individual lot owners in the scheme will not be able to launch such an application. This is in recognition of the fact that one disgruntled owner should not be able to pursue a personal beef against an on-site caretaker manager and that an application should only arise when it is clear that a majority of owners are dissatisfied. I will shortly explain how the proxy voting provisions of the legislation are being overhauled to ensure that proxies are not misused to block an owners corporation from lodging an application in respect of a caretaker management contract.

In the consultation process leading to the introduction of this bill, caretaker managers pointed out that many contracts already have clauses providing remedies to situations where an owners corporation seeks to terminate the arrangement. This bill does not interfere in that process and if the parties wish to use contractual provisions to pursue a dispute or to seek cancellation of a contract, that is their prerogative. However, if an owners corporation, despite a dispute resolution clause in a contract, wishes to access the tribunal under the provisions of this bill, that will be available to them. Importantly, this particular provision of the bill will apply to contracts already in existence.

One of the most common complaints over caretaker management contracts is that people buying into a scheme are not always aware of the length or nature of contracts already in existence. The bill addresses this aspect by requiring owners corporations to declare this information in the section 109 certificate provided during the conveyancing process. A second provision will require owners corporations to make these contracts available for inspection. These two measures should ensure that there is much less likelihood that a purchaser of a strata unit will be unaware of an existing long-term caretaker management contract when he or she buys into the scheme. Of course, in some situations, the existence of a caretaker contract may have positive implications as an investor who does not intend to occupy the premises may be comforted by the fact that there is someone on site to look after his or her interests more closely.

A new provision is created by the bill to further limit decisions made in the initial period of a strata scheme. The initial period is the time between registration of the scheme and the stage when one-third of the lots have been sold. During the initial period the developer, if the building is a newly erected one, is still largely in control and some consumer protections are included to lessen the possibility that the minority lot owners will be disadvantaged. A caretaker management contract entered into during the initial period will only be able to last for a period extending to the first annual general meeting of the owners corporation. However, at that first annual general meeting the owners corporation will be free to ratify a longer contract if that is its desire. The important thing is that there will be input from the people who live in the scheme, or who own lots in it, in determining who will be engaged for any long-term caretaking contracts. It will be the owners corporation deciding who helps to look after their building rather than being dictated to by a developer who eventually goes off the scene.

I referred earlier to some changes to the proxy voting provisions of the Strata Schemes Management Act. The bill limits the way in which proxy votes held by caretaker managers or strata managing agents will be able to be used on resolutions which, if passed, would give a pecuniary or other material benefit to the caretaker manager or strata managing agent. This provision deals with another matter that the consultation process revealed to be an area of much consumer dissatisfaction. This concern arises over the issue of some persons in management or caretaking positions using a bundle of proxies to make decisions which financially or otherwise benefit themselves. An example would be a managing agent or caretaker using proxy votes to extend a term of appointment or to grant an increase in remuneration. The bill will prevent the use of proxies in this way. They would also not be able to be used to delay, impede or withdraw an insurance claim or to prevent legal proceedings in regard to a caretaker agreement.

While an ethical person would not use a proxy vote in the manner described, the bill puts beyond doubt that it is not only unethical but also void. The fact that managing agents commonly say that they would never use a proxy vote on a matter that gave them a financial or material benefit will clearly mean that they will not be troubled by this new provision. The bill also removes uncertainty over proxies issued prior to the commencement of the 1996 Act. That legislation placed a limit on the life of a proxy to 12 months or two consecutive annual general meetings, whichever is the longer. Advice received is that the effect of the provision on proxies issued prior to the commencement of the 1996 Act on 1 July 1997 was somewhat uncertain and that some very old proxies may still be valid. This was clearly not intended and the bill will put beyond doubt that all proxies have a limited life.

The bill also makes some changes to provisions regarding priority voting in strata schemes. Priority voting rights are given to mortgagees of strata units under the current legislation. It is a long-standing provision to ensure that the financial institution's security is protected. The financial institution providing the loan has a right to vote in place of the borrower should the circumstances warrant it. Historically, the traditional lenders like the banks have rarely, if ever, used the priority voting rights they have had. The legislation requires that mortgagees be notified of meetings at which more important issues are on the agenda. However, it is understandable that a bank with thousands of loans connected with strata schemes throughout the State would be reluctant to have staff attending meetings of various owners corporations on a continuing basis. The provision has been there for them to cast a vote at a meeting of an owners corporation if they considered that the security attached to the loan, that is the strata unit itself, was at any risk.

A much wider range of sources now provide loans for the purchase of strata units and mortgagees are now sometimes the developers of schemes. In some circumstances priority voting is more vigorously utilised and lot owners are sometimes in the position of having no input at all into the affairs of the owners corporation. The bill modifies the way in which priority voting may be used. A priority vote will only be able to be used for the more significant types of matters. This will ensure that lot owners who have mortgages will not be excluded from the general day-to-day decision making of their owners corporation. Priority voting rights will only be able to be exercised for resolutions on insurance, budgeting, fixing of levies, expenditure above a specific amount and on any matter requiring a 75 per cent or unanimous vote to pass. The prescribed level of expenditure will be included in the regulations that are to be drafted after the passage of the bill through parliament. The Department of Fair Trading will consult with interested parties on this issue before the figure is finalised.

The other change in relation to priority voting is that the mortgagee will be required to give the lot owner concerned two days notice of an intention to exercise the vote before it can be used. Failure to give notice will render the priority voting right void. Consequently, lot owners will know before the start of a meeting whether they can vote in their own right or whether the priority voter will vote in their place. In conclusion I wish to state that the bill overcomes some unintended impact on strata schemes solely owned by the Crown and in particular the New South Wales Land and Housing Corporation. Exemptions will be provided for the meaningless requirements of the legislation where, for instance, a whole building is owned by the Department of Housing and is used for public housing. The requirement to have regular meetings with lot owners, to appoint office-bearers, keep minutes, fix budget estimates and levy contributions are all superfluous when 100 per cent of the units are owned by the Crown.

It is the height of absurdity to require a government authority to have a meeting with itself each year and to document the business of such a meeting. The bill will overcome this obvious anomaly without removing any of the rights of occupants, who will continue to have access to all of the provisions of the legislation that benefit them. There is no doubt that this bill will further improve the effectiveness of the legislation in dealing with issues arising in modern strata schemes. Stage two of the amendments, to be introduced in 2003, will augment the changes contained in this bill with a further round of improvements. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

PAWNBROKERS AND SECOND-HAND DEALERS AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr AQUILINA (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading) [10.24 a.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Pawnbrokers and Second-hand Dealers Act 1996 and the Pawnbrokers and Second-hand Dealers Regulation 1997 as a consequence of a national competition policy review of the legislation. The bill principally contains provisions arising in response to recommendations made in the final report of that review. The main purpose of the Pawnbrokers and Second-hand Dealers Act 1996 is to restrict the trade in stolen goods. This is done by regulating the industry through an occupational licensing regime and having evidence of identity and record-keeping requirements. The Act also aims to constrain the exercise of market power in respect of the provision of pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably.

As of 16 October there was a total of 1,339 licence holders under the Act of whom five were licensed as pawnbrokers only, 997 were licensed as second-hand dealers only and 337 were licensed as pawnbrokers and second-hand dealers. The review of the Pawnbrokers and Second-hand Dealers Act 1996 was undertaken in accordance with the Government's commitments under national competition policy. There was extensive consultation with the industry and other interested parties throughout the review process. The review was supervised by a steering committee and a reference group was also established to provide advice to the review. The reference group included representatives from the Pawnbrokers Association of New South Wales, the Australian Antique Dealers Association, the Law Society of New South Wales, the Consumer Credit Legal Centre and other industry and consumer groups.

The review concluded that the current licensing system provides a net public benefit and therefore should be retained. Notwithstanding that finding, the review also found that a greater net public benefit would arise from enhancing the existing licensing model. The final report recommended that the legislation be amended so that it is more effective and efficient in achieving its objectives, to reduce the regulatory burden for licensees, and for the purposes of clarification and consistency.

In this regard the bill makes further provisions regarding the application and operation of the Act, the licensing of pawnbrokers and second-hand dealers, the regulation of licensed businesses, the regulation of markets at which second-hand goods are sold, and the taking of disciplinary action against licensees and former licensees. The bill also provides a new mechanism to deal with goods in the possession of a licensee that are claimed to have been stolen or otherwise unlawfully dealt with. The bill prevents the unauthorised disclosure of personal information obtained in the course of conducting a licensed business and makes other amendments of a minor, consequential or ancillary nature.

I now turn to specific provisions contained in the bill. In the course of the operation of the Act it has become apparent that the presumption for carrying on a business has been used as a means of circumventing the need to be licensed. Consequently the bill changes the statutory presumption as to when a person is considered to be carrying on the business of buying or selling second-hand goods, so that the presumption arises when a person sells goods on more than six days—instead of 12 days—within a 12-month period.

This presumption will allow people conducting garage sales or sporting and school groups enough opportunity to sell their own household quantities of these prescribed goods while ensuring that the system of tracking stolen goods is as effective as possible. This presumption is also in keeping with similar provisions in the legislation of other jurisdictions. Licensing arrangements within the Act have been amended so that they are more effective in their objective of preventing people of unsuitable character from entering the industry. In this regard the bill provides that an individual or a corporation, and each of its directors, cannot be a disqualified person and must be a fit and proper person to hold a licence.

In addition to existing requirements the bill provides that a disqualified person is one who is: the holder of a licence suspended under the Act or a licence or authority suspended by the Fair Trading Act 1987; or disqualified from holding a licence or other authority, or have such a licence or other authority suspended, under a corresponding law of another jurisdiction. The bill also provides that a person is disqualified from holding a licence if he or she is the executive officer of a corporation that is disqualified from holding a licence; or is in partnership in connection with the business with a disqualified person. In order that the Act is consistent with other jurisdictions and other Acts administered by the Department of Fair Trading, licence conditions can now be imposed, varied or revoked at any time during the currency of a licence.

Amendments have been made to the business of pawnbroking to ensure that the requirements of the Act are effective and to clarify certain provisions. In this regard the bill provides that pawned goods must be physically kept at registered business and storage premises. This allows pawnors to redeem their goods whenever possible and to ensure that such goods can be readily inspected. Specific classes of premises can be

excluded to ensure that the intent of the legislation is maintained. To ensure that the tracking of stolen goods is as effective as possible a pawn ticket, and a pawnbroker's record of pledges, must, in a fair and reasonable description of the pawned goods, include every serial number, other identifying number, inscription and engraving appearing on the goods and each component of the goods.

One of the main areas of market failure in the pawnbroking industry is the imbalance of information between the consumer and the trader. As a means of addressing this important consumer issue, the Act has been amended to require a pawn ticket to incorporate or be accompanied by an itemised statement of fees and charges and the manner of determining those fees and charges. The bill requires a licensee to provide a pawner with a prescribed notice which sets out the rights and obligations of the pawner and a statement of the method by which the pawned goods may be sold if they are not redeemed. To ensure that a pawner's rights are not undermined, a pawn ticket cannot exclude, modify or misrepresent the pawner's legal rights.

To provide increased consumer protection, the bill requires that a pawn agreement cannot be varied, except by extending the original redemption period by mutual agreement. The operation of the Act has determined the importance of having all agreements in writing. To that effect the bill provides that certain particulars must be set out in writing when extending the original redemption period. The Act currently requires all unredeemed pledges to be sold by public auction when the principal lent on the goods exceeds \$50. The review concluded that this enforced method of sale does not always procure the fairest price for the goods and the costs involved in sending goods to auction often negates a potential surplus for the pawner on the sale of the goods. Consequently, the bill allows pawnbrokers the option of selling unredeemed goods either by sale at their premises or by sale by auction elsewhere. Pawnbrokers, however, are still required to sell unredeemed goods in a manner conducive to securing the best price reasonably obtainable.

A person who has pawned goods for a lesser value than their worth but is unable to redeem those goods is entitled to any surplus proceeds from a sale of those goods. To support this right the bill provides that a pawnbroker must notify the pawner, by way of registered mail, of any surplus proceeds of the sale of pawned goods. This is not necessary when the pawner has requested the pawnbroker in writing not to send the notice or where the amount that may be claimed is less than \$50. To assist pawners in redeeming their goods at the end of the redemption period, the bill requires that pawners have the option to pay their interest on the pawn at monthly intervals, rather than at longer intervals or entirely at the end of the redemption period. To ensure that those who pawn goods are aware of all the fees and charges and the applicable interest rates, the bill provides that pawnbrokers are required to display these prominently. In the interests of consumer protection the bill provides that interest on the pawned goods is to cease at the end of the redemption period.

To maintain consistency with other consumer protection laws, the bill requires pawnbrokers to notify those with whom they have operational pawn agreements if the business is sold or transferred to another licensee. Additionally, if pawnbrokers surrender or do not renew their license, then the bill requires that they make arrangements for the redemption of pawned goods. To assist with the tracking of stolen goods, the bill requires that market promoters obtain the same kind of evidence of identity from stallholders that persons offering to pawn or sell goods are required to produce before permitting them to sell second-hand goods at the markets.

I now come to one of the most important aspects of the bill, the provision of a new mechanism for the restoration of goods that are alleged stolen or improperly dealt with and are in the possession of a licensee. The bill provides that if the theft of the goods has been previously reported to the police, then the person claiming the goods may furnish a written statement to a police officer alleging that the goods have been stolen or otherwise improperly dealt with, together with documentary evidence or a statutory declaration substantiating the claimant's ownership of the goods. The police officer may then serve a restoration notice on the licensee requiring the licensee to deliver the goods to the claimant, unless the licensee commences proceedings before the Consumer, Trader and Tenancy Tribunal, which may deal with the matter. To ensure that consumers are aware of their rights, the licensee must display prescribed notification of these rights in a prominent location.

For the purposes of tracking stolen goods, the legislation requires the capturing of detailed information about those who use pawnbroking and/or second-hand dealing services. To ensure that this information is treated confidentially the bill makes it an offence, with the exception of certain circumstances, for a licensee or other person involved in the management of a licensed business to disclose this personal information. The disciplinary provisions of the Act have been amended to ensure that those of unsuitable character are not involved in the pawnbroking and second-hand dealing industries.

In this regard the bill provides that a "show cause" can be served on a licensee as to why the licensee's licence should not be revoked on the following grounds: that the licensee, or an employee, has contravened the

Act or other legislation administered by the Department of Fair Trading; or that the licensee has been convicted of an offence involving dishonesty or become a disqualified person since the licence was issued or last renewed. In order that disciplinary action can be taken against those licensees who do not comply with the Act's requirements, the bill introduces a new provision which enables disciplinary action to be taken against those who have held a licence in the last 12 months. This provision is in keeping with current legislation administered by the Department of Fair Trading.

I now turn to amendments to the Pawnbrokers and Second-hand Dealers Regulation 1997. As technology advances, certain types of goods come onto the market which are at a high risk of theft. Consequently, the prescribed list of goods to which the legislation applies must be updated to ensure that they represent those goods that are still at high risk of theft. In this regard the bill amends the regulation to clarify that items like minidisks and DVDs are specifically included in the prescribed list of second-hand goods. The record-keeping requirements have also been amended to keep up with technology to ensure that the most valuable information is obtained. To this end, the bill provides that pawnbrokers record what is a fair and reasonable description of goods in relation to compact discs, mobile phones and items with bar codes.

In order to ensure that people are not discriminated against when using pawnbroking services, the bill has provided for more acceptable forms of identification. In this regard the bill provides that the documentation issued by the government of a foreign country is allowed amongst the kinds of evidence of identity that may be produced by a person seeking to redeem goods. As another means of providing up-to-date information about transactions involving prescribed classes of second-hand goods, the bill requires second-hand dealers to record transaction details by close of business on the date of the transaction. However, as this may not always be practical when licensees are on buying expeditions or when the acquisition of second-hand goods is at a place other than the dealer's business premises, this recording is to be done as soon as possible afterwards.

This bill enhances the existing pawnbroking and second-hand dealer licensing regime. It ensures that the objectives of the legislation—to restrict the trade in stolen goods, to provide consumer protection to those who use pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably—continue to be met in the most efficient and effective way. My appreciation is extended to the industry and other interested parties who made submissions to the review and in response to the exposure draft bill. In particular, I extend my appreciation to the Pawnbrokers Association of New South Wales and its members who have taken a constructive approach in the consultation process on this bill. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

CITY OF SYDNEY AMENDMENT (ELECTORAL ROLLS) BILL

Second Reading

Debate resumed from 24 October.

Mr WOODS (Clarence—Minister for Local Government, Minister for Regional Development, and Minister for Rural Affairs) [10.41 a.m.], in reply: I thank all honourable members for their contributions to debate on this bill and I welcome the Opposition's support for this important bill. These amendments do not propose substantial changes to the City of Sydney Act; rather, the amendments will clarify the intent of that Act. The Government is committed to ensuring that the legislation governing local government is clear and workable. The amendments contained in this bill will ensure that clarity is given to an essential democratic process in this important level of government in the State's premier city. It will also afford greater consistency across all local government elections in New South Wales. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

HUMAN TISSUE AND ANATOMY LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from 23 October.

Mrs SKINNER (North Shore) [10.43 a.m.]: This bill, which will amend the Human Tissue Act 1983, the Anatomy Act 1977 and the Coroner's Act 1980, will replace the Human Tissue Amendment Bill which was introduced late last year and which lay on the table. This legislation is the Government's response to the removal

and retention of body tissue—which includes organs such as hearts, brains, lungs and so on—without consent during post-mortem examinations. The Minister first raised this issue in Parliament in October 2000 following revelations of this practice in the United Kingdom. He said at the time that he would conduct a review to determine whether this had been happening in New South Wales, and he also said that he would issue interim guidelines in the meantime to prevent it from happening.

The Opposition referred to examples of where this practice was continuing, despite the guidelines issued by the Minister and before the Minister released findings from the review, which indicated that the practice was widespread and common in New South Wales. It was found that over 25,000 specimens of human tissue were being held in collections in New South Wales and it was estimated that about one-third of those specimens had been retained after post-mortems. In many cases tissue collections had been held for many years without families being aware that the bodies that were returned to them for burial had had organs removed. The Government appointed Bret Walker, Senior Counsel, to conduct an inquiry into practices at Glebe morgue following graphic descriptions of what was happening to bodies at that morgue. The provisions in this legislation take those findings into account.

The bill will allow tissue, which is defined as an organ or other part of a dead human body removed from the body of a living or deceased person for the purposes of medical, dental or surgical treatment, to be used for therapeutic, medical or scientific purposes only with the consent of the person from whom the tissue was removed or, if the person has died, a senior available next of kin. The same applies in relation to non-coronial post-mortems. The bill removes current inconsistencies regarding authorisation to remove tissue or body parts from a deceased person. At present, if a person died outside a hospital, a post-mortem can be authorised only by a senior available next of kin. If there is no next of kin to consent to the procedure, no post-mortem may be conducted. However, if the person died in hospital and no next of kin can be found, a post-mortem can be authorised by a designated hospital officer.

This bill requires next of kin authorisation regardless of where a person died. The same consent requirements apply to the issue of human tissue for transplantation. A person giving consent for the use of tissue may limit that consent to a particular purpose, such as a specific research project. The bill requires regard for the dignity of a deceased person in the conduct of all post-mortem examinations and anatomical examinations, and makes provision for the transfer and disposal of bodies that are retained for anatomical examination. This covers the issue of the retention of body parts, which so distressed relatives who were not aware that that had occurred in the past. The retention of a small sample of tissue is allowable—in the form of a tissue block or tissue slide—without explicit authority.

The bill prohibits a person consenting to or authorising the removal of tissue from the body of a deceased child who is in the care of the State, or the post-mortem examination or anatomical examination of such a deceased child. It also makes provision with respect to the prohibition against entering into certain contracts or arrangements relating to the sale or supply of human tissue, but allows exceptions in respect to the sale and supply of therapeutic goods that contain human tissue such as human serum products, which are regulated by the Commonwealth Therapeutic Goods Act. The bill requires record keeping for tissue collection, and provides improved enforcement powers primarily aimed at prohibiting the trade in human tissue. It also redefines "anatomical examination" to include not only the dissection of bodies but also the use of a body for medical and scientific purposes.

The bill provides that bodies that are donated for such purposes may be kept only for eight years in respect for the dignity of the deceased. The bill clarifies the position of a coronial post-mortem as "assisting in the investigation into a death". Small samples may be kept for this purpose and written records must be kept of the practice. Obviously, that practice, which assists in the later examination of events that led to a death, may take into account developments in forensics and science that enable additional investigations. It should be noted that most of the post-mortems that are undertaken in New South Wales are ordered by a coroner. Under the Coroners Act the consent of the next of kin is not required. However, there are provisions for the next of kin to object to a coronial post-mortem.

Penalties for unauthorised uses of tissue range up to a maximum of 40 penalty units or imprisonment for six months, or both. Given that, in the past, the Minister's interim guidelines were ignored, it seems to me that this is an essential component of this legislation. I ask the Government to indicate whether it intends to run an education campaign to ensure that everybody is aware of the requirements of this legislation. Old habits die hard. It will take some time before those who are responsible for this area of work know what is expected of them.

The Coalition supports this legislation. It was distressing to receive calls from many parents who reported to me that the body parts of babies and very young children had been removed. In many cases those parents said that they had given consent, not really knowing the full implications of that consent. This bill will give parents a much greater say in how a body part is used and it will ensure that any tissue removed is returned so that the deceased may be buried with the dignity and respect that families expect. This is long-overdue and much-needed legislation and the Opposition supports it.

Ms ANDREWS (Peats) [10.51 a.m.]: It gives me great pleasure to speak in support of this bill. It will be welcomed by a number of constituents in the electorate of Peats who unfortunately have been personally affected and further traumatised while trying to deal with the loss of a loved one because of the lack of strong legislation in this very sensitive area. I commend the Minister for Health, the Hon. Craig Knowles, for having these issues addressed. The main objective of the bill is to ensure that human tissue removed during medical, surgical or dental procedures for the purpose of a post-mortem examination is not used for other purposes without written consent. That is very important.

All non-coronial post-mortem examinations are to be carried out in accordance with the wishes of the deceased or his or her senior available next of kin. It will be unlawful to use tissue removed from a body during a non-coronial post-mortem examination. The passage of this legislation will ensure that due regard is given to the dignity of the deceased person. As I said, that is very important for those trying to come to terms with the loss of a loved one. The bill also contains more effective provisions covering the prohibition on the trade of human tissue than those in the Human Tissue Act and the regulations dealing with human tissue collection in an accountable manner.

Of course, this legislation arose from the report entitled "Inquiry into matters arising from the post-mortem and anatomical examination practices of the Institute of Forensic Medicine". We have all heard about the terrible incidents which occurred at the Glebe morgue and which were the subject of extensive publicity. That report contained a number of recommendations relating to the legislation governing the use of human tissue and the conduct of anatomical examinations. Consequent upon the submissions received about the Human Tissue Act and the recommendations in the Walker report, the Carr Government has prepared revised legislation in the form of the Human Tissue and Anatomy Legislation Amendment Bill.

The fact that penalties will be imposed for incorrect dealing with human tissue and anatomy is a good thing. I am sure it will make a huge difference to the handling of bodies. I am also sure that no honourable member would object to the use of human bodies to advance medical research, but, of course, that should happen only with the written permission of the next of kin. Any human body must be treated with great dignity. I know that people who lose loved ones expect this Government to ensure that that occurs. This bill will go a long way in the process of restoring public confidence in this very sensitive area, which has been of great concern to the community for some time. I support the bill.

Mr HAZZARD (Wakehurst) [10.56 a.m.]: As indicated by the shadow Minister for Health, the Opposition will not oppose this bill. Aspects of it are positive measures following the many problems that were clearly demonstrated when it became known that personnel at the Glebe morgue were undertaking tests on bodies without full consideration of what the community might think about those procedures. Of course, following that public outcry, the Minister for Health, the Hon. Craig Knowles, requested NSW Health to undertake an inquiry, and the Opposition strongly supported that move. The Liberal and National parties were extremely concerned that bodies be dealt with appropriately in a range of circumstances.

In fact, we supported the establishment by the Minister and NSW Health of a community advisory panel on post-mortem examinations. The panel undertook an excellent review and submitted a valid and appropriate report to the Minister entitled "Interim report into the retention of tissue and organs following post-mortems in NSW" and dated 5 March 2001. The following interesting observation was made in the foreword to the report:

The community is relatively unaware of forensic and anatomical pathology practice. The medical profession still largely remains uncomfortable about open discussions with relatives of the deceased about post-mortems, principally out of concern for adding to the pain of bereavement. This, combined with the nature of the current laws, and the bereavement process itself, will almost inevitably lead to situations where families on subsequent reflection may reasonably feel they have been misled or inadequately informed. Current community standards require that this be addressed and the Interim Report makes a number of recommendations that would help.

Unfortunately, this is a difficult issue for the community to discuss; it is also difficult for medical practitioners to deal with the situation when someone has passed away, often in horrific circumstances. The community

believes that it would be better to find effective ways to discuss these issues. Underlying the lack of willingness to talk about the issues are some real community fears that have emerged about what happens with bodies for a range of reasons that the community is not comfortable with or that it finds objectionable.

I refer honourable members to an article in a newsletter published by the National Children's and Youth Law Centre, Volume 5, No. 2 of August 1997. The article is headed "Experiments on children in Victorian orphanages" and examines what appeared to be, and clearly was, a fundamental infringement of the rights of children and their relatives when those children passed away. There appears to be a long history of governments thinking it is acceptable to undertake experiments or take tissue samples for research when they have some role in the management of an individual prior to death. As the shadow Minister for Community Services, I have been made aware of the sensitivity and significance of the issue, and this bill seeks to address it. For that reason, the Opposition welcomes it.

Wards of the State or children who are the subject of a care and protection order, perhaps as a result of allegations of abuse or neglect, will now not be at risk of having their tissue removed if they die unless the Coroner is required to undertake an investigation into the cause of death. This issue causes enormous grief. I am thinking of a particular case in this regard. It would be inappropriate to illuminate honourable members as to the names of the persons involved as a criminal trial is currently under way.

However, it involves the recent—I will not identify a specific time period—alleged murder of a child in care. The mother of the child was extremely disturbed to learn subsequently that the Coroner had seen fit to order the removal of certain organs from the baby post-mortem without any discussion with the mother as next of kin. Such a practice could have grave psychological consequences for any grieving family member, but it has an even greater impact in certain cultures. In this case the mother and child were Aboriginal and the harvesting of organs has significant consequences in their culture. My office had several dealings with this mother and her lawyers. In the end, the State Coroner wrote to the lawyers in the following terms:

Firstly, I accept that recent events, including notification of the retention of [the baby's] brain for forensic purposes has greatly distressed your client, his natural mother. I truly regret that that has occurred.

You will know that the issue of non disclosure of retention of organs generally, has arisen this year. Many next of kin have obviously become upset to learn of retention of large organs, at times, years after the event. Curiously, they were not told directly for fear of causing distress. It is now the firm policy of the New South Wales Government to disclose retention promptly in cases of autopsy or post mortem examination, including coronial autopsy.

That case and the Coroner's clear admission that the retention of organs can cause distress is a major driver of this bill. The legislation will ensure that children in care do not have their tissue removed for research in the normal course without seeking the consent of their next of kin and making the appropriate arrangements with that person. The Liberal and National parties welcome that significant initiative, which we have wanted to see enacted for some time. The community wants this bill. People want to be certain that body tampering, to which the Walker inquiry alluded, will not be possible and that there are defined limits as to what can happen to bodies.

I remind honourable members of the revelations in 1997 by the *Age* that an experimental whooping cough vaccine had been tested on orphans and State wards. In that case approximately 100 children were used as guinea pigs. The results of the test were written up in the *Australian Journal of Experimental Biology and Medical Science* in 1951. The practice appeared to be totally acceptable such that those responsible were quite happy to publish the test results in an eminent medical journal. By the way, the study found that the vaccine caused a mild fever and vomiting in some children. It undoubtedly identified some benefits of the vaccine, but the price paid was far too great. This bill makes it clear that such practices will never occur again.

The Minister for Health is not in the Chamber, but I seek guidance, as the shadow Minister for Community Services, Disability Services and Ageing, from the Government as to whether the legislation extends to people with disabilities who are under the supervision of the State. I ask the Minister at the table, the Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development, to confirm in his reply to the second reading debate whether disability groups have been consulted about this bill and whether it includes some provisions to protect people with disabilities who are under the supervision or control of the State. The Coalition and I, as shadow Minister, are concerned that it does not but perhaps the Government intends to deal with the issue separately. I ask the Minister to outline what consultation has taken place and what proposals, if any, the Government has in train to ensure that people with disabilities enjoy the same sorts of protections that have now been extended to children in care in New South Wales.

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development) [11.06 a.m.], in reply: I thank all honourable members who have contributed to the

second reading debate. The honourable member for Wakehurst asked what protections will be extended to people with disabilities. I will take the question on notice and seek a detailed reply from the Minister for Health in that regard. In answer to the inquiry from the honourable member for North Shore, the Department of Health will be conducting an education campaign and reviewing thoroughly all policies and procedures relating to post-mortem examinations and other uses of human tissue, which, as the honourable member pointed out, is a vexed issue.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CIVIL LIABILITY AMENDMENT (PERSONAL RESPONSIBILITY) BILL

Second Reading

Debate resumed from 23 October.

Mr DEBNAM (Vaucluse) [11.08 a.m.]: In leading for the Coalition on the Civil Liability Amendment (Personal Responsibility) Bill, I signal that, although we will not oppose it in this place, we will seek the Government's response to several questions and concerns raised during the debate. The Coalition will then consider that response before the bill is considered in the other place. For six months we have offered bipartisan co-operation on this bill and asked that the Government discuss its proposals with us. Despite letters from the Leader of the Opposition, various speeches in the House and numerous public announcements, the Government decided not to co-operate on this bill. It continued to consult in secret and eventually delivered a stage two consultation draft followed by the bill. That is a shame, but it is a reflection of all that the Carr Government has done for eight years and is one of the reasons why it will be voted out of office in little more than four months. We ask the Government to respond to the questions and concerns that my colleagues and I will raise during the debate. We will then consider the Government's response before resolving our course of action in the other place.

The bill sets out its objects in great detail. I do not intend to go through the bill's six pages of explanation in detail. The Premier virtually read the objects of the bill during his second reading speech and made a brief commentary on them. I will raise some points in relation to his speech and ask for a more definitive response in relation to those areas that he quickly glossed over. It is important to look at the history of public liability changes in New South Wales this year. The stage two reforms could have been delivered to this Parliament a lot earlier. If they had been considered much earlier in the year—perhaps even six months ago—they would have been of real assistance to many businesses and community groups that have been under severe stress all year as a result of trying to deal with public liability premiums or their inability to get insurance.

We must remember that the stage one bill was essentially a mathematical bill: it simply delivered for insurers. It made a number of changes to reduce the cost of claims and was bulldozed through Parliament. The Premier used the full force of his office to get that bill through Parliament to pursue the interests of insurers. Interestingly, he then slowed down stage two, which was going to deliver commonsense reforms for the community. I will go through some of the hypocritical things the Premier has done this year in pushing the stage one bill through. When the Premier bulldozed the stage one reforms through this Parliament he largely talked about the stage two reforms. He talked about delivering to the community a number of stage two reforms and used that to whip up enthusiasm for the stage one bill. It was certainly hypocritical and successful, in the end, in getting stage one through, but then the community, small businesses and community groups found that relief was not provided at all by those reforms six months ago.

There is still a question about the effect of the relief that the community will get from these further changes. However, one definitely got the impression this year that public liability reform in Australia, not just in New South Wales, was the Premier's baby—that he dreamt it up, designed it and delivered it. I will run through a few other authors of the changes to show that they were not the Premier's baby at all. One would have been forgiven for thinking that the Premier had written the Civil Liability Amendment (Personal Responsibility) Bill. One could perhaps see it as another book, as he is into writing books. Perhaps it could be seen as "Thoughtlines—The Sequel", but it is not. This bill has been in discussion for some time. On 20 March the Premier talked about these sorts of issues. When talking about the second stage reforms the Premier said:

First, we want to protect good Samaritans who help in emergencies. As a community, we should be reluctant to expose people who help others to the risk of being judged after the event to have not helped well enough. Second, we propose to ensure that a warning of risk becomes a defence ...

Third, we will revisit the High Court's removal of the immunity from liability for highway authorities ...

Fourth, we will provide that the existence of a power does not imply a duty to exercise that power ...

Fifth, we propose abolishing reliance by plaintiffs on their own intoxication ...

Sixth, we will consider preventing people from making public liability claims where their injury arises in the course of committing a crime. Finally, we propose changing the professional negligence test to one of peer acceptance.

Those topics had been discussed for a considerable period of time. Honourable members are aware that the need for reform has a long history; it is a shame that we as a Parliament did not pursue this commonsense reform much earlier. Since 20 March the Opposition has tried to point out to the Premier that the community wants reform delivered. Unfortunately, the bureaucracy and the Premier betrayed the community. Throughout the year the bureaucracy simply stuck with the rhetoric and the Premier's pretence of being a leader, instead of delivering commonsense reforms for the community. Previously I have recommended that honourable members read a defining speech by Justice Spigelman at the Judicial Conference of Australia in Launceston on 27 April. I am sure some honourable members have read it. Justice Spigelman titled his speech "Negligence: The Last Outpost of the Welfare State". He began by saying:

I had occasion to observe last year that in many respects the tort of negligence is the last outpost of the welfare state. This observation prompted the following comment by Professor Harold Luntz, in the preface to the fourth of his texts on damages: No welfare state would ever have created a system so irrational, expensive, wasteful, slow and discriminatory.

I think honourable members will agree. That is why there has been a sense of need for commonsense reform for some time and why we have been somewhat concerned this year as the Premier drew this out over six months. New South Wales undoubtedly has the biggest challenge in addressing this issue, and has for a period of time. The Opposition offered its co-operation to the Government to pursue commonsense changes sooner rather than later. I cannot help but note what Justice Spigelman then said:

In discussing the issue of tort law reform, I am reminded of the blistering attack on reformers by Senator Roscoe Conkling, a Republican machine party boss in New York City who said in 1880:

Some of these worthies masquerade as reformers. Their vocation and ministry is to lament the sins of other people. Their stock in trade is rancid, canting, self-righteousness ... Their real object is office and plunder. When Dr Johnson defined patriotism as the last refuge of a scoundrel, he was unconscious of the then undeveloped possibilities of the word "reform".

I know that Justice Spigelman was not intending to imply that the Carr Government could fall into that category, but each time I read that I am reminded of exactly what the Carr Government does. He used the word "reform". The Government's real object is to do whatever it takes to remain in office and plunder—there are many definitions of "plunder"—or use whatever power to stay in office. One of the reasons the Premier has delayed these proposals until later in the year is to get them as close as possible to the election, which is due in a little over four months. Justice Spigelman further said:

The idea that governments are in some way responsible for caring for all citizens—as it was put, "from cradle to grave"—contains a strong element of paternalism that has now been rejected in most advanced industrial countries as the basis of government intervention to attain social policy objectives. An element of welfare state paternalism, driven by the same sense of compassion, is not absent from day to day judicial decision making about when a person ought to receive compensation, even in our fault based system.

Justice Spigelman acknowledged the problem in April and in previous speeches. This was obviously an eloquent dissertation on the topic. The speech of Justice Spigelman is referenced in later documents throughout this year. The Premier was obviously aware of the problem some time ago, and this was an eloquent discussion of the difficulties and the way forward. Under the heading "The Trend of Judicial Decisions", Justice Spigelman said further :

Over a few decades—roughly from the sixties to the nineties—the circumstances in which negligence would be found to have occurred and the scope of damages recoverable if such a finding were made, appeared to expand considerably. Professor Atiyah referred to this long term historical trend as "stretching the law". There may be an equivalent parallel trend, perhaps of even greater practical significance, of "stretching the facts".

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

The paper then refers to pressure on premiums. Justice Spigelman acknowledges:

A central concern of the past and prospective statutory modifications to the common law has been the increase of premiums for contracts of liability insurance. This has generally been the primary focus of attention, to the virtual exclusion of other policy considerations that are pertinent to the decision making process.

That is true. That is the focus of community. As Justice Spigelman says:

It is the primary focus of attention in the current debate.

That was in April this year. He further says:

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

He further says:

In 1999, I said:

The judiciary cannot be indifferent to the economic consequences of its decisions. Insurance premiums for liability policies are, in substance, a form of taxation (sometimes compulsory but ubiquitous even when voluntary) imposed by the judiciary as an arm of the State. For many decades, there has been a seemingly inexorable increase in that form of taxation by a series of judicial decisions, on substantive and procedural law.

It was an excellent introduction, as was his intention, to the whole topic and the process of reform. The paper, which was delivered in April this year, covered areas that Justice Spigelman had addressed before. There had been open discussion on many of these issues for some time. There was on the part of the community, and undoubtedly the public sector, a willingness to move forward. It is a shame that we have not moved forward on these issues in the past six months. Justice Spigelman then addressed reasonable foreseeability. He made reference to obvious risks, proportionate liability, death benefits and contributory negligence, and damages and offsetting benefits. In the end, he urged everybody to move towards reform but to also involve the legal fraternity in that challenging review of public liability. As I have said, that was back in April. I made that same point in a speech on the stage one reforms. In my speech of 29 May on the Civil Liability Bill 2002 again I made the point that the Premier had been out there using all the rhetoric in the world about the stage two reforms, when the bill being debated in May was purely and simply a mathematical bill for insurers. I summed it up by saying:

What this bill does is deliver for insurers. The insurers wanted, the insurers asked, and the insurers got.

That is exactly what happened. I also made the point:

There is a lot of difference between what the Premier says in a press release, a media grab, and what he puts on the table. We have seen it time and again and we will see it in stage two. The Premier will not deliver on his rhetoric ... until he feels it is a politically opportune time to deliver that [stage two] bill.

I made the point again about the stage one bill:

This bill does not attack warts in the system, it does not introduces commonsense to the debate. Those aspects are awaiting the stage two reforms that we might see some time later this year.

I really did not expect that it would take five months to get to this point. On 28 May, when addressing the topic of the stage one reforms, the Premier made another contribution. It was in question time. I draw this to the attention of the House because at that time it was the main concern of the community. It remains the community's main concern. The Premier virtually told the Parliament: This stage one bill has to go through because it will deliver premium reductions to the people of New South Wales. After that day the Premier said, as many times as he could, "I did not say that." I want to put in *Hansard* what he did say. Talking about a report, the Premier said it was:

... evidence that our reforms will have an impact on insurance premiums.

He did not say "might"; he said "will have an impact on insurance premiums."

Ms Nori: Some people have got coverage for the first time. So don't you think the reforms were impacting favourably for some people?

Mr DEBNAM: The Minister seeks to defend the Premier's words. But the Premier, in the firestorm that he had whipped up in the debate at that time, was trying to deliver reforms for insurers. Undoubtedly, the Minister for Small Business was there to deliver for insurers as well. That bill was simply about reducing insurers' costs. The Government did deliver for the insurers through its stage one reforms, but it did not deliver for the community. Today, the community is still struggling to get coverage and is still struggling with very high

premiums. The insurance industry is telling the Government—as it was telling the Government then—that there was no guarantee that those reforms would result in a reduction in premiums. But that did not worry the Premier, who told this Parliament that the report was "evidence that our reforms will have an impact on insurance premiums". He went on to say:

The report calculates that our reforms could deliver a 17.5 per cent reduction in the cost of personal injury claims and a 14 per cent reduction in the cost of public liability claims. The result should be cheaper premiums for consumers. According to the PricewaterhouseCoopers report, there could be reductions to premiums in the order of 12 per cent.

On 28 May the Premier made great play of that statement. That was all part of his forcing through that stage one legislation; but that legislation was simply about delivering for insurers. The Premier has not delivered premium reductions. As I say, there is still a question about whether the stage one and stage two reforms, in the short term, will actually deliver premium reductions for the community. A few other papers are very useful in the consideration of this whole debate. The Parliamentary Library has issued a number of briefing papers, the last of which is Briefing Paper No. 11/02, entitled "Public Liability", which came out in September this year. It covers the background to the debate, the stage one reforms, the background to tort reforms, the stage two reforms and other reform proposals. It is worthwhile reading basically as background to how we have got to this point. It covers a little too much of the Premier's rhetoric for my liking, but it is a worthwhile document.

I again make the point that in this whole debate there has been a need to move forward with public liability reform as soon as possible, in the interests of the people of New South Wales, businesses, recreational activities and volunteer groups. But the Premier has been very slow in that regard. One person who has done an extraordinary job in pulling this issue together is Senator Helen Coonan. I congratulate Senator Coonan on the role she played this year in bringing the States and Territories to the table and talking through what can be achieved in the shortest possible time scale. But, again, it was entirely up to New South Wales, which had the biggest challenge in this area, to move ahead and, if you like, lead the pack. The Premier chose instead to be a political opportunist, not a leader, on this issue. But that is his nature.

One of the other documents to which I want to make reference is the Ipp report and final report. I acknowledge the panel of eminent persons: the chairman, the Hon. David Ipp, Professor Peter Cane, Associate Professor Donald Sheldon and Mr Ian Macintosh. The final report makes 61 recommendations. I will not go through all of those. Clearly, to some extent the Government has gone through those and reconciled them with the draft bill. But it has not totally adopted all of the recommendations, and has gone against one or two of them. The document, however, provides incredibly valuable discussion of public liability and the problem confronting the community. The Ipp report puts the entire debate and the changes we are considering in context. Page 25 refers to the establishment of the committee. Paragraph 1.2 states:

This was the second Ministerial Meeting held to discuss the public concerns about the cost and availability of public liability insurance. In the Ministerial communiqué that followed, Ministers stated, "unpredictability in the interpretation of the law of negligence is a factor driving up [insurance] premiums".

Paragraph 1.3 states:

Within this broad context, the Terms of Reference for the review stated that "[t]he award of damages for personal injury has become unaffordable and unsustainable as the principal source of compensation for those injured through the fault of another. It is desirable to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death".

Paragraph 1.20 states:

If implemented, the recommendations made by the Panel will, to a degree, shift the cost of injuries from injurers to injured persons. As a result, some injured persons who, under the current law, would be entitled to compensation will no longer be so entitled; and other persons will be entitled to less compensation. How these issues are to be dealt with is a matter of policy for governments to determine and is not dealt with in our Report.

That is a strong reminder to us all that, whether we are in the Federal Parliament or the State Parliament, we have a long way to go before satisfactory support systems are provided for people who are injured, some very seriously. As the Ipp report rightly says, the panel did not examine that issue but noted it was one that Parliament should pursue. Paragraph 1.24 states:

The Panel's starting point is that personal injury law comprises a set of rules and principles of personal responsibility. The Panel sees its task as being to recommend changes that impose a reasonable burden of responsibility on individuals to take care of others and to take care of themselves, consistently with the assumption inherent in the first paragraph of the Terms of Reference that the present state of the law imposes on people too great a burden to take care of others and not enough of a burden to take care of themselves.

Paragraph 1.26 states:

Some submissions have urged the Panel not to recommend changes to personal injury law that would reduce the level of protection provided to individual consumers of goods and services. The Panel has taken the view that the interests of individual consumers must be weighed against the interests of the community as a whole in the reform of the law, and has tried to strike a reasonable balance between these two sets of interests.

That has been the challenge for us all in researching this issue and dealing with the many interest groups that have suffered in recent years as result of the crisis in public liability and insurance generally. Some people have been unable to gain insurance and, therefore, have had to cancel activities. Others have had to deal with an extraordinary increase in premiums, much of which has been unexplained by insurance companies. We need to examine that topic further to provide community groups with explanations about premiums for their activities. Paragraph 1.27 states:

Our Terms of Reference require us to take a "principles-based" review. This is an approach suggested by Spigelman CJ in his article "Negligence: the Last Outpost of the Welfare State". The Chief Justice contrasted principles-based law reform with "underwriter-driven proposals" for special rules to govern particular types of cases or particular categories of potential defendants. The Panel understands principles-based reform as favouring general rules governing as many types of cases and as many categories of potential defendants as is reasonably possible. Principles-based reform favours consistency and uniformity and requires special provisions for particular categories of cases to be positively argued for and justified. This is the approach to reform that the Panel has adopted in conducting the review and making its proposals and recommendations.

That is one of the points I drew from Justice Spigelman's speech in April, and one of the points he has made clearly on a number of occasions as the viable way forward. Paragraph 1.28 states:

Our view is that in order to be "principled" and effective, reforms of personal injury law must deal with such liability regardless of the legal category (tort, contract, equity, under statute or otherwise) under which it arises. If they do not, it may be possible for a claimant to evade limitations on liability for personal injury and death that attach to one cause of action by framing the claim in another cause of action. For example, if a limitation on liability or damages were applied only to the tort of negligence, injured persons would be encouraged to explore the possibility of framing their claim in contract or for breach of a statutory provision.

Paragraph 1.29 states:

Another important consideration underlying our deliberations is that only a small proportion of the sick, injured and disabled recover compensation through the legal liability system, and only a very small proportion of deaths result in the payment of compensation. As a result, only a very small proportion of the total personal and social costs of personal injury and death are met by the imposition of legal liability to pay compensation. The vast majority of those who are injured or suffer disease or lose a breadwinner have to rely on their own resources and on other sources of assistance, notably social security.

That takes us back to the point I raised earlier: whatever we do, this reform will not solve all of our problems. Parliaments have to focus on the support system for those who are seriously injured or who lose a breadwinner as a result of injury. Paragraph 1.30 states:

We are also mindful of the fact that the levels of compensation available through personal injury law are generally much higher than those available under the social security system. Relatively speaking, personal injury law provides very generous compensation to a very small proportion of injured people. The Panel has taken the view that the relationship between personal injury law and other systems for meeting the needs of injured people is relevant to its Terms of Reference, especially to that part concerned with assessment of damages.

That is a good introduction to the topic. The report argues the pros and cons as to why the committee decided on each of its 61 recommendations. I commend the report to honourable members to assist them in their understanding of the basis of the reforms and to make them realise that they were not dreamed up in the last week or month. Many of the changes have been debated for a considerable period. I refer also to the report of the Public Bodies Review Committee entitled "The Effects on Government Agencies of the Abolition of Nonfeasance Immunity", dated September 2002, which has been somewhat overtaken by the bill.

Mr R. H. L. Smith: A very important document.

Mr DEBNAM: As the honourable member for Bega said, it is a very important document that details debate on this key issue. Chapter 6, page 45 "Conclusions and Recommendations" details four recommendations. The first paragraph of the concluding chapter states:

The Committee believes that all road authorities should put inspection and maintenance systems in place for all their roads as a matter of course. This is in line with most other jurisdictions in the world which no longer enjoy the protection of the nonfeasance rule.

The report makes a number of detailed worthwhile recommendations, regardless of what happened to the nonfeasance rule. I ask the Government to indicate what it proposes to do in relation to those recommendations.

Many people are concerned about that matter. I would appreciate it if the Government could set out in reply its intentions about the four recommendations. The last report to which I will refer is "A Review of Public Liability and Professional Indemnity Insurance" from the Senate Economic References Committee. The Premier referred to the document, which was released shortly before he delivered his second reading speech. I refer specifically to recommendations 4 and 5. Recommendation 4 states:

The Committee recommends that Commonwealth, state and territory governments form a working group to examine how best to give protection to volunteer and not-for-profit organisations and their workers from civil action for damages based on negligence.

Recommendation 5 states:

The Committee recommends that a working group of Commonwealth, state and territory officers be established to examine how best to provide for the long term care and treatment of persons who suffer catastrophic injuries as a result of someone's negligence.

The Premier made no comment during his second reading speech on that recommendation. He simply referred to its existence, tacitly inviting honourable members to read the report. The report is short and I suggest that honourable members read it. Recommendation 5 goes to the heart of the provision of support for people who suffer catastrophic injuries and recommendation 4 deals with protection for volunteers and not-for-profit organisations, which are referred to in the bill. Concerns have been expressed about the manner in which the Government has drafted the amendments and I will deal with that in more detail later. I ask the Government to specifically indicate its intentions in relation to those two recommendations. Where does the Government see those two issues heading, given that the report, which has been acknowledged by the Premier, calls for all jurisdictions in Australia to work together? The Premier began his second reading speech by stating:

The introduction of this bill today is a triumph for commonsense. Personal responsibility will rightly assume a much higher profile in our law thanks to these reforms. Simple pleasures enjoyed by the community will be able to continue because of them.

Earlier I debated that point with the Minister for Small Business, the honourable member for Port Jackson. All honourable members agree on the need to raise the profile of personal responsibility. Indeed, I wish the Government would apply the principle to itself by being accountable for many of the mistakes it makes. The Opposition endorses the promotion of a sense of personal responsibility as a worthwhile objective. Moreover, for more than six months the Opposition has emphasised the need for commonsense reforms and, in an endeavour to have legislation passed as quickly as possible in the hope of providing relief to communities and businesses throughout New South Wales, has offered bipartisan support for this bill.

The Premier, ever one for rhetoric, said that simple pleasures enjoyed by the community will be able to continue. The Opposition hopes that that is true but believes that much will depend on how quickly this bill is passed by both Houses of Parliament and how quickly the Government proclaims the legislation. The Government does not have a good record on proclaiming legislation, but the sentiments expressed when these commonsense reforms were introduced are wholeheartedly supported. Because the Premier discussed the objects of the bill in detail, I will not deal with those. Instead I will discuss some of the terms and provisions of the bill that concern many people.

I note that the Premier dealt with the only two paragraphs with substantial changes in the bill that will affect the public sector. I ask the Government to be more expansive in its reply and to explain the provisions of the bill in terms that the community will understand. People are extremely concerned that the Government effectively has written itself a blank cheque when it comes to public sector responsibility. I will deal with that in greater detail at a later stage. The Premier also stated in his second reading speech:

The bill will also protect the good faith actions of good Samaritans who come to the assistance of a person in danger. This will mean no liability for voluntary rescue organisations, such as surf life saving clubs, if a person is injured in the course of or in connection with a rescue.

The phrase "in connection with a rescue" is one of the matters I wish to discuss. Various community service organisations are concerned about the significance of that provision. The Government should provide a greater elucidation of its approach. The definition of "public authority" is also a matter of concern. The bill provides:

public or other authority means:

- (a) the Crown...
- (b) a Government department, or

- (c) a public health organisation within the meaning of the *Health Services Act 1997*, or
- (d) a local council, or
- (e) any public or local authority constituted by or under an Act, or
- (f) a person or body prescribed... by the regulations as an authority... or,
- (g) any person or body in respect of the exercise of public or other functions of a class prescribed by the regulations...

Schedule 1 contains new section 42, which is headed "Principles concerning resources, responsibilities etc of public or other authorities"; new section 43, headed "Proceedings against public or other authorities based on breach of statutory duty"; new section 44, which is headed "When public or other authority not liable for failure to exercise regulatory functions"; new section 45, headed "Special non-feasance protection for roads authorities"; and new section 46, headed "Exercise of function or decision to exercise does not create duty". The Premier dealt with those substantial amendments in only two paragraphs of his second reading speech. A number of people have complained to the Opposition that the Government's approach is simply too wide. Perhaps it is, but it is also possible that the provisions are not well understood. The Opposition seeks a more detailed explanation of the safeguards provided in the bill for public sector organisations that continue to bear a great sense of responsibility towards the community. I draw to the attention of honourable members the dates of operation in schedule 2 to the bill. Clause of schedule 1 to the Act is headed "Application of amendments" and provides:

- (1) The amendments to this Act made by the 2002 amending Act extend to civil liability arising before the commencement of the amendments, but do not apply to or in respect of proceedings commenced in a court before that commencement.
- (2) Despite subclause (1), the following provisions of this Act (as inserted by the 2002 amending Act) apply to and in respect of proceedings commenced in a court on or after 3 September 2002 (except in respect of a decision of the court made before the commencement of this clause)
 - (a) Part 7 (Self-defence and recovery by criminals),
 - (b) section 30 (Limitation on recovery for pure mental harm arising from shock).

People have expressed concern about the date on which the legislation becomes effective, as they always do. I suggest that honourable members consider those dates and draw attention to any concerns they might have about them. Earlier I mentioned the provisions of the bill relating to volunteers. The Government has consulted the New South Wales Volunteer Rescue Association Inc. I note that on 15 September the association wrote to the Minister for Emergency Services and on 27 September to the Attorney General—the Hon. Bob Debus is responsible for both portfolios. The association received a copy of the final draft of the bill and responded to the Minister on 25 October to raise a number of concerns. Part of the association's letter stated:

During the consultative process, we met with you, staff from the Attorney General's office, the office for Emergency Services, and the State Rescue Board to present our case. We are disappointed this aspect has not been incorporated in the bill, despite our representations.

The matter referred to by the association is basically the protection of volunteers. That is set out in some detail in a letter from the association that was circulated to all members of Parliament on 26 October. The Opposition seeks a detailed response from the Government on that specific issue. The association's letter stated:

The NSW Volunteer Rescue Association Inc. [VRA] is concerned that while the Civil Liability Amendment (Personal Responsibility) Bill is well intentioned, protection offered to volunteers in a non-government emergency service such as the VRA is inadequate ...

We are seeking your support to ensure our volunteers have adequate protection. We suggest an amendment to Schedule 4 of the Bill titled "4.9 State Emergency and Rescue Management Act 1989 No 165" to ensure the NSW Volunteer Rescue Association Inc., our affiliates and volunteers are protected whenever carrying out the bona fide business of the VRA and our affiliates ...

Protection for the NSW Volunteer Rescue Association Inc. (VRA), our affiliates (list attached) and our volunteers is only provided by the present Bill during rescues (a very restricted event as defined in the SE&RM Act) and during the response to an emergency (defined in the SE&RM Act as an event requiring a significant coordinated response).

A large proportion of the assistance we provide to the community, particularly assisting the Police and Ambulance, is neither a rescue nor a response to an emergency as defined in the SE&RM Act. Situations where the proposed cover is inadequate include:-

- VRA Affiliates routinely provide assistance to Ambulance and Police in a wide range of support roles. For example, the Manilla Rescue Squad west of Tamworth provides about one hundred (100) "Ambulance assists" a year supporting local

ambulance staff with patient treatment, handling and transport. This type of work is neither a rescue or an emergency response as defined in the SE&RM Act.

- Body recoveries are neither a rescue nor an emergency as defined by the SE&RM Act. But, this is an important role assisting the Police and in turn the Coroner, let alone bereaved relatives
- Safety patrols and other preventative measures are neither a rescue nor a response to an emergency but are bona fide activities of the Ski Patrols, Aerial Patrols, maritime and inland water groups and other specialist units affiliated with the VRA.
- The day to day operations of our Maritime Radio Bases provide a very important safety service for recreational boaters. Again these day to day safety operations, whilst of immense community benefit, do not fall within the definition of a rescue or a response to an emergency and leave our organisations and volunteers exposed ...

During the consultative process, the VRA actively sought appropriate protection. We are disappointed that neither the importance of comprehensive protection for our volunteers, nor the roles and functions of a non-government volunteer rescue organisation, were fully understood in preparing the Bill.

On behalf of the VRA, the 75 affiliates and the 4,000+ members who have diligently served communities throughout NSW for many decades (over 50 years in the case of the Wagga Wagga Rescue Squad) may we respectfully request you support an amendment to the Bill to ensure that the VRA, affiliates and members are covered while ever they are undertaking the bona fide business of the organisations.

The association attached to its letter a draft of an amendment to the State Emergency and Rescue Management Act. I will not read the draft amendment as every member of Parliament would have a copy of it. The association's argument is valid and the Opposition seeks the Government's response on why it did not pursue protection for volunteers generally. Obviously we seek a level of detail sufficient to satisfy the New South Wales Volunteer Rescue Association Inc. The old chestnut of taxes and the Carr Government profiteering from the insurance crisis has also raised its head in relation to this matter. Australian Business Ltd has made the point that the Government is still benefiting significantly from the insurance crisis. That organisation has called for reduced stamp duty, and for that reduction to impact in a more meaningful way on the costs of doing business in New South Wales. Australian Business Ltd calls for the total abolition of stamp duty on public liability and professional indemnity insurance premiums with effect from the next major renewal period in June 2003.

I am sure that the Government will not totally embrace that request. However, the organisation has raised a valid point. Many people in New South Wales are still concerned that the Carr Government has profited from the insurance crisis. As the premiums go through the roof, so do the taxes collected. I am sure that the Minister for Small Business, as a responsible member of this House, would share that concern. The Insurance Council of Australia Ltd [ICA] has raised two issues. Obviously the first issue it has raised concerned the liability of public authorities, an issue about which I have asked the Government to respond. The council's submission stated:

As a matter of principle, protection of public authorities from liability is a matter of public policy for the Government and the Parliament to determine. ICA is concerned, however, that to the extent to which public authorities are protected from claims, those claims may be re-directed to other organisations so that, rather than achieving a cost saving, there is merely a cost transfer from the public sector to the private sector. This can easily occur where a public authority engages contractors to undertake its functions and activities. The public authority may be protected by the amendments, but the private contractors may remain fully exposed, and ultimately liable for the cost of any claims.

To the extent to which any cost transfers occur as a result of these provisions, the Bill will fail to make public liability insurance more affordable in New South Wales.

That refers to a point I made earlier: how wide is the protection for the public sector? Obviously, it is not only the Insurance Council that has gained a quick and full appreciation of the bill. A number of other organisations have raised concerns about the breadth of the protection provided to the public sector. The Opposition seeks a further confirmation from the Government that personal responsibility and accountability are as important to the public sector as is the protection of the community. The Insurance Council of Australia Ltd referred also to the limitation periods. Given the wording of its recommendation I am sure that this matter has been discussed in detail with the Government. Clearly it is a matter of negotiation as to how the numbers in the limitation periods end up. In that regard the ICA submission stated:

The Bill implements the Ipp Committee recommendations for changes to limitation provisions for claims for personal injury and death.

Part of the changes includes a limitation period in respect of a claim by a minor who is injured by a parent or guardian or a close associate of the parent or guardian. The Bill proposes that the application limitation period will not start running until the person turns 25 years of age.

At present, the limitation would not start running until the person turns 18 years of age. The ICA does not accept the need to extend this limitation period by a further 7 years, and is concerned that this amendment will increase rather than reduce uncertainty in the number and cost of personal injury claims. Once again, this will detract from the overall aim of making public liability insurance more affordable and available in New South Wales.

I am sure it will not do that, but I ask the Government to comment on the ICA's concerns in that regard. A number of other issues have been raised by other parties, including the claim that the definition of recreational activities is far too broad. There were concerns that the Ipp panel recommendation relating to recreational services requires the activity to involve a significant degree of physical risk. It has been suggested that that provision could be more appropriate. The Government may like to comment on that. Another concern raised is that the new regime of reform ignores tourists and Australians from non-English-speaking backgrounds. The Government may wish to comment on those concerns.

Concerns were raised about Australian standards for signs to warn of risks. At a minimum those standards should be complied with. I would appreciate the Government's response to that. Another concern is the use of the word "irrational". It is suggested that the use of that word will lead to further legal debate and litigation and that the word "unreasonable" should be substituted. The Government may wish to comment on that. A further concern that was raised relates to the liability of public authorities. Substantial concerns have been raised about the breadth of protection provided to the public sector. I have referred to that issue on a number of occasions but I again ask the Minister to respond to it. The Australian Plaintiff Lawyers Association [APLA], which has raised concerns about the reinstatement of nonfeasance, notes:

The Ipp report and the NSW Public Bodies Review Committee have advised against the reintroduction of the nonfeasance rule. Yet the Government's bill does exactly that.

It has been suggested that it will create litigation, but that is not necessarily my view. I would appreciate the Minister's response to that issue. A further point that was raised relates to part 6, "Intoxication" in schedule 1. APLA states:

Clause 49 seems to empower licensed premises to profit from supplying alcohol but take no responsibility for then having drunk people on their premises. Those enterprises that profit from selling alcohol to the public, and continue to sell alcohol to patrons already intoxicated, have no additional duty to care for that person while they are on the premises.

That is an interesting interpretation of the amendments. I would appreciate the Minister's response to that issue. Concern has been raised also in relation to schedule 4, division 6, relating to limitation periods. APLA states:

The Bill proposes to change the law relating to when a plaintiff can bring a cause of action. The concern here is in relation to children. Those children who are in the care of a parent or guardian will have the limitation period run against them even in situations where the parent or guardian is not acting in the best interests of the child. Allowing an extension only in those cases where the parent acted "irrationally" in not commencing proceedings on behalf of the child will see unjust results. Often the parent's decision can be rational yet not in the best interests of the injured child. The court should be allowed an open discretion to extend for such rare cases.

That issue has been debated in many of the documents to which I have referred. I would appreciate the Minister's response to that issue. I said earlier that the Opposition does not oppose the bill. However, Opposition members will ask a number of questions, raise a number of concerns and ask the Government to respond to them in some detail. The Government might find it tedious but the community does not. As this is complex legislation most members of Parliament would appreciate a more expansive explanation of the issues that I have raised. I said earlier that a number of my colleagues will raise further concerns.

Despite the suggestion by the Minister for Small Business, and Minister for Tourism, who is in the Chamber, that we have made substantial progress on the public liability issue, many businesses and community groups are suffering real stress. They are unable to obtain insurance or pursue their activities, and they are unable to afford the premiums that they are being asked to pay. Those community groups who welcome these reforms hope that they will have a short-term impact on premiums in New South Wales. We are yet to see the effects of this legislation. There is no guarantee that premiums will fall as a result of stage one or stage two of this legislation.

Many people have argued that the current insurance crisis, which is partly cyclical, has been exacerbated as a result of a number of events over the past 12 months. Opposition members will not oppose the bill but will seek detailed responses from the Government. We reserve our right to raise further issues in the other place. We again offer co-operation—as we have done over the past six months—in relation to this bill in the hope that we get commonsense reform through this Chamber quickly. The Government must be honest in response to the concerns that have been raised.

Mr GIBSON (Blacktown) [12.04 p.m.]: I support the Civil Liability Amendment (Personal Responsibility) Bill. I wish to respond to some of the issues raised earlier by the honourable member for Vacluse, who does a good job looking after all the Aussie battlers who reside in the Vacluse electorate. The honourable member referred earlier to insurance companies, to the Insurance Council of Australia and to the time that it has taken the Government to implement stage two of this legislation. He then referred to blocking this legislation or to holding up its progress in the upper House. I would have thought that Opposition members would have wanted to assist the passage of the bill through both Houses of Parliament to resolve the issues being faced by real battlers—people in Western Sydney and in other areas—who need some relief from the uncertainty they are facing in the insurance industry.

Imagine waiting for Opposition members to come up with a solution to this issue. We would be more likely to see rain in the outback. The honourable member for Vacluse referred to Government members as plunderers. He should talk to former Opposition leaders to determine who are the real plunderers. He referred also to the costs associated with insurance companies. It is the duty of the Commonwealth Government to examine insurance costs, benefits and payouts. However, the Prime Minister and the Federal Government avoid that issue whenever it is raised. Perhaps it will be addressed in the near future.

The Civil Liability Amendment (Personal Responsibility) Bill is an important piece of legislation. The number of people who abuse these laws has increased to such an extent that it has threatened our way of life. The high cost of insurance has impacted on kids who play sport on Saturday morning and on those who play soccer, rugby league, basketball and netball. It has impacted also on gymnasts, ballet dancers and bridge players. All those forms of activity are being threatened. Everyone agreed that something had to be done. It was left to this Government to come up with a solution.

I, unlike the honourable member for Vacluse, compliment the Premier, Justice David Ipp and the panel that reviewed the law of negligence. That panel's report was released only last month. If the Government had not introduced this legislation—a difficult piece of legislation to formulate—it would have been criticised for not addressing this issue. The Government's commonsense legislation, which is appreciated by people in New South Wales and across the nation, will reform the law of negligence. I thank the Premier, Justice Ipp and those who participated in last month's historic joint sitting for placing this issue on the agenda. New South Wales is ahead of all the other States in the fight against civil liability costs.

The reforms that are being implemented by this Government will work only if similar legislation is enacted in other States. The Premier said that Queensland had moved some way towards implementing similar legislation. We will not obtain the results that we desire unless similar legislation is enacted in other States. The Premier said in his second reading speech that we must seize the opportunity to wind back cultural blame—a statement with which I concur. The Premier also said that our community deserves our best efforts to preserve the Australian way of life, which is what this legislation will do.

This legislation provides the necessary safeguards and gives us and our children the opportunity to continue to live as we want. It modifies particular aspects of the common law but does not establish a complete code. We adopted the approach to duty of care and causation that is outlined in the Ipp report. A risk must be not insignificant for a court to find that it was reasonably foreseeable. This will send a clear message to the courts that liability for insignificant risk is imposed too easily under common law. The new formulation will emphasise the community's reasonable expectation that people should have to guard only against risks that are a real possibility.

The Premier also said that inherent risks are those risks that no amount of reasonable care and skill can avoid or minimise. If a person has a duty under the common law to warn of an inherent risk that is not obvious, that duty will not be affected by the bill. The bill requires risk warnings to be effective for children and disabled people in certain circumstances. This is important because it would be unreasonable to expect that a recreational service provider could not rely on warnings given by parents before children go horse riding, cycling and so on. We cannot expect potential defendants to take better care of a child than the child's parents.

It will no longer be an advantage to claim ignorance when bringing court action. People will no longer be able to say that they did not know of the danger or they could not see, read or understand a sign. I am sure that most people have thrown their hands in the air upon hearing stories about people who are drunk as a monkey, who hurt themselves and who then sue and are awarded huge payouts. This bill introduces duty of care into the equation. An intoxicated person will be able to take his or her case to court only if the accident was likely to have occurred if that person had been sober. Any damages awarded to an intoxicated person will be reduced on the presumption of contributory negligence of 25 per cent—more if appropriate—unless the person's intoxication played no part in the accident. I am certain that everyone in this nation welcomes that development.

Other ridiculous cases have involved those who were hurt while committing an offence—perhaps they tripped over a rake and broke a leg—and sued. In many instances the intruder has won the case and been awarded damages. Under this bill people who commit a criminal offence will have no avenue through which to pursue liability—and nor should they. I am sure we all agree with that proposition. This nation has been built on the ethos of the good Samaritan, but that ethos has disappeared over the past decade or so. We used to read stories from America about injured people who received no assistance for fear that the good Samaritan would be sued.

Mr Tripodi: *Seinfeld*.

Mr GIBSON: That is a good example. We thought it would never happen here but unfortunately we have followed that trend. A doctor friend told me that he would have to think carefully before assisting an injured person because if the injury was beyond his capabilities or expertise he could end up in court. People may be reluctant to become involved in an argument, for example, for fear of being sued. This bill looks after good Samaritans by protecting the good-faith actions of those who come to the assistance of people in danger. That is one of the most pleasing parts of this legislation. Unfortunately, good Samaritans have disappeared from the Australian landscape in the past few decades, and their return would be most welcome.

The legislation will ensure that volunteer rescue organisations such as surf-lifesaving clubs are free from liability if a person is injured in the course of, or in connection with, a rescue. Those volunteers can continue to rescue and assist people free from the fear of litigation. We have reached the ludicrous situation in this country whereby fear of litigation has halted surf-lifesaving patrols. Those opposite have criticised the Government for taking time to draft this legislation, but if we failed to draft it carefully our Australian way of life could disappear. The bill also protects from lawsuits individual volunteers who acted in good faith. As the Premier said, the legislation does not seek to alter the potential liability of community organisations by providing individual members with immunity.

The Ipp report recommended codifying the law in relation to mental harm, and the bill has adopted that recommendation. Rather than use a precise term such as "nervous shock", the bill provides that damages are recoverable for a recognised psychiatric illness. It also provides that only the victims of the negligence, people present at the accident scene or family members of a victim can recover damages for mental harm. I am sure all honourable members agree with that provision. I refer the House to the recent case involving a person who broke into a hotel to rob it, was discovered by the publican and got a hiding. When the offender's mother saw his injuries, she sued for compensation and was awarded \$10,000 for nervous shock. This bill will ensure that that never happens again. Under this legislation that type of appalling claim can no longer be submitted.

I believe this bill is the saviour of the Australian way of life. It signals a return to the style of living that we enjoyed before the culture of litigation took hold. Last month I met a group of 12 senior women from my electorate—the youngest was 80 years old. They used to pay \$2 to attend an exercise class every Wednesday: touching the toes and so on. It was a social get-together, an outing and an excuse to get active. However, the cost of liability insurance—the women were informed that it would be about \$100,000—forced the cancellation of the classes. This bill will return dignity to little old ladies and to everyone else in our community. It will allow people to live their lives as they choose.

Groups in my electorate and throughout New South Wales will be saved by this legislation. I am happy to support this bill on behalf of all organisations—sporting and cultural organisations, those for the elderly and the young and for every other group in my electorate—that will be saved the outrageously high cost of liability insurance. I believe it is one of the most important bills ever to come before Parliament. Opposition members talk about the impending election, but if they do not support the bill in its entirety the people of New South Wales will reject them in March and they will remain in opposition for a long time to come.

[Debate interrupted.]

BUSINESS OF THE HOUSE

Precedence of Business: Suspension of Standing and Sessional Orders

Mr WHELAN (Strathfield—Parliamentary Secretary) [12.18 p.m.]: I move:

That standing and sessional orders be suspended to permit Government business to take precedence over general business on Thursday 31 October 2002.

To paraphrase the words of the honourable member for Blacktown in commencing his speech, the Civil Liability Amendment (Personal Responsibility) Bill is probably the most important bill that Parliament will deal with this session.

I have been advised that some 24 members from both sides of the Chamber wish to speak to this bill. It should therefore be given due consideration. The same situation applies in respect of the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. A number of speakers have contributed to that debate, which has not yet concluded. It is therefore incumbent upon us to weigh up the considerations, namely the importance of Government legislation.

These two bills are a vitally important part of the Government's program and, as the honourable member for Blacktown indicated, they are vitally important to the people of New South Wales. This State should lead the nation with this tort law reform. For those reasons it is regrettable that private members' business will not be dealt with tomorrow. Instead, Government business will be dealt with from 10.00 a.m. to 1.00 p.m. There will be no other changes to the routine of business—notice of motions and question time will be dealt with as usual, but there will be three additional hours in which to deal with Government business.

The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill was debated last night for 4½ hours. If private members' business were to proceed tomorrow and Friday there would not be sufficient time in which to debate the bill. As I said, 24 members are listed to speak on the civil liability bill alone. The Government has a legislative program, and Ministers want to deliver second reading speeches. The Minister for Small Business, Minister for Tourism, and Minister for Women has an important bill, which the Government has embraced. We will be interested to see what the Opposition—

Mr Fraser: That should be done on private members' day.

Mr WHELAN: The honourable member for Coffs Harbour will learn one day that when a Minister introduces a bill which has the backing and support of the Government, it is a Government bill. In view of the weight of Government legislation at this time, this motion might assist the passage of these bills through the Chamber. The Government has a number of second reading speeches to be dealt with. I understand that it is difficult for members of the Opposition, but I ask them to accept that these two bills are probably the most important bills to come before this Parliament, and we must give weight to that fact.

Mr TINK (Epping) [12.22 p.m.]: The Opposition opposes the motion of the honourable member for Strathfield. It proves that this Government is in a shambles after seven years in office. I say that deliberately because a similar motion was moved this time last week—albeit about two hours later than now; he would not move a motion such as this during question time. The Government did away with private members' day this time last week, and we did not sit on Friday. The Government did away with the Save Callan Park Bill of the honourable member for Davidson and the Save Hunters Hill High School Bill.

Nevertheless, it is very happy to slip in the bill introduced by the Minister for Small Business, Minister for Tourism, and Minister for Women relating to Callan Park. Nobody has been fooled by that nonsense. The Government is running scared, and the Minister is running scared. It will be the last bill that she will move as a Minister or a member. Having done away with private members' day last week, the Leader of the House—although not personally at fault—had nothing to do on Friday. The Government had nothing to do because the Attorney General is in a complete mess when it comes to the most important bill to come before the House, namely, the bill relating to sentencing. That was to be the big deal for last Thursday and Friday, but it was not ready to proceed on Friday.

Mr SPEAKER: Order! Members on the Government benches will come to order. I include the honourable member for East Hills in that warning.

Mr TINK: This was the seventh-year dying attempt to fill a few gaps of what has been a disgraceful sentencing regime under this Government, but the Government was not even ready. This pathetic bill—which the Attorney General is personally embarrassed about having to move; it has been dreamt up in the Premier's Department—finally surfaced this week. Before the Attorney General had even finished his second reading speech he came with his tail between his legs and presented further amendments because there is a yawning gap in the bill—it does not cover people who commit sexual assaults on minors. On the Ray Hadley radio program the Attorney General said that the bill was still not quite ready and that the Government still has some amendments to it. The Government is flying with sticky tape, it is flying with coat-hanger wire. It is a plane that

is heading for the ground, and it is heading for the ground somewhere near Callan Park. There will be a change of government next year because of the Government's legislative program and its attitude after seven years in government.

Within 24 hours of suspending private members' day last week the Government had no business, so the House did not sit on Friday. There is even a chance, with the disarray in which the Attorney General finds himself with the sentencing bill, that we will not sit this Friday. It will take longer than that to fill in some of the gaps that are emerging in this bill. The Opposition says that there are 13 gaps in the Government's bill, plus the biggest gap of all, that is, a capacity for the judge not to impose a custodial sentence for crimes of murder, sexual assault relating to a minor, and serious, consistent and persistent drug dealing of a commercial kind. There is a big back door in this bill for a judge to say that a person will not go to gaol for any major offence. That is why, despite the fact that there was no private members' day last week, the Government is still in a mess with this legislation and other key pieces of legislation.

Opposition members are ready, as always, to proceed. We are ready to proceed with legislation relating to Callan Park. The Minister for Small Business, Minister for Tourism, and Minister for Women has not been in the Chamber pushing her legislation. She is not ready to proceed. But the Opposition is ready. The Government is scared stiff that the honourable member for Davidson is ready to move his bill tomorrow. After seven years in office this Government is tired, it is clapped out. The Attorney General, the Minister for Small Business, Minister for Tourism, and Minister for Women and a few other members will be looking for work next year. [*Time expired.*]

Question—That the motion be agreed to—put.

The House divided.

Ayes, 46

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| Ms Allan | Mr Greene | Ms Nori |
| Mr Amery | Ms Harrison | Mr Orkopoulos |
| Ms Andrews | Mr Hickey | Mr E. T. Page |
| Mr Aquilina | Mr Hunter | Mr Price |
| Mr Ashton | Mr Iemma | Ms Saliba |
| Mr Bartlett | Mr Knowles | Mr W. D. Smith |
| Ms Beamer | Mrs Lo Po' | Mr Stewart |
| Mr Black | Mr Lynch | Mr Tripodi |
| Mr Brown | Mr Markham | Mr Watkins |
| Miss Burton | Mr Martin | Mr West |
| Mr Campbell | Mr McBride | Mr Whelan |
| Mr Crittenden | Ms Meagher | Mr Woods |
| Mr Debus | Ms Megarrity | |
| Mr Face | Mr Mills | <i>Tellers,</i> |
| Mr Gaudry | Mr Moss | Mr Anderson |
| Mr Gibson | Mr Newell | Mr Thompson |

Noes, 34

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|-----------------|---------------|-------------------|
| Mr Armstrong | Dr Kernohan | Mr Slack-Smith |
| Mr Barr | Mr Maguire | Mr Souris |
| Mrs Chikarovski | Mr Merton | Mr Stoner |
| Mr Collins | Ms Moore | Mr Tink |
| Mr Cull | Mr McGrane | Mr Torbay |
| Mr Debnam | Mr O'Farrell | Mr J. H. Turner |
| Mr George | Mr D. L. Page | Mr R. W. Turner |
| Mr Glachan | Mr Piccoli | Mr Webb |
| Mr Hazzard | Mr Richardson | |
| Ms Hodgkinson | Mr Rozzoli | <i>Tellers,</i> |
| Mrs Hopwood | Ms Seaton | Mr Fraser |
| Mr Humpherson | Mrs Skinner | Mr R. H. L. Smith |

Pairs

Mr McManus
Dr Refshauge

Mr Brogden
Mr Kerr

Question resolved in the affirmative.

Motion agreed to.

CIVIL LIABILITY AMENDMENT (PERSONAL RESPONSIBILITY) BILL**Second Reading**

[Debate resumed.]

Mr FRASER (Coffs Harbour) [12.36 p.m.]: I support the bill. But, in doing so, I wish to reiterate many concerns, not just about the bill and its impacts on the community but why the Government has taken so long to introduce it. I spoke to the bill containing the first tranche of legislative reforms. I also listened intently to the Premier, who suggested that under that first tranche of measures premiums offered by insurance companies would reduce by 10 per cent. That guarantee and that promise of the Premier, made when introducing that legislation, have not eventuated. If anything, premiums have continued to rise at an exponential rate.

Businesses, especially in my electorate, and organisations such as Apex, Rotary, Lions and Quota, as well as many clubs still find that they cannot afford insurance, resulting in businesses closing their doors. Events that have been held annually in regional and rural New South Wales are being cancelled because the first tranche of legislative reforms did not bring about the promised reduction in premiums, which in fact have increased. Insurance companies are still not offering insurance coverage. Instead, they are using problems being experienced across the board in the insurance industry as an opportunity to increase premiums and their premium bases. I have some concerns about the Civil Liability Amendment (Personal Responsibility) Bill, which was introduced by the Premier. I refer honourable members to these statements made by the Premier in his second reading speech:

Very importantly, the bill will limit people claiming damages for injuries received while committing a crime. The general rule under the bill—

I emphasise the term "general rule"—

will be that no damages are payable if the injured person was engaged in conduct constituting a serious offence.

My concern is that the Premier said "a general rule" and "a serious offence". Earlier the honourable member for Blacktown referred to the case of a person who broke into a hotel somewhere out in the western suburbs. He was discovered by the licensee.

Mr Tripodi: Don't say somewhere out there.

Mr FRASER: I am not familiar with Western Sydney—

Mr Tripodi: You should know.

Mr FRASER: —just as the honourable member for Fairfield is not familiar with regional and rural New South Wales.

Mr Tripodi: During the by-election I spent months up there.

Mr FRASER: The honourable member has no idea about what goes on with small business and tourism in regional and rural New South Wales.

Mr ACTING-SPEAKER (Mr Lynch): Order! The honourable member for Fairfield will come to order. The honourable member for Coffs Harbour will address his comments through the Chair.

Mr FRASER: I admit that I have no real knowledge of Western Sydney, but I draw the attention of the House to the case referred to earlier by the honourable member for Blacktown. The mother of the offender was awarded \$10,000 under victims compensation for nervous shock. I challenge the Premier to prevent such a

claim as a result not only of a serious criminal offence but all criminal offences, and to ensure that victims compensation is not available to offenders or their relatives. The only nervous shock the offender's mother should have suffered was when she belted the offender on the backside when he was a kid to keep him away from offending behaviour. The Premier said in his second reading speech:

Nor will any damages be available if the criminal was injured through reasonable self-defence. Also, no damages will be payable if the criminal was injured through excessive self-defence, unless the court considers the circumstances are exceptional.

So far as I am concerned, there are no exceptions. People who commit criminal offences should not be able to claim damages under any public liability policy. The Premier made no mention of any reduction in premiums that will flow from the legislation. Mr Kevin Ruby, the proprietor of the Big Banana in Coffs Harbour, has been paying premiums of \$150,000 per annum to run his business. He was supposed to have a 10 per cent reduction—that is, \$15,000—as a result of the first tranche of the legislation, but he did not get it. His premiums went up, not because of his claims history but because the insurance industry did not see fit to pass on purported savings referred to by the Premier. The legislation affords him some protection, and I commend those measures. People who take a risk on his premises—ice skating, tobogganing or riding on the train—will have to accept liability unless there is an obvious breach of common law liability. But will the legislation result in any reduction to Mr Ruby's premiums?

The challenge is for the Premier and the insurance industry to ensure that any savings to the insurance industry flow on to tourist operators, businesses and voluntary community groups. I acknowledge that the legislation will provide medical practitioners with more protection. I acknowledge also that volunteers and voluntary groups will be protected. The most obvious example on the North Coast is when a surf-lifesaver or some other person applies mouth-to-mouth resuscitation and cracks that person's rib while performing cardiac massage. There have been cases of people who have sustained broken ribs seeking compensation from the person who saved their life. It is very important that the volunteers who protect our beaches so well are afforded protection.

[Debate interrupted.]

DISTINGUISHED VISITORS

Mr ACTING-SPEAKER (Mr Lynch): I acknowledge the presence in the gallery of I Gusti Bagus Alit Putra, the Vice-Governor of Bali, who is accompanied by Mr Eric de Haas, the President of the Australia-Indonesia Business Council Ltd. I understand that they are here to meet with the Premier to lay a wreath at the front of Parliament House at 1.00 p.m. in memory of the victims of the Bali bombings. I welcome them to the Parliament.

CIVIL LIABILITY AMENDMENT (PERSONAL RESPONSIBILITY) BILL

Second Reading

[Debate resumed.]

Mr FRASER: I again refer to the Premier's second reading speech when he said:

These changes simply recognise that services provided to the community by public authorities are not provided for commercial gain but for the public good.

The bill will also protect regulatory and roads authorities if they could have done something to avoid a risk but did not do so.

The legislation will exempt public authorities, especially road authorities. In areas that are growing, such as mine, a road authority could constitute the local council or the Roads and Traffic Authority [RTA]. Often I write to the authorities and people ring them about risks associated with roads. But because of lack of funding or because it is not part of a program the roads are not fixed and accidents happen.

Mr Ashton: They will have to inspect it now.

Mr FRASER: The honourable member says that they will have to inspect it. But what if they use the excuse of not having the staff, the money or the time, or that they did not know about it? The onus of proof is on the person who rang the council. If the council says there is no record of such a phone call the public authority is forgiven its liability, and that should not be allowed. Public authorities have the same liability as anyone else. A common law liability should be treated the same as any other liability for a public authority as it is treated for any other business or community group.

Mr Ashton: They do, if they have taken proper steps. They have a liability under the law.

Mr FRASER: The honourable member is trying to give me an explanation. I presume he has had the benefit of a party-room briefing.

Mr Ashton: No, I had the benefit of being on the Public Bodies Review Committee, as did the honourable member for Wagga Wagga and the honourable member for Bega.

Mr ACTING-SPEAKER: Order! I call the honourable member for East Hills to order.

Mr FRASER: The Premier gave no such assurance when he introduced the legislation. The Premier's second reading speech is very important under the Acts Interpretation Act because whatever is said in the second reading speech and in reply to the second reading debate is interpreted by the court as law. The Government should examine carefully how it will excuse public authorities from liability under the legislation. This will not affect the cost of public liability insurance for the private sector or volunteer groups, but it will excuse public authorities from taking due care and exercising due diligence in their legislated role to ensure that they do their jobs properly and do not put members of the public at risk. An example is a damaged footpath or paved area in a local government area. If the council is aware of the problem but no-one has made representations and it is not on the record the loophole referred to in the Premier's contribution means that the council is not liable if someone trips and breaks a leg.

I welcome the legislation, which is long overdue. Disclaimers and obvious risks will be discharged, which will reduce the opportunity of a person making a claim. However, the Opposition has some concerns about the legislation. The legislation would severely diminish the opportunity for people to sue if, for example, they jump off the Coffs Harbour jetty into the water and break an arm or a leg. The risk of such action is obvious. Anyone who is injured by indulging in such an act accepts the inherent risk.

Prior to the introduction of the legislation, if a sign on the beach said that the beach was closed the injured person could sue because the beach was not patrolled or the sign may not have been written in English. If such a sign was not displayed, the council could be sued. That was absolute lunacy. I hope that the Law Society and other members of the legal profession embrace the legislation. I also hope that insurance companies will pass on premium savings to consumers instead of allowing the cost of premiums to remain high and that, in future, businesses will not have to struggle as they have in the past. I commend the bill to the House.

Ms BEAMER (Mulgoa) [12.49 p.m.]: I am pleased to support the Civil Liability Amendment (Personal Responsibility) Bill. Honourable members and people in the community are aware of the crisis caused by the collapse of insurance companies, the refusal of insurance companies to offer public liability coverage and the exorbitant cost of premiums when insurance is able to be obtained. This bill represents the second stage of reforms in civil liability and provides the most fundamental reforms to the law of negligence. The bill has been presented to the House in its current form after extensive consultation and consequently better reflects community expectations. The insurance crisis led to the withdrawal of public liability insurance products from New South Wales community groups, but this bill will go a long way toward responding to current problems as part of a package of reforms.

The New South Wales community wants reforms so that our cultural and recreational life may continue. The New South Wales community deserves the best efforts of parliamentarians in retaining the Australian way of life. It is not good enough that pony clubs and dance groups are unable to operate, or that restaurants are unable to obtain public liability insurance, except at exorbitant cost, and it is not good enough that fairs cannot be held or that community groups can no longer operate street stalls. Changes that have been made since the consultative draft was produced have been drawn from recommendations made in "The Review of the Law of Negligence", which is known as the Ipp report. Although the bill does not adopt all of the report's recommendations, the vast majority of its recommendations have been incorporated. The bill and its explanatory notes redress the emphasis of liability for insignificant risk to take account of circumstances in which a reasonable person in the position of the injured person would have taken precautions.

As the Premier stated, the bill reflects the community's expectation that people should have to guard only against risks that are a real possibility. The bill deals with causation, assumption of risk, duty of care, professional negligence and contributory negligence in the most far-reaching reforms that the law of torts has ever experienced. Although it is not my intention to canvass every aspect of this bill, I will highlight a few of the reforms contained in the legislation. Many people in the community are appalled that liability attaches to

volunteer rescue organisations and good Samaritans. Parts 8 and 9 of the bill provide that members of organisations who are acting in good faith will be protected from liability for acts or omissions. Considerable outcry occurred when surf life rescue organisations and other volunteer groups attracted civil liability claims when they acted in good faith to provide assistance for people who were in danger. Honourable members who are present in this Chamber should applaud volunteers and give them the type of coverage that they deserve.

Another change introduced by this bill is that apologies will not be taken as an admission of liability. Often all people want is an apology when an event does not quite turn out in the way they expected it would. The feeling that an apology may be an implied admission of fault is often the reason why an apology is not made. The change proposed by the legislation is reasonable and supports people who are inclined to make an apology by defusing rather than inflaming conflict. Civil liability claims by people who are injured while intoxicated have been ridiculed and scorned. The community is aghast that silly actions taken by people while they are affected by alcohol—such as wearing pork chops on their feet—have been the subject of litigation.

Mr Fraser: That ruins the flavour.

Ms BEAMER: That may be true, but the chops may also be softened and tenderised as a result. More seriously, the community has been appalled by the ramifications of those actions and has expressed a great deal of anger. The bill will not prevent people from civil liability claims as a result of being injured while intoxicated. If a reasonable person is injured in circumstances where the level of intoxication is irrelevant, that person will still be able to claim damages. For example, if scaffolding fell on a person who was drunk it may make no difference to that person's rights to claim damages—it may have happened regardless of whether the person was drunk or sober.

Mr Ashton: A person may feel less pain.

Ms BEAMER: A person may well feel less pain. However, people who are intoxicated should not have a right to claim civil liability when their intoxication is a major cause of the injury. All honourable members are upset about people who engage in criminal activities and later claim a right to bring civil liability actions when other members of the community have acted in self-defence or in defence of their property. It is appalling that an action for civil liability may arise from injuries sustained while committing a crime as a result of another person's efforts at prevention or through common occurrences, such as stepping on a garden rake. Considerable comment has been made about protection provided by the bill for regulatory and road authorities. I am able to state from my experience in local government that regulatory authorities know numerous roads that need sealing and reconstruction, and footpaths that need improving.

Mr Crittenden: And potholes needing to be fixed.

Ms BEAMER: Yes. When I contacted the Penrith City Council, council officers identified areas in which footpaths need to be built, at a cost of \$3 million. Millions of dollars worth of center-seal construction is part of a progressive program of improvement. An incredible onus is imposed on local councils by the suggestion that their only priority should be readiness to avoid legal actions that may or may not be taken as a result of deficiencies in road construction programs. This legislation is not a cop-out, because the Government cannot require authorities with limited financial resources to spend those resources in an unlimited way. It should be remembered that although local councils have a responsibility to deliver community services, because of budgetary constraints not all obligations and responsibilities can be attended to at once.

Councils must give priority to dangerous conditions and matters that need urgent attention, but they cannot go on forever against legal actions arising from the responsibility of local authorities for potholes that may have caused a flat tyre. Legal actions based on everyday occurrences represent an appalling misunderstanding of the way in which the budget process works. This bill redefines and examines aspects of personal responsibility. In the past a culture of blame and shifting of responsibility by individuals for their actions existed. The bill sets down time limits and substantially reorganises the process of compensation for personal injury in its sweeping reforms of civil liability. I take great pride in participating in this debate because it is time to reverse the effects of a culture of blame and to restore personal responsibility. I commend the bill to the House.

Debate adjourned on motion by Mr Ashton.

BILL RETURNED

The following bill was returned from the Legislative Council without amendment:

Fair Trading Amendment (Employment Placement Services) Bill

REGULATION REVIEW COMMITTEE**Membership**

Mr ACTING-SPEAKER (Mr Lynch): I report the receipt of the following message from the Legislative Council:

Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly that it has this day agreed to the following resolution:

That Ms Saffin be discharged from the Regulation Review Committee and that Mr Primrose be appointed as a member of the Committee.

Legislative Council
30 October 2002

MEREDITH BURGMANN
President

[Mr Acting-Speaker (Mr Lynch) left the chair at 1.03 p.m. The House resumed at 2.15 p.m.]

MINISTRY

Mr CARR: I advise the House that in the absence of the Deputy Premier, Minister for Planning, Minister for Aboriginal Affairs, and Minister for Housing for family reasons, I will answer questions on his behalf.

SYDNEY AIR POLLUTION**Ministerial Statement**

Mr KNOWLES (Macquarie Fields—Minister for Health) [2.16 p.m.]: The current bushfire and drought conditions result in smoke and dust particles that have a substantial impact on the health of the community. Last week, when Sydney experienced both a dust storm and a ring of bushfires, the measure of particulate matter was almost double the safe level set by the national health standards. On the same day, the maximum regional pollution index reading recorded in Sydney was 149. That is three times the Environment Protection Authority's high level of 50. Today the index has been in the high range again.

Mr SPEAKER: Order! There is far too much audible conversation in the Chamber. The member for Wakehurst will resume his seat.

Mr KNOWLES: Today at 10.00 a.m. the index measured 91 at St Marys in north-west Sydney. The effects of those increases in particulate matter could result in an increase in asthma attacks for asthmatics, increased chest pain for those with heart disease and difficulty in breathing for those with respiratory conditions. Eye, ear and nose irritation, as well as headaches, also increase with an increase in particulate matter. Today the Chief Health Officer of New South Wales has warned that on days of high levels of particles or smoke in the atmosphere, asthma sufferers should avoid strenuous outside exercise, be sure of their medication and that it is at hand, and stick to their management plans.

The Asthma Foundation said that people with moderate and severe asthma who need to go out on heavy pollution days should cover their noses with scarves or handkerchiefs and, naturally, they should all have asthma plans developed in conjunction with their general practitioners. Of course, the drought has psychological impacts as well. People may experience suffering, especially those in isolated or rural areas. I remind them that professional counselling services are available across New South Wales to offer support and comfort in those circumstances. Simple precautions and a simple warning about preventative measures will assist our communities to get through what promises to be a long and hot summer.

Mrs SKINNER (North Shore) [2.19 p.m.]: This is an important issue, particularly for those who have breathing difficulties, asthma or chest pain, as the Minister has said. The Coalition joins with the Minister in warning people to take special care on days when particulate matter is high following dust storms or bushfires. It is worrying to learn that the index was so high at St Marys. The warning of the Chief Health Officer that those suffering from respiratory conditions should try to avoid being outside, avoid strenuous exercise, and cover their noses with handkerchiefs or scarves, is good advice.

My colleagues on this side of the Chamber and I know that that advice applies equally to those who drive through the M5 tunnel. The particulate matter in the M5 tunnel is a major concern to those who travel through it regularly and those who live near it. I call on the Minister for Health to make a ministerial statement about his responsibility in relation to that matter and what he intends that the Government should do in relation to it. Every day those who live near the tunnel face the prospect of having headaches, having to walk outside with handkerchiefs over their noses or a scarves around their faces—and not only on days when there is a bushfire or a dust storm. It is an ongoing nightmare for them. I have met many of them, as have my colleagues. I am sure that the Minister for Transport has also met them. They are articulate and they are able to explain exactly how ill they feel when they have to breathe the particulate matter that emanates from the M5 tunnel.

BILLS UNPROCLAIMED

Mr SPEAKER: Pursuant to standing orders, I table a list detailing all legislation unproclaimed 90 days after assent as at 30 October 2002.

PETITIONS

Planning Control Reform

Petition requesting reform of planning controls by gazettal as a legal document, oversight by the Department of Planning, public benefit assessment of variations, and a ban on development-related donations to political parties and elected officials, received from **Ms Moore**.

Coffs Harbour Radiotherapy Unit

Petition praying for increased funding for establishment of a radiotherapy unit in Coffs Harbour, received from **Mr Fraser**.

Mental Health Services

Petition requesting urgent maintenance and increase of funding for mental health services, received from **Ms Moore**.

Queanbeyan District Hospital

Petition requesting that Queanbeyan District Hospital be upgraded, received from **Mr Webb**.

School Bus Safety

Petition praying that seats and seatbelts be provided for all students on school buses, received from **Mr Debnam**.

Belmont North Traffic Arrangements

Petition praying for installation of traffic calming and safety devices on the pedestrian crossings at Belmont North on Old Belmont Road and on Nikkin Street, received from **Mr Orkopoulos**.

Richmond Regional Vegetation Management Plan

Petitions seeking extension of the exhibition period of the draft Richmond Regional Vegetation Management Plan, received from **Mr Fraser**, **Mr George** and **Mr D. L. Page**.

Lake Burrinjuck Water Level

Petition asking that the Department of Land and Water Conservation be instructed to maintain the level of water in Lake Burrinjuck at a minimum of 45 per cent, received from **Ms Hodgkinson**.

Underground Cables

Petition requesting that the House ensure that an achievable plan to put aerial cables underground is urgently implemented, received from **Ms Moore**.

Old-growth Forests Protection

Petition praying that consideration be given to the permanent protection of old-growth forests and all other areas of high conservation value, and to the implementation of tree planting strategies, received from **Ms Moore**.

Circus Animals

Petition praying for opposition to the suffering of wild animals and their use in circuses, received from **Ms Moore**.

White City Site Rezoning Proposal

Petition praying that any rezoning of the White City site be opposed, received from **Ms Moore**.

Graffiti Controls

Petition requesting further legislative changes to reduce graffiti on private and public property, received from **Ms Moore**.

Companion Animals Legislation Obligations

Petition asking that the House ensure that State Government authorities and local councils meet their obligations under the Companion Animals Act, received from **Ms Moore**.

Homeless Services Funding

Petition asking that homeless services funding be increased urgently and maintained until no longer needed, received from **Ms Moore**.

Surry Hills Policing

Petition seeking increased uniformed police foot patrols in the Surry Hills Local Area Command and installation of a permanent police van or shopfront in the Taylor Square area, received from **Ms Moore**.

VARIATIONS OF PAYMENTS ESTIMATES 2002-03

Mr Aquilina, by leave, tabled, pursuant to section 26 of the Public Finance and Audit Act 1983, variations of the receipts and payments estimates and appropriations for 2002-03 arising from the provision by the Commonwealth of specific purpose payments in excess of the amounts included in the State's receipts and payments estimates.

QUESTIONS WITHOUT NOTICE

INDECENT ASSAULT OFFENDER PRISON SENTENCE

Mr BROGDEN: My question is directed to the Attorney General. Given his admission that the weekend detention sentence given to the man who repeatedly indecently assaulted two young girls is not fair, insufficient and not enough—the words he used today on radio—and that such cases are, to quote him, appalling, will he reconsider his refusal to use his power to order an appeal in this case? How about some justice for that family?

Mr DEBUS: I stand by the answer that I gave yesterday. This morning I spoke again to the Director of Public Prosecutions at length about this matter. It is his clear advice to me that there is no reasonable prospect of an appeal succeeding in this matter.

Mr SPEAKER: Order! I call the Deputy Leader of the Opposition to order.

Mr DEBUS: This advice is based on clear analysis of the facts and the law in this particular case. This family has suffered a terrible tragedy, made all the more distressing because of the position of trust of the perpetrator within the extended family.

Mr SPEAKER: Order! The Leader of the Opposition will remain silent.

Mr DEBUS: However, lodging an appeal when there is clear advice that it has no prospect of success would be a hollow gesture. What the Government can do, and the Government is doing, is moving to change the law to set out in black and white the level of sentencing that the community expects for this kind of offence.

Mr SPEAKER: Order! I call the honourable member for Vacluse to order.

Mr DEBUS: That is why the Government will create a standard minimum sentence for the offence of aggravated indecent assault and for aggravated indecent assault against children. I expect that minimum standard sentence to be at least five years.

Mr BROGDEN: I ask a supplementary question. In view of the Attorney General's answer, will he give a commitment that under his Government no legislation will be passed that allows a person convicted of sexual offences against young children to escape a prison sentence?

Mr SPEAKER: Order! The honourable member for Epping will remain silent.

Mr DEBUS: The standard minimum sentencing scheme is before Parliament at present and it makes entirely clear the range of sentences.

PRIVATE HEALTH INSURANCE

Mr STEWART: My question is directed to the Minister for Health. What is the latest information on the use of private health insurance in New South Wales?

Mr KNOWLES: I note that yesterday the Commonwealth Health Minister, Senator Kay Patterson, indicated that she would write to me to seek a guarantee that no public hospital patients were being compelled to use their private health insurance. Senator Patterson does not need to write; I can give her that guarantee right now. Anyone wanting to use the public health system without charge is entitled to do so irrespective of his or her insurance status. That is a principle that Labor members have held dear for about 30 years. However, I will be writing to Senator Patterson seeking a commitment from her to review private health insurance arrangements because, as most honourable members will be aware, at the moment they are largely a failure. Private health insurance policies are confusing and expensive. They are full of qualifications about gaps and excess payments. In short, there is a lot of fine print.

Mrs Skinner: Point of order: I am very interested in this answer—

Mr E. T. Page: What's your point of order?

Mrs Skinner: It is a shame that the Minister for Health does not speak that loudly. I cannot hear the Minister because he insists on speaking to the camera rather than to the House. Will he confirm whether private hospital patients are queue jumping?

Mr SPEAKER: Order! There is no point of order. The honourable member for North Shore will resume her seat.

Mr KNOWLES: The community overwhelmingly understands that private health insurance is largely a failure, as I have said. It is full of qualifications, a lot of fine print and references to gaps and excess payments. All of those things make it a failure. Put simply, the majority of Australians these days regard private health insurance as a tax benefit not a health benefit, more likely to be taken out on the advice of their accountant for tax purposes rather than on the advice of their doctor for health purposes. Is it any wonder that although 46 per cent of Australians have private health insurance, about 60 per cent simply do not use it when they enter a public hospital? One must ask: Why would they? The Commonwealth Government spends about \$2.7 billion each year in an attempt to raise private health insurance participation rates. This means that at least \$7 billion has been spent on the scheme since 1999. John Howard's plan was to ease pressure on the public hospital system, but of course that has not happened.

Mrs Skinner: It has.

Mr KNOWLES: Only the naive or ignorant would assert otherwise.

Mr SPEAKER: Order! I call the honourable member for Fairfield to order. I call the honourable member for North Shore to order. I call the Minister for Energy to order.

Mr KNOWLES: The one thing that the community agrees on is that, because of the perversity, expense and complexity in the fine print of private health insurance products, private health insurance is having no effect on relieving pressure on the public health system despite the Commonwealth's expenditure of \$7 billion since 1999. The Commonwealth can claim to have increased overall health spending in this nation, but the big buckets of money are going straight into the bank vaults of the private health insurance companies. While the number of people taking out private health insurance has increased by about 9 per cent since 1999, demand for public health services has not changed. So much for easing pressure on the public system! No one believes that and the statistics reveal the facts.

Is it any wonder, therefore, that the Private Hospitals Association recently commissioned Access Economics to conduct a study that effectively called for a transfer of the tax rebate for what is known in the insurance industry as "ancillary services"—things like gym membership, the second pair of sneakers, aromatherapy and jogging gear. Access Economics said that that money would be better targeted at the acute care system and the hospital system as a whole—the public health system.

Mr SPEAKER: Order! I call the Deputy Leader of the Opposition to order for a second time.

Mr KNOWLES: For once it makes sense. Last year taxpayers shelled out \$755 million—a staggering figure—in subsidies for those ancillary services. In one category alone of ancillary services, \$33 million was spent on what is lovingly known as lifestyle forces and fitness equipment. That was an increase of \$19 million on last year, but \$33 million would pay for about 2,500 hip replacements or in the order of 16,500 cataract operations. It is a question of priorities. I am sure the community would prefer the public hospital system to receive money to do more operations than to see some middle class yuppie get a pair of taxpayer-subsidised joggers. Although the honourable member for Ku-ring-gai might need the joggers, I am sure that even he would concede that the money would be better spent in acute care systems.

Mrs Skinner: Point of order. You should ask the Minister to respond as a Health Minister and explain why more than 3,000 middle class people are waiting for joint replacements and have not had their operation. It is because of this Minister. It has nothing to do with the Commonwealth.

Mr SPEAKER: Unfortunately, the Chair cannot ask questions.

Mr KNOWLES: Whilst talking about middle class welfare, the other dysfunctional area in private health insurance is the dental scheme. John Howard gutted the public health dental scheme. He cut it to ribbons and transferred the dollars away from poor people who relied on public dental care and put it into insurance packages where those who can afford it can get their dental care subsidised.

Mr SPEAKER: I call the honourable member for Fairfield to order for the second time.

Mr KNOWLES: In the end, the Commonwealth must concentrate on providing a gap-free hospital cover scheme rather than the frills and marketing gimmicks associated with the present range of private health insurance products. Even where private hospitals are doing more medical procedures—and it is undoubtedly the case they are—there is evidence that they tend to concentrate on the procedures which are more predictable, less complex and not chronic, that is, they cherry pick. That leaves procedures that occupy more bed days, more complexity and more expense with the public system. The Commonwealth has put a lot of money—\$7 billion since 1999—into encouraging people to take out private health insurance. One can only presume that the Commonwealth wants people to use their private health insurance but at the moment using it is more likely to cost people more money with no better quality of care. This matter needs to be reviewed.

Patients are missing out, the public health system is missing out and even private hospitals are not doing as well as they should. The only people getting better out of the \$2.7 billion annual taxpayer subsidy are the directors and shareholders of the big private health insurance companies. Last year alone, the profits of private health insurers increased by a staggering 530 per cent, which is a massive increase. Their credit ratings have gone from a B-minus to triple-A plus and we are paying for it but we are not getting any of the benefits. Everyone knows that a review is long overdue. Instead of Senator Patterson writing to me, I will write to her and ask her to undertake a much-needed review of a part of a system that is long overdue for a major overhaul.

PRIORITY ACTION SCHOOLS PROGRAM

Mr CAMPBELL: My question without notice is to the Minister for Education and Training. What is the latest information on the trial of the Priority Action Schools program?

Mr WATKINS: In August I announced the Priority Action Schools program [PASP], which is a Government initiative to boost student achievement in specially designated schools. This program will trial intensive support to 74 primary, central and high schools with concentrations of students from disadvantaged areas from the start of the next school year. This is the first time that such intensive assistance has been available to schools such as these to produce long term, sustained change. An amount of \$16.1 million is available under the program. This significant injection of funding will assist the schools that need it most, build their capacity to develop professional knowledge through mentoring, research and evaluation and strengthening the links between the school and the community. It is designed to help students in needy communities towards better educational outcomes.

To gain maximum benefit from the program, the innovations and programs trialled by schools will be documented through an academic research program. The benefits will be twofold. We will have a credible external evaluation of the most useful strategies to support these schools. In turn, schools will have gained skills in research and evaluation, which can be used by teachers in a range of programs in the future. The trial will also foster co-operation between schools, TAFE and other agencies and community organisations. Schools from western New South Wales to the Illawarra, to northern New South Wales and inner Sydney will take part in the program. A Priority Action Schools support team, led by District Superintendent Diane Wasson—who has done a tremendous job—has been helping schools to prepare their Priority Action Plans for 2003. Last Friday, schools were advised of their allocations under the program. Schools are now preparing for next year, refining their plans and getting ready to implement them.

I advise the House that the plans that have been submitted focus on a range of strategies. The strategies include providing staff in schools with comprehensive and quality training on behaviour management or new teaching and assessment approaches. They include organising a team-teaching approach with specialist teachers working with other staff in a range of areas including literacy, numeracy, and technology; and providing quality training and development to help teachers create individualised programs for students that need it. Or it could employ community liaison officers, youth workers and co-ordinators to maximise the effectiveness of interactions between schools, families and other government and non-government agencies. A number of schools, including Whalan Public School and Airds High School, will implement after-school tuition programs to provide critical support for students at risk of not being able to complete work effectively at home. Other schools, including Sir Joseph Banks High School and Granville Boys High School, will implement middle years of schooling programs, with particular attention to students in year 7.

Another example, Bonalbo Central School, will focus on supporting teachers to implement initiatives to assist the needs and lives of isolated students, preparing them for the future. Other schools are also focusing on

providing support for parents so that they can be involved in their child's education. Outside of Sydney, local schools are also drawing their plans. Gateshead West Public School will help parents get involved with their children's technology through training and development programs. Kempsey West Public School will focus on supporting students in Kindergarten to year 2, through curriculum measures and integrating the teaching of conflict resolution skills. Specific training and development in conflict resolution will also be provided for the staff and community, including the local member, if he wishes.

To help Priority Action Schools stay in touch during the trial the department is currently designing a web site to provide a range of ways for schools in the program and members of the PASP support team to communicate about planning, implementation and evaluation of the program. The web site should be up and running by the end of November. In conclusion, I thank all of those who have worked to get this program up and running. Teachers in the schools, Dianne Wasson and Hetty Ciszloski from the Department of Education and Training and Angelo Gavrialatos and Gary Zadcovich from the Teachers Federation have prepared programs. I know the schools are excited about getting this program up and running. I look forward to visiting them and talking with students, teachers, staff, parents and community members about their successes under the Priority Action Schools Program. I hope to report back to the House next year about real changes that have been made to schools and student outcomes through this program.

CLARENCE RIVER DIVERSION

Mr SOURIS: My question is addressed to the Minister for Land and Water Conservation. Does the Minister endorse the policy announcement, made by the honourable member for Murray-Darling at the Murray-Darling Basin Commission forum at Moama on 11 October, that the Australian Labor Party will divert the Clarence River inland?

Mr AQUILINA: I will discuss the matter with the honourable member for Murray-Darling.

KIRKCONNELL GAOL INMATES DISABILITY ASSISTANCE DOGS TRAINING

Mr MARTIN: My question without notice is to the Minister for Corrective Services. How is the Government using minimum-security prison labour to assist people with disabilities?

Mr AMERY: I thank the honourable member for Bathurst for his question as it enables me to give some details of a very interesting project to commence within his electorate. I should start by stating that there are a number of highly successful programs and plans within the Department of Corrective Services to teach inmates valuable skills whilst allowing them to give something back to the community. Both the inmates and the community benefit from those programs. In response to the question asked by the honourable member for Bathurst, I should advise the House about what I believe is a very exciting program—an Australian first.

Under the pilot program, specially screened inmates at Bathurst's Kirkconnell gaol will train assistance dogs for people with disabilities. It will be my pleasure to launch this project in the electorate of the honourable member on Friday 8 November. I would like also to acknowledge publicly the role of the honourable member for Heathcote, Mr McManus, who has supported this program and Assistance Dogs Australia, a group based in his electorate. Honourable members may recall that some years ago the honourable member sponsored a presentation in the Jubilee Room where the first assistance dog was handed over to a lady who, I think, was a quadriplegic. Honourable members who were at the presentation saw the dog exhibit a number of home skills, such as picking up a telephone, turning on a light or otherwise assisting someone who could not perform those tasks.

I emphasise that this project involving Corrective Services will have dual benefits. On the one hand, it will assist prisoners who are undergoing rehabilitation programs; on the other hand, and importantly, it will assist people with disabilities who cannot do the day-to-day chores that we all take for granted. I further emphasise that the inmates who will take part in the program will be very carefully selected to ensure they are suited to the responsibilities of the program. Strict program guidelines have been prepared in consultation with the New South Wales Animal Welfare Advisory Council. Initially, two Labradors, or golden retrievers, will undergo an intensive three-stage program over 18 months with two inmates under the supervision of prison staff.

If the program is successful—we might be able to try it with the honourable member for Coff's Harbour—it could be extended to other prisons. It will cost something like \$20,000 to train each dog, and this

will be funded by the Department of Corrective Services. An extra \$10,000 has been allocated to establish the pilot program, a promising venture from which both inmates and the physically disabled will benefit. I support this program wholeheartedly because of the obvious benefits those dogs will bring to their eventual owners. If the program also helps reduce reoffending behaviour—by giving inmates work skills and training leading to possible employment after their release—that will be a bonus.

I have been informed that inmates taking part in the program could specifically gain vocational skills relating to the pet industry. The honourable member for Coffs Harbour might find this amusing, but the program will be of great assistance to disabled people. I have just been advised that the honourable member's cage has been cleaned, so he can leave now! Staff and inmates have already been chosen to train and maintain the animals over the next 18 months. Assistance Dogs Australia aims to train and place 100 assistance dogs with the disabled within the next four years. That is a great goal. If the pilot program is a success, prison inmates could be vital in achieving that aim.

This is the first time the program has been implemented in Australia. It has been operating quite successfully in the United States of America and in the United Kingdom, where I understand the success rate is something like 95 per cent using inmates, compared to a success rate of about 75 per cent using conventional methods through the community. This will provide a great sense of job satisfaction for the inmates who volunteer to work on the program. Also, I assure the House that arrangements to satisfy all the care needs of the animals have been made. I look forward to reporting to the House at a later date on the success of this project and whether it can be extended to other gaols. I thank the honourable member for Bathurst for another project in his electorate.

PRISON SENTENCES

Mr RICHARDSON: My question without notice is directed to the Attorney General. How does the Attorney justify the Government's claim that "we are safer because violent people are not on the streets" when 86 per cent of criminals are released from gaol after serving their minimum non-parole period? This includes Carl Della-Tore, who allegedly slit his 80-year-old grandmother's throat six days after getting out of Junee gaol on parole.

Mr DEBUS: I am not aware of the particular case raised by the honourable member. I shall seek more details of that matter and provide information to the House in consequence.

PUBLIC TRANSPORT DISABLED ACCESS

Mr MOSS: My question without notice is to the Minister for Transport. Will the Minister inform the House of the latest information on access to public transport for people with disabilities?

Mr SCULLY: As all honourable members would agree, it is important that we continue to do all we can to make our public transport as accessible as possible, particularly for those who have disabilities and mobility problems. People in wheelchairs have particular difficulties accessing public transport, but they are not the only ones. Thousands of people who are frail and aged, mums and dads with strollers, shoppers and toddlers have difficulty gaining access by stairs. In 1995, when the Carr Government was elected, only 10 stations had easy access—that is, a paltry 10 of 302. After seven years in office the Coalition Government had installed easy-access facilities at 10 railway stations. In April 1995 10 per cent of passenger journeys started and ended with easy access facilities. How many wheelchair-accessible buses were there in March-April 1995? Zero.

Mr Knowles: How many?

Mr SCULLY: Zero. I could not believe that. I said, "That can't be right." It was a bad Government, but not that bad; it did not have complete contempt for the disabled in our community. Officers checked, and the advice came back that under the Coalition there were no wheelchair accessible buses and only 10 stations out of 302 had easy access. This Government has got on with the job. It has provided, and will continue to provide, easy access and wheelchair accessibility for those in the community who need it. We now have 56 wheelchair accessible stations. We have done 46 in the past 7½ years; the Coalition did 10. That means that, from the 10 per cent of passenger journeys that then started and ended with an easy access station, 50 per cent now start and end with easy access stations—a massive improvement. Honourable members might ask where the Government has been constructing those easy-access facilities. Many members on both sides of this Chamber have benefited from the Government's easy access program.

Many of them—Engadine, Wollongong, Maitland, Beresfield, Thornton, Beverly Hills and Riverwood—opened only a few months ago. The honourable member for Fairfield is a beneficiary of an upgrade at Fairfield railway station. The Parliamentary Secretary for Transport has long campaigned for an upgrade at Campsie station. As a fitting legacy to his years of service to the people of Canterbury, in the next few weeks he will be involved in the opening of Campsie. I know the local member, as part of a railway upgrade, sought an upgrade at Marayong station. The honourable member for Menai was given a commitment to upgrade Holsworthy railway station. Unlike the crowd opposite, we fulfil our commitments. The commitment to Holsworthy was not non-core; it was core. I am sure honourable members remember the Howard non-core promises.

The upgrades continue at Kiama, Rockdale, Oak Flats and West Ryde, but those opposite do not like to hear this. We are about to start updating Granville, Guildford, Cabramatta, Miranda, Kings Cross and Mount Druitt. We need to do more to make our public transport accessible. While honourable members are absorbing this comprehensive program to provide easy access on public transport they are probably wondering how many buses we have upgraded. It was zero under the former Coalition Government but 485 wheelchair-accessible buses under this Government. Some 25 per cent of the fleet is now wheelchair accessible. We are planning further upgrades for the CityRail network at Auburn, Thirroul, Blaxland, Helensburgh, Gymea, Kingsgrove, Eastwood, Meadowbank, Mortdale and, yes, even Bowral.

I always give credit where it is due so I must give credit to the honourable member for Ku-ring-gai, a long advocate for upgrades on the North Shore line. As he would know, Hornsby, St Leonards, Waverton and Milsons Point have easy access. He would be aware of the current assessment of a public-private project for North Sydney. He would also know that Chatswood will be upgraded, as part of the Epping to Chatswood rail link. He has long put the case that Turramurra and Gordon need upgrading. The Government listened, as we do to all communities. On 2 September the honourable member and I went there. A photograph of the honourable member and I announcing the Government's commitment to upgrade his railway stations appeared on the front page of the *North Shore Times* and the *Ku-ring-gai Observer*.

I thank the honourable member for his comments in the *Ku-ring-gai Observer*, but I will not embarrass him by quoting them. He is a strong supporter of disability services and a person who recognises the Government's agenda, unlike his successor in office, the honourable member for Vacluse. The House should know the views of the honourable member for Vacluse on disability access. Unlike this side of the House he believes what is written in the morning newspapers. One morning he got up and unfurled his *Sydney Morning Herald*, and while he was eating his wheaties he read that the New South Wales Government was allegedly painting the train doors yellow as a multimillion-dollar millennium stunt. It was in the *Herald*, so it must be true.

The honourable member for Vacluse could not wait to pick up the phone and be heard on the radio. He said it was outrageous, gobsmackingly shocking. What government could possibly descend to such a depth of wasting public money by painting doors yellow to make them look like millennium trains and trick the public? Then he put on his togs, went down to the pool and had his morning swim. He felt pretty terrific. If only what he said were true. It is rubbish to suggest that it is costing multimillion-dollars: it is in the order of \$615,000. But how did this start? Why are train doors and the front of trains being painted yellow and when did it start?

The fronts of trains have been painted yellow for a long time. I would like to take credit for it, but that would not be fair, it would not be right. Occupational health and safety maintained that rail workers in and around the track should be able to see more clearly trains approaching them. That is why, some years ago, the rail authorities, with the support of the State Government of the time, decided it was appropriate to paint the front of trains yellow. It started in 1992. The honourable member for Ku-ring-gai worked on the policy.

Mr Debnam: Point of clarification: If the Minister is spending \$615,000 then that is more than the \$500,000 that Barrie Unsworth was going to spend on plastic noses for the Tangaras.

Mr SPEAKER: Order! There is no point of order.

Mr SCULLY: It is not often that I am prepared to give credit to what was the Bruce and Barry show, but the honourable member for Ku-ring-gai got it right when he was Chief of Staff to Bruce Baird. He ticked off, as chiefs of staff often do, and advised his Minister that the State Rail Authority was getting it right: the front of trains should be painted yellow to make it safer for workers. It was done in 1992. It was a good decision, and we supported it. In 1994 Bruce Baird decided that the front of the rolling stock acquired by the rail authority should be painted yellow. Since that time the front of rolling stock has been painted yellow.

When the main train centre at Auburn was opened we started a program of painting the doors yellow. This is what the honourable member for Vacluse refers to as a shocking, horrifying publicity stunt engaged in by the Government. It is irrelevant that it will assist the visually impaired. On 15 August the Federal Attorney General signed into law the new disability standards requiring certain things to be done by public transport authorities all around the country to provide effective accessibility for those with various impairment. One of the requirements is that doors have contrasting colours so that the visually impaired are more able to see them. Guess what? Yellow is considered an effective contrasting colour so that the visually impaired can see the doors. We are following a program commenced by the previous Coalition Government and implementing a disability standard set into law by a Federal Coalition Attorney-General.

Yet again, the honourable member for Vacluse is debunked, made a complete fool of and shown for the fool that he often is. I know that this might be a little unparliamentary, but we cannot believe anything the honourable member for Vacluse says. We are getting on with the substantive program. Colleagues on both sides of this House can see what we are doing to our railway stations. We are improving people's lives. I know that those opposite cannot imagine talking to stationmasters, but the honourable member for Ku-ring-gai and I talked to the stationmaster at Gordon. He is typical of the good people on our railways who are working to improve access for the disabled. He is one of many staff and commuters enjoying our system. Next time we hear an utterance by the honourable member for Vacluse after his morning wheaties, we should remember that on a previous occasion he got it completely wrong.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE

Mr CULL: My question without notice is directed to the Minister for Agriculture. In the light of Australian Bureau of Agricultural and Resource Economics [ABARE] statistics showing that the drought has hit New South Wales the hardest of all States and the Premier's comments that the drought could send us into recession, why will he not sign up to the Federal Government's exceptional circumstances package that will cut red tape and deliver aid more quickly and more efficiently?

Mr AMERY: For the record, I make it clear that I did not give that question to the honourable member for Tamworth and I would be surprised if the honourable member for Lachlan gave it to him. It is almost insulting for a member of the National Party to talk about drought assistance being provided by the Federal Government. I show honourable members a map of New South Wales with the predominant areas of the State coloured yellow. If every dollar applied for by the State Government for exceptional circumstances [EC] assistance was granted today, the small, darker area at the top of the State, which depicts Bourke and Brewarrina, are the only areas that would receive any Federal Government assistance.

Obviously the honourable member for Tamworth supports Federal Government assistance being provided to only 6.7 per cent of the State when 92 per cent of the State is drought declared and 6 per cent of the State is marginally drought declared. The New South Wales Government's 30-point plan for drought assistance applies to all areas that have been drought affected for up to six months. Figures collected every month show that nearly 70 per cent of farmers in New South Wales receive State Government assistance but, at the last count, only four farms were receiving Federal Government assistance. In those circumstances, fancy a National Party member suggesting in this House that this Government should sign off on an agreement with the Federal Government!

I refer now to the shared arrangement in relation to exceptional circumstances assistance. I have previously informed the House that the Federal Government is paying very little in drought assistance but now wants to pay even less by shifting more responsibility for drought relief funding onto the State Government. It is incredible that the Federal Government wants to reduce the 6.7 per cent of the State that is in receipt of its EC funding. The State Government's drought assistance relief is running at approximately \$1 million a week. If I remember correctly, State Government drought relief assistance amounted to approximately \$6 million after the first six weeks of payment, and the State Government's financial support total is climbing. In contrast, at the last count the level of Federal Government's financial support amounted to four properties.

Mr Souris: The State Government is responsible.

Mr AMERY: The Leader of the National Party makes a good point by way of interjection. I ask the Federal Government to consider why it confines its drought assistance to EC funding. The Leader of the National Party agrees and the Federal Government believes that the only role of the Federal Government in addressing the drought problem is to provide financial support to exceptional circumstances areas which, even at

the best of times, will reach only farmers in the far western part of the State. Most drought-affected areas will never receive Federal Government financial assistance under current criteria. The Federal Government is paying very little in drought relief, yet wants to pay even less, and that is the Federal Government's problem.

I give the Federal Government a little credit because it would have an argument if the role of the State Government were to jointly fund the exceptional circumstances assistance program only. If the role of the State Government were to provide financial assistance only to exceptional circumstances areas, as the Federal Government does, the State Government would be obliged to pay a greater share; but this Government has its own 30-point State assistance program consisting of transport subsidies and fees waiver, et cetera, while the Federal Government provides financial assistance only to areas declared to be experiencing exceptional circumstances.

Mr Souris: All you have ever paid is money collected from a tax on camping.

Mr AMERY: The Leader of the National Party should not interrupt because the only time he has ever uttered a sound about the drought has been by way of interjection during question time. When the drought is being discussed the Leader of the National Party is nowhere to be seen and nobody ever hears from him, and when the drought is being discussed on the airwaves he is unavailable for comment. As I said, the Federal Government has to stop the nonsense about passing more of the responsibility for financial assistance under the exceptional circumstances program to the States. It is fair to say that as the drought spreads across the State and increases in intensity every month, the Federal Government should provide financial assistance to affected areas other than those that have been declared exceptional circumstances areas. After all, drought is not constrained by financial assistance criteria or boundaries. The Federal Government could provide extended assistance if it wanted to.

In response to the first comment made by the honourable member for Tamworth, I acknowledge media articles in which reference is made to a report on crops. The report clearly shows that the drought is becoming worse and that production has been particularly hard hit in New South Wales, with harvest forecasts showing a decrease from 8.9 million tonnes in 2001-02 to 2.2 million tonnes during the current financial year. Such a severe reduction in production indicates just how much the drought has affected the livestock industry through the winter months and how greatly it is likely to impact on crop-growing industries. The State Government's financial assistance packages have been tailored to meet the impacts of the drought, but it is about time the Federal Government started to provide drought relief financial assistance to major areas of New South Wales that have been affected by drought but which may not be part of exceptional circumstances areas. I thank the honourable member for Tamworth for his question.

DENILIQUN LIQUOR ACCORD PROGRAM

Mr BLACK: My question is directed to the Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development. How is the Government helping to reduce antisocial behaviour in Deniliquin?

Mr FACE: I thank the honourable member for Murray-Darling for his question about problems with liquor in Deniliquin. I would have thought that the best interests of the constituents of the honourable member for Murrumbidgee would be served by his being in the Chamber to hear about what is occurring in Deniliquin. As many honourable members would be aware, liquor accords have been one of the most successful tools used in combating antisocial behaviour associated with alcohol in many suburbs and country towns that are experiencing liquor-related problems. As I have stated in this House on many previous occasions, the pioneer project in Dubbo has probably recorded the most successful outcomes of all accords but, most importantly, liquor accords bring together key players at local levels, including licensees, police officers, proactive councils and officers of my department.

The Department of Gaming and Racing provides assistance by establishing and monitoring accords right throughout this State. I am pleased to inform the House that 60 accords are currently operating throughout the State, some featuring value-added strategies such as entry curfews, lockdowns and restrictions on the sale of liquor in licensed venues. However, I express concern and disappointment that bottle shops in most cases have either not participated in the accords or have not co-operated with the accords to the same extent as have hotels, clubs and some restaurants. Support for accords is reflected in reforms of liquor laws to enhance harm-minimisation measures. Accords have strengthened the harm-minimisation process by providing legal certainty that accords processes will not conflict with competition laws.

Earlier this year a local police officer from Deniliquin, Senior Constable Dick Arnold, drew to my attention a number of local liquor-related issues. I am pleased to inform the House that as a result of the rapport I have fostered between my department, my ministerial office and police officers, many experienced licensing police officers throughout the State have agreed to contact me directly or liaise with my personal staff on issues impacting on the policing of liquor and gaming laws.

Senior Constable Arnold outlined to me the positive achievements that have been made as a result of the Deniliquin liquor accord being relaunched late last year. I said "relaunched", because it had fallen down and was beginning to create a host of difficulties in that location. One of the most startling achievements recorded by local police is that over a two-month period only one arrest had been made in Deniliquin on a Friday or Saturday night that could be attributed to the operation of licensed premises. Feedback indicates that Deniliquin is now a much safer place in which to live, work and socialise. That is in stark contrast to the large number of alcohol-related incidents recorded by Deniliquin police in recent years leading up to the accord.

For example, in a nine-month period 152 street offences were recorded and 85 of those were alcohol related. Of those incidents 112 occurred at night during licensed premises' peak trading time. However, the relaunching of the Deniliquin accord came about only because local police and the community realised that they had to be responsible for what was going on. We cannot have hordes of police wandering around blaming everyone else for community problems. The police and the community saw this accord as a key strategy to reduce the high levels of alcohol-related problems experienced by the town.

By early last year it was not uncommon for up to four police officers to be called at night on weekends to incidents in the vicinity of the Central Hotel. Honourable members would agree that in a town the size of Deniliquin, with a population of about 8,000, that behaviour is not acceptable to anyone. Apart from helping to relaunch the liquor accord, Deniliquin police also targeted the Central Hotel and the licensee, Mrs Judith Cully, for enforcement action in a bid to bring about a much safer town and to bring the hotel into line with community expectations. Police lodged a complaint against the hotel, and that complaint was dealt with earlier this year.

I commend the Liquor Administration Board for imposing stringent condition on the hotel's licence. What occurred in that case is a warning to licensees throughout the State. That hotelier was required to stop selling liquor by 2.00 a.m. and to adopt a 1.00 a.m. entry curfew for patrons—that was my recommendation, one that had been pioneered in the Dubbo liquor accord. Further, the hotelier was to maintain video surveillance of the hotel and videotapes were to be provided to police and the Department of Gaming and Racing and the hotelier was to clean up the vicinity of the hotel on Saturday and Sunday mornings. Local police also secured an undertaking that Mrs Cully was to be replaced as the approved manager of the hotel as that would help improve its operations.

Further disciplinary action was taken by police in relation to breaches of licence conditions such as breaches of the entry curfew and not meeting harm-minimisation requirements. The Licensing Court imposed a penalty of \$1,500 in addition to other conditions and reprimanded the hotel owner, Sustir Pty Ltd. Other sanctions were available to the court, including suspension of the licence and disqualifying the licensee from holding a licence. More of that type of disciplinary action will occur if licensees do what they should not do. Reports to me indicate the success of the town's accord and that the disciplinary action taken against the Central Hotel is now paying dividends. The results that have been achieved in restoring peace in the community of Deniliquin are a credit to the committed police and to the responsible hoteliers who have worked hard to turn around the problems experienced there.

The success also shows that liquor laws can be used effectively to minimise liquor abuse in those circumstances. That should be an important lesson for those in the industry who are under the misguided belief that they can run their premises along the lines of a bloodhouse without coming under notice or facing punitive action. I repeat what I have said in this House several times: a liquor licence is a privilege, it is not a right. Hotels operate during hours that create difficulties, therefore they receive community odium. Hotels operate at night and receive profits. Police have to attend, at public expense, to protect those premises. My Department of Gaming and Racing published details of this case in the September edition of its bulletin entitled "Liquor and Gaming". That bulletin is distributed to members of both Houses and makes for absorbing reading. I commend it to honourable members as an easy way to keep up to date with major issues impacting across the liquor and gaming industries.

JOINT STANDING COMMITTEE UPON ROAD SAFETY CHAIRMAN

Mr McBRIDE: Yesterday the honourable member for Myall Lakes, the shadow Minister for Roads and Tourism, asked me a question about recent comments relating to speeding on New South Wales roads. I

have been quoted completely out of context in that regard and am now able to supply the following supplementary information. I refer to a newspaper report of an interview I gave just minutes after the report of an attack on me by the Opposition. An article in a local newspaper headed "MP: watch your speed", referring to me, stated:

"As Staysafe Committee Chairman, I have seen the horror that speeding can cause," he said. "I just want to make sure people on the coast get the message loud and clear that a decision has been made and they are at the greatest risk of losing their licences if they do not slow down."

I was issuing a warning to Central Coast motorists who drive on the F3; I want them to slow down, as I said in the article. This is a timely warning because on 1 December New South Wales motorists driving at more than 130 kilometres per hour, irrespective of the posted speed limit, will automatically lose their driver's licence for a month. My message was clear. Drivers on the Central Coast should not speed, because they are putting their community, their licence and their jobs at risk. Currently 80 per cent of motorists have no demerit points against their licence.

Mr R. H. L. Smith: Point of order: When a supplementary answer to a question is given, we are allowed to give only answers on how we were impugned. We are not permitted to give a detailed answer. The member is quoting from an article that is not relevant to the question.

Mr SPEAKER: Order! No point of order is involved.

Mr McBRIDE: Currently only 20 per cent of motorists have demerit points against their licence, and only a small number of those engage in excessive speeding—it is those motorists who think it is the Australian way to speed, and they need to change their ways, just as 20 years ago some drivers had to change their attitude to drinking and driving. As Staysafe chairman, I have seen the horror that speeding can cause and I commend the initiatives introduced by the Minister and his strong commitment to change the community's attitude to speeding, as successfully advocated by successive Staysafe committees of this Parliament.

ENNGONIA SEPTIC TANK SYSTEMS

Mr IEMMA: On 24 October the honourable member for Barwon asked me why the Government has allowed septic tank systems in the township of Enngonia to overflow for many months, creating serious health hazards to local residents. I am now able to provide the following advice. The Department of Public Works and Services has been engaged as project manager for the Enngonia \$1.56 million water and sewerage scheme. The department has no role in funding that project and is not responsible for any leaking sewerage system. Water and sewerage infrastructure is the responsibility of the Bourke Shire Council. The reason for the delay in commencement of that project is that Bourke Shire Council has failed to commit to its share of funding.

As I said earlier, water and sewerage services are the responsibility of the local council. The Government recognises the problems being faced by small communities that have septic systems. That is why the Government offered assistance through the Aboriginal Communities Development Program. Under this program the Government will spend over \$200 million in the next eight years on much-needed infrastructure. This program was established to raise the health and living standards of disadvantaged Aboriginal communities. These communities are included in a special tri-party funding arrangement. The Department of Aboriginal Affairs and the Department of Land and Water Conservation have committed to funding, but Bourke Shire Council has not.

Council said that it is supportive of the project, but to date it has not contributed its share of funding. I am advised that Bourke Shire Council wrote to the Department of Aboriginal Affairs on 9 October stating that it is pursuing funding with its local community. I take this opportunity to urge council to approve funding for this project—an important infrastructure service in a disadvantaged and remote community. Work will proceed as soon as funding approval is received. We can see from the facts that the honourable member for Barwon has got it wrong. This is just another example of an inexperienced shadow Minister getting his facts wrong.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE

Mr AMERY: I provide supplementary information in response to a question asked earlier by the honourable member for Tamworth. The Australian winter crop production report states:

Production of the four major winter crops, wheat, barley, canola and lupins in 2002-03 is forecast to decline to 14.8 million tonnes, down 57 per cent from last season's harvest of these crops of 34.1 million tonnes. This size harvest would make it the smallest for these crops since the drought of 1994-95, when a crop of 13.2 million tonnes was harvested.

I said earlier that four properties were receiving assistance under the Federal Government's exceptional circumstances program. I have just been advised by my staff that on 22 October—the last date for which they have information relating to this issue—only three properties were receiving assistance under the Federal Government's exceptional circumstances program. A number of applications are currently being considered by the Federal Government.

Questions without notice concluded.

CONSIDERATION OF URGENT MOTIONS

Exceptional Circumstances Drought Assistance

Mr BLACK (Murray-Darling) [3.32 p.m.]: The Commonwealth Government must face up to its responsibilities and relax exceptional circumstances conditions in all sectors of New South Wales. In question time today the honourable member for Tamworth asked one of the dopest questions that I have ever heard about exceptional circumstances assistance. Towns in the electorate of the honourable member for Murrumbidgee are hurting, but he was not in the Chamber for the whole of question time. The dopey duet—John Anderson, Federal Leader of the National Party, and Warren Truss, Federal Minister for Agriculture—has been roaming around the countryside—

Mr SPEAKER: Order! The honourable member for Murray-Darling must give reasons why his motion should receive priority.

Mr BLACK: John Anderson and Warren Truss are not facing up to their responsibilities. This motion calls upon them to address in a fair and equitable manner the exceptional circumstances conditions. This motion calls on those Federal members to address the problems being faced by drought-stricken communities in western New South Wales. This matter is urgent because we are seeking to extend those exceptional circumstances conditions. The Minister for Agriculture said during question time that exceptional circumstances conditions are extremely limited. Only three of the six applications that have been submitted from the Bourke and Brewarrina pastoral protection board areas have been accepted. The Federal Government must be made to match funding that has already been contributed by the State Labor Government.

Sydney Water Management

Mr HUMPHERSON (Davidson) [3.35 p.m.]: This motion is urgent. The Minister who has responsibility for Sydney Water must be called to account because of the inadequacy of the customer information and billing system and his ongoing mismanagement of our water system. The Minister must address all the concerns that have been raised over the past four years. Water has been wasted, charges have increased, dividends have been raided and sewerage systems are in a state of disrepair. The whole system is in chaos but the Minister for Energy is not even in the Chamber today. This matter is urgent. The Minister must accept responsibility for these failures.

In September 1998 Premier Bob Carr said that Ministers must be responsible to Parliament and they should have control over the administration of their corporatised authorities. Sydney Water is a corporatised authority. Since the Sydney Water crisis five years ago the Minister for Energy has not accepted responsibility for these failures. I refer to some examples that demonstrate why my motion is urgent. It was disclosed by Sydney Water a week ago that \$16 million had been spent on its customer information and billing service. Funding for other programs has been cut. Last year the Government cut \$40 million from its ocean treatment plant upgrade and that money was used to implement Sydney Water's customer information and billing system. The Opposition wants the Minister to participate in debate on this motion.

Mr Ashton: Point of order: The honourable member for Davidson wants the Minister to participate in debate on this motion. However, that has nothing to do with whether his motion is urgent and it is not relevant.

Mr SPEAKER: Order! The honourable member for Davidson is entitled to make that demand. Whether it is relevant is outside the control of the Chair.

Mr Ashton: Further to the point of order: In the last minute and a half the honourable member has not indicated why his matter is urgent.

Mr HUMPHERSON: I have indicated why my motion is urgent. The pipeline in the Engadine area—the area in which the bushfires commenced and where 10 homes were lost—has been leaking thousands of litres

of water a day. The Minister referred to this massive water loss in the Chamber yesterday, but he failed to acknowledge it publicly. The Minister is calling for usage cuts and he wants to impose restrictions on water use in Sydney. The water loss from one leak in that pipeline is sufficient to fill an Elvis helitanker every two days.

The Minister must respond urgently to customer and community concerns. He must say what he is doing about these problems. Millions of litres of water are being lost and the Minister is not prepared to address that issue. This matter is urgent. The Minister must come clean about a number of things that have occurred over the past four years. The Minister must disclose final costs for the northside sewerage tunnel. It was estimated that that project would cost \$290 million, but that figure has now blown out to \$465 million—an increase of \$175 million. The Minister must address these issues. Why was there a \$50 million dividend raid on Sydney Water by the Treasurer earlier this year? [*Time expired.*]

Question—That the motion for urgent consideration of the honourable member for Murray-Darling be proceeded with—agreed to.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE

Urgent Motion

Mr BLACK (Murray-Darling) [3.39 p.m.]: I move:

That this House:

- (1) notes the support the New South Wales Government has given to country businesses hit by drought; and
- (2) calls on the Federal Government to extend exceptional circumstances funding to drought-affected small businesses.

Mr Fraser: Point of order: When explaining why his motion was urgent the honourable member for Murray-Darling suggested that the honourable member for Murrumbidgee was not in the Chamber because he chose not to be here. If the honourable member for Murray-Darling had bothered to check with his Whip he would know that the honourable member for Murrumbidgee was paired. The honourable member for Murray-Darling is an absolute disgrace.

Mr SPEAKER: Order! There is no point of order.

Mr BLACK: I acknowledge that the honourable member for Murrumbidgee was paired on the advice of the National Party Whip. He would never tell any fibs in Parliament, would he? In my contribution I will, first, describe the rural sector in the small section of south-western New South Wales that is affected by the current drought and then link it with the effect that the drought has had on our towns. The figures that I shall cite have been calculated by the Central Murray Area Consultative Committee Regional Economic Impact and Employment Planning Project for the Balranald, Berrigan, Conargo, Deniliquin, Jerilderie, Murray and Wakool local government areas. The impact of the drought in this region has already been devastating for farms, businesses serving farms, processing industries, businesses in rural communities and on the social infrastructure of rural communities. Some \$271 million in farm gate income has been lost and there will be a \$484 million regional flow-on effect, 2,586 agricultural industry jobs will be lost and a total of 3,741 jobs will be lost throughout the region.

Murray Irrigation Ltd covers the largest proportion of the irrigated area in the Murray Valley. The company is the largest single water user in the valley, providing general security water to 2,400 holdings owned by 1,600 farm businesses. Properties in the shires that I have mentioned fall within the company's area of operation. Annual farm gate production in the region is usually about \$300 million. The area produces 50 per cent of Australia's rice crop and 20 per cent of milk production in New South Wales. It has a population of 25,000 and covers an area of 780,000 hectares. The area has had record low water resources in recent times. The general security allocation is only 10 per cent of allocation throughout the valley, or 8 per cent for Murray Irrigation Ltd shareholders. This is a record low for the company at this time of year. Last year a total of 1.23 million megalitres was delivered within the Murray Irrigation area. Of the 253,000 megalitres available to its shareholders this year—which includes water traded in—only about 80,000 megalitres are left. This time last year 98 rice wheels were operating, providing water for rice paddies. This week only 19 rice wheels are operating in the area.

I have some details on information prepared for the Central Murray Area Consultative Committee. The work is based on a pilot project conducted by the Centre for Sustainable Rural Communities at La Trobe University in Bendigo. These figures are absolutely correct. In the Northern Victorian Goulburn Irrigation

System, which comprises 1,450 farms, it is estimated that approximately 80,000 dairy cattle have been withdrawn from the milking herd. Some 10,000 of them have been "cow parked", a further 60,000 have been sent for slaughter, 5,000 have been sent to knackeries and 5,000 have been sold to other dairying districts. This represents a 25 per cent to 30 per cent reduction in cow numbers. Current production levels are 10 per cent less than last season. At a net return of \$1,000 per head, this represents an \$80 million loss in income to the region. Federal figures confirm that loss. If we extrapolate this effect across the Southern Riverina, it means that there will be approximately 9,500 fewer cows. The drought is having a significantly greater impact on the Southern Riverina as the current water allocation is 10 per cent of water entitlements with only a 50:50 chance of gaining 31 per cent of water entitlements by May 2003.

We had hoped that last week, with water at \$180 to \$200 per megalitre on the Deniliquin water exchange, approximately 65 per cent of last year's milk output could be achieved this year in the district. However, I was informed yesterday that the price of water has shot up to \$350 per megalitre on the temporary water exchange. At that price it is totally unsustainable. Therefore, based on the 2001 census figure of \$37.5 million for on-farm income from dairying, the region will lose approximately \$13 million. There will be 70,000 fewer hectares—at an input cost of about \$1,000 per hectare—of rice grown in the region this season. This represents a \$131 million decrease in on-farm income in 2003-04. On 17 October 2001 Murray Irrigation Ltd had 928 farmers ordering water for rice but on 17 October this year—just last week—only 19 farmers were ordering water for rice. We are facing a real disaster. It is estimated that the dairy industry will lose approximately \$13 million, rice and grains will lose \$168 million, and other industries in the region, such as the poultry industry, will suffer losses amounting to \$90 million. That makes a total loss of \$271 million in the region.

Let us consider how those figures will affect the towns. The region's agriculture, forestry and fisheries sectors will lose a total of \$415 million, with an industrial effect of minus \$68.2 million. The mining sector will lose \$0.474 million and the manufacturing industry will lose \$58.32 million. The electricity and gas industries will lose \$5.58 million and the construction industry will lose \$2.42 million. Wholesale trade will be down by \$20.27 million and retail trade will be down by \$9.1 million. The accommodation sector, cafes and restaurants will lose \$6.5 million. The transport and storage sectors will lose \$21.5 million—some trucks in southern New South Wales have been rostered off for a year. Communication services will lose \$2.655 million. The finance and insurance sectors will be down by \$6.09 million and property and business services will lose \$11.6 million. Government administration will lose \$0.7 million and the education sector will lose \$0.208 million when little Johnny and thousands like him are pulled out of school.

The health and community services sector will lose \$1.09 million and cultural and recreational services will lose \$0.13 million. Personal and other services will be down by \$0.29 million. That makes a total loss of \$215 million to towns in the district. I emphasise that these figures were produced by La Trobe University. The average loss per household is \$38,860 dollars. I have similar figures that show that, in light of this loss, householders will not boost the towns' economies. As I said earlier, it is anticipated that 3,358 jobs will be lost in the region. People are being laid off as we speak. Many businesses have no cash flow. Some header businesses, which should be ready for harvest, are not operating at all. Adding the consumer effect, we anticipate that 3,959 jobs will be lost to the town sector. La Trobe University also produced other figures, but time precludes me from detailing them. The exceptional circumstances assistance scheme is not working and the Commonwealth is not contributing adequately. One cannot claim that the approval of three applications—that is how many were approved last time—is a significant contribution to this drought on the part of the Commonwealth.

There must be some relaxation of eligibility for exceptional circumstances assistance in the rural sector. The figures show that exceptional circumstances payments must be extended to our rural towns. Great people live in western New South Wales. We do not want them to be relocated—perhaps forcibly. We do not want them to pack up and move east in search of a job, perhaps never to return. This matter is of the utmost urgency. I recognise that we have in this place a great Minister for drought—also known as the Minister for Agriculture. I am certain that he will do his level best to undo the damage caused by the deal that the honourable member for Lachlan signed in 1994. [*Time expired.*]

Mr ARMSTRONG (Lachlan) [3.49 p.m.]: The Opposition does not dispute the figures cited by the honourable member for Murray-Darling, but I suspect that he has underestimated some of the long-term significant impacts of this drought.

Mr Black: These are La Trobe University figures.

Mr ARMSTRONG: I do not doubt that for a moment. I do not dispute the figures—they may be somewhat conservative. Often figures do not take into account harvesting contractors, finance companies that finance machinery, contractors who supply chippers for the grape and cotton industries, specialist mechanics who maintain harvesting equipment, contract aerial agricultural operators, contract ground spray operators, fertiliser providers and direct farm inputs. Those businesses are not taken into account; they are considered to be town businesses rather than directly within the purview of agriculture. To that extent, during the past four days the Opposition has indicated that it will ask the Commonwealth Government to average their income—as occurs with farmers—for taxation purposes and that in the future they be included in the farm management deposit scheme.

The farm management deposit scheme has been known by many names over the years. It is working. More than \$2 billion is in the scheme at the moment for more than 11,000 farmers across Australia, 6,000 of whom are from New South Wales. The bulk of those who have made deposits are from the wheat industry and the beef industry. The remainder are from the broad spectrum of agriculture. The infrastructure behind agriculture is now at a grave risk. The honourable member for Murray-Darling talked about people withdrawing their children from schools. As a result, the jobs of teachers and police will be at risk. Public service positions in country towns depend on benchmark population numbers. There may be a decline in public service positions as we move into the summer months. Public servants spend their wages in country towns. Therefore, the loss of such positions will affect the economy of those towns.

I have no argument with the proposition of the honourable member for Murray-Darling. In 1994-95 the then Coalition Government gave a considerable amount of assistance to small business during a big drought. First, it gave a payroll tax relief. Businesses that are due to suffer a 15 per cent reduction in gross income from 1 July 2002 to 30 June 2003 will be able to defer their payroll tax. The Office of State Revenue will audit the applicants at the end of 2003. That is an important matter that affects bigger businesses, abattoirs and many contract employers who provide labour for some of the industries to which I have referred. Small country businesses will be able to apply for a grant for up to \$3,000 to engage an expert to sustain their operations during and beyond the drought. Those options are available.

In 1995 the Fahey-Armstrong Government provided \$30 million to aid farmers in their recovery. The package was in addition to previous assistance worth \$167 million and featured a \$10 million payroll tax rebate scheme designed to help give country businesses engaged in the value-added agricultural sectors a boost. It was a rebate scheme, not a postponement. In addition, \$18 million was provided for a crop planting subsidy to farmers who did not qualify for the Rural Assistance Authority's exceptional circumstances criteria. If it were to rain, as we hope it does, in the next week in the north-west of the State—the bulk of it is a summer rainfall area—within 48 hours it would be necessary for people to become mobile with seed, fertiliser, fuel and to repair machinery, if needed. In addition, they would require labour to help drive trucks and tractors to plant crops. It would generate income in the area and produce fodder. For example, the production of feed sorghum and sugar dip varieties would relieve the problem of farmers having to find feed for drought-stricken stock in much of the State, particularly in the Western Division.

I ask the Government to announce the introduction of a cash crop planting scheme so that rural communities can plan for when it rains and get to work straight away. On 2 January 1995 the then Minister for Small Business, Mr Ray Chappell, said that his department was receiving about 100 calls per week from businesses. He said he had distributed \$166,000 from the Government's small business drought assistance program and that the forgotten victims of the drought were country town businesspeople. The Fahey-Armstrong Coalition Government provided cash subsidies for small business. I call upon the Carr Government to repeat that exercise and to recognise that the figures cited by the honourable member for Murray-Darling are accurate. He has presented a strong argument as to why the Government must support country retailers, distributors and manufacturers and the infrastructure of country towns. I hope that the Government will support the call from its member. If it does not, it will indicate that it is not particularly concerned about the honourable member, the drought or the electorate of Murray-Darling.

I know that other honourable members will refer to exceptional circumstances. There is no doubt that the application process for exceptional circumstances is ponderous, time-consuming and, I suspect, mostly unnecessary. In the past four or five days I have said that the responsibility put on the Rural Lands Pastures Protection Board [RLPB] in recent times to prepare applications to have an area drought-declared has increased considerably. The research and information that people must present in their application is far more than what any previous government asked for. I suggest that the RLPBs, which are truly non-political, are probably in the best position to judge whether there are exceptional circumstances. There are differences of opinion within boards, as we found at Nyngan on Friday. However, the bottom line is that we should accept their opinion on these matters when we are experiencing such a serious drought.

When applications are approved by the New South Wales Minister—which, I understand, will be virtually automatic—and sent to Canberra the process should be completed in one visit. In recent years the Government has twice signed off on the methodology for determining exceptional circumstances. I cannot understand that. There must have been an oversight. Knowing the Minister as I do, I suspect that he is also of that opinion. I do not want to get into a political argument about this matter; it is too important. The process needs to be simplified. In the meantime, I call on the State Government to give all the support it possibly can to drought-affected areas of New South Wales and to acknowledge that the Commonwealth Government has come to the party in relation to this matter.

The Commonwealth Government has said that if the States agree to an increased commitment the overall contribution to exceptional circumstances will increase from 4 per cent to 17 per cent. That is a breakthrough. I ask the Minister to reconsider the position. We should provide the assistance now and have the argument later. I am quite happy to participate in the argument later. At the moment I am concerned only with the figures presented by the honourable member for Murray-Darling. I suspect that if the La Trobe University conducted a similar exercise in other parts of the State it would come up with a similar template. Ninety per cent of exceptional circumstances funding is met by the Commonwealth Government, with the States and Territories contributing 10 per cent where exceptional circumstances applications are approved. Two applications have been approved, and others are in the pipeline. I call for a speedy assessment of those applications. *[Time expired.]*

Mr MARTIN (Bathurst) [3.59 p.m.]: I am pleased to support my colleague the honourable member for Murray-Darling in seeking to debate this very important urgency motion. I was pleased to hear what was said by the honourable member for Lachlan. We are in basic agreement, with only fine points needing clarification. At the outset I will put the record straight. This Government has already addressed the payroll tax issue. In fact, the great majority of businesses will not qualify for payroll tax concessions because, under the threshold, they are not required to pay payroll tax. It was this Government that raised the threshold. In 1994 more businesses would have been subject to payroll tax under the previous Government's taxation policy. But this is nonetheless an important issue. No doubt drought-affected small business operators are finding it difficult to service interest and loan repayments and other financial facilities, because they are already carrying debts from the farmers who are so badly affected by the drought. That compounds the problem.

With the present conditions, whatever cash flow is available to farmers will be applied to keeping the farm functioning, leaving small businesses unpaid until farm incomes are restored. One of today's newspapers carried the story of a Coonabarabran farm supplier who has not had a sale for three months of perhaps his two major items, fertilisers and pesticides. Those are the sorts of problems that industries and businesses in the bush are experiencing. One of the initiatives that the Government has put in place relates to the Orana Regional Development Board, which, as we know, is funded by the Government through the Department of Small Business. That board has been funded to employ two small business advisers for an initial period of three months to conduct up to seven workshops throughout the region. This is designed to help those businesses come up with strategies to help them through their financial problems. We know that these people need more than just advice, and I will return to that in a moment.

The advisers already cover an area from Dubbo to Lightning Ridge, as well as from Dubbo to Cobar and Bourke. These are the areas that were first affected by drought, and they were the most severely affected. The job of the advisers will be to collaborate with local councils and business chambers of commerce. They will conduct one-on-one meetings with small businesses, offer business counselling and assist with identifying options for the short and long-term viability of businesses. If it is necessary, the department is prepared to help with the recruitment of additional advisers. The Government continues, almost daily, to monitor the impacts of the drought, particularly on regional businesses, which in essence have expressed a desire for a broad range of practical programs, rather than additional advisers. We can understand why that is so. The Government is continuing to respond.

The Minister mentioned some 30 points in the Government's drought relief program, covering a whole range of important issues. The response of the New South Wales Government is in direct contrast with that of the Federal Government, which well prior to the drought was busy dismantling a whole range of programs of assistance to small business. It has been pretty savage in its cost-cutting over the past few years. Compare that with what the New South Wales Government has been doing. The Government, the Premier and the Treasurer have intimated that they will continue to respond positively. Deserving farmers in the parched western region of New South Wales continue to wait for the Federal Government to get its act together on exceptional circumstances funding.

We know how narrow is the involvement of the Federal Government because of the strict nature of the exceptional circumstances criteria. We need a relaxation of those criteria. The Federal Government should not use the exceptional circumstances criteria as some sort of tool to use in its bargaining with the States to achieve a financial cost shifting from the Federal Government back to the States. That ought to be put to one side. The Federal Government should be delivering this aid as quickly as possible. We know of the bureaucratic problems faced by farmers in the Bourke region in trying to get income support. That is due to the ineptitude in the Federal Minister's office and in Federal departments. Those issues should be put aside so that the help can be given where it is needed—not only on-farm but to off-farm businesses that are suffering.

Mr CULL (Tamworth) [4.04 p.m.]: I find the urgent motion to be quite strange. Neither of the matters raised in it has been addressed by Government members. The urgency motion asks the House to note the support that the New South Wales Government has given to country businesses hit by drought. Let us consider the extent of assistance that the New South Wales Government currently gives to business communities located in drought-affected areas of New South Wales. The first is payroll tax relief. I commend that; I have no problem with it. But let us look at the nature of the businesses that are seeking drought relief and support. Payroll tax relief is available to only a very small number of businesses. The people really hurting in drought-affected areas are small businesses—the contract harvesters, spray rig operators, chippers in the cotton industry, agriculture-related businesses that service the industries. Many of them do not have the number of staff necessary to bring them within the payroll tax relief measures; they are under the threshold.

The only other assistance of the State Government to business communities in drought-stricken areas of New South Wales is a one-off grant of up to \$3,000 to engage an expert to help them sustain their businesses on a financial basis. Many of them do not need financial management experts; they are suffering a cash crisis. Because their cash flow has been cut off due to the drought, due to the farming communities not making money, these small businesses do not have enough finances to keep operating. The State Government, if it is serious, should be trying to help those businesses, because those are the businesses that are employing people within the local communities. Those are the small businesses that are closing down because they do not have the financial resources to carry them through to the end of the drought.

The other aspect to the motion relates to exceptional circumstances declarations. What is happening with exceptional circumstances declarations in New South Wales? Only a very small portion of the western districts of the State are currently eligible for some sort of assistance under the exceptional circumstances criteria. This Government has been very slow to address the problem of solving exceptional circumstances applications. In fact, many areas of New South Wales—the electorate of Tamworth is one of them—should be entitled to exceptional circumstances funding at the present time. One matter overlooked in the area of the Tamworth Rural Protection Board is that in November 2000 the area was considered to come within the exceptional circumstances provisions because of devastating floods. We had one year after that before the whole area went into severe drought, backdated to January.

I ask the Government to have a serious look at the impact of the drought on this particular region, which is quite different from other regions. It has been impacted not just by the drought but by exceptional circumstances of two years ago from which communities in the Tamworth electorate have not recovered. I draw the attention of the Government to the fact that on 10 October the Commonwealth Government made an offer to the State Government in relation to the exceptional circumstances provisions. That proposal was to meet, in the first year, 90 per cent of the cost of the exceptional circumstance business support measures, and in the second year to split the cost of the funding 50:50. What did the State Government do at this time of crisis? It walked away from the offer, rejecting it. The New South Wales Government would not accept the proposal.

It is not good enough for the State Government to play politics when communities are desperately looking for support. When I ask farmers and people in the business community in my electorate whether their most desperate need is transport subsidies or water they say that their immediate need is cash. They are running out of financial resources to buy fodder to keep their breeding herds alive, to keep the banks at bay and to pay their creditors, who are now putting pressure on them. I support the action of the Victorian Government in giving funds to local farming communities. The New South Wales Government should consider a similar assistance package to provide farmers, who are the backbone of New South Wales, with the support they need to remain viable and stay on their farms. When it rains they will be able to rebuild their herds and their cash flow, and they will again be able to contribute to the economy of New South Wales. The drought makes us understand the importance of our rural communities.

Mr HICKEY (Cessnock) [4.09 p.m.]: It is wonderful to know that the motion, which is in the following terms, has bipartisan support:

That this House:

- (1) notes the support the New South Wales Government has given to country businesses hit by the drought; and
- (2) calls on the Federal Government to extend exceptional circumstances funding to drought-affected small businesses

The Federal Government should be able to allocate funds to the areas referred to by the honourable member for Tamworth without waiting for exceptional circumstances declarations. The Federal Government has the ability to help people if it so chooses, and it should do so rather than wait for exceptional circumstances declarations. The Federal Government could allocate funds to the 92 per cent of the State that is affected by the drought, but the Opposition continues to carp and moan about what the State Government is doing. The New South Wales Government has a 30-point plan in place, and it is clear that the State Government leads the Federal Government in the provision of drought relief. However, that is not reflected in the carping, moaning and groaning of the honourable member for Tamworth, who continues to point the finger at everybody else but the Federal Coalition Government. He would rather blame the State Government and play politics with those who are affected by the drought.

It is essential that any drought assistance package provide assistance to regional businesses relying on farmers for income and retain specialist jobs within regional communities. Country businesses that have been severely affected by the drought and are dependent on farmers and their income can now apply for assistance under the business assistance package. Businesses such as farm machinery suppliers or those that service and maintain farm equipment rely on farmers, just as farmers rely on their stock and crops. As the drought worsens, the hardship on rural and regional business communities will be prolonged. In August the New South Wales Government set up a two-part assistance program. The first part deals with payroll tax relief and the second deals with business and credit management strategies. The Department of State and Regional Development, which administers the program, has responded to more than 80 direct inquiries about the program.

Small country businesses are able to apply for grants to engage experts to help them sustain their operations during and beyond the drought. This may involve engaging an accountant or business management adviser to give advice on business operations or to suggest ways in which to branch out into new products or services. Obviously, applicants must meet the criteria to be eligible. That will ensure that the most deserving cases receive assistance. The criteria include the production of evidence that the performance of the business has been adversely affected by drought conditions and that the business is located in an area that has been drought declared for at least six months. Businesses that have suffered a 15 per cent reduction in gross income in the 2002-03 financial year will be able to defer their payroll tax and negotiate a manageable payment plan with the Office of State Revenue. One company approved for assistance under the business assistance package is the Orange-based Farm Implement Tractor and Motor Company Pty Ltd, a new and used farm machinery dealership with branch offices in Condobolin, Parkes, Narromine and Tottenham.

Sales of equipment by the company had a significant multiplier effect on spending within the region. Decreased sales means jobs are at risk and there is a lack of family spending, which affects the whole business community. Another business that applied for assistance in the New England region relies on good quality wool from healthy sheep. If the drought broke now the company estimates that it would still lose up to 70 per cent of its business in the next two years. The drought of 1994 closed that business for four years, and without the assistance of the State Government it may close for good. The New South Wales Government can do only so much. Clearly, the honourable member for Tamworth cannot get it into his head that the Federal Government must take the lead in drought assistance. It is not only an issue for the State Government, it is also an issue for the Federal Government. The drought is not contained within State boundaries; it is across the entire country.

[Debate interrupted.]

BUSINESS OF THE HOUSE

Urgent Motion: Suspension of Standing and Sessional Orders

Motion by Mr Amery agreed to:

That standing and sessional orders be suspended to allow the honourable member for Dubbo to speak to the motion for a period of five minutes.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE**Urgent Motion**

[*Debate resumed.*]

Mr McGRANE (Dubbo) [4.15 p.m.]: I appreciate being given the time to contribute to this debate. The figures put before the House by the honourable member for Murray-Darling highlighting financial losses in regional New South Wales are stunning. He highlighted one part of his electorate that is severely affected. When the figures reach the press, people will realise that Australia depends heavily on the people on the land, who generate the cash flow that supports businesses in small and large regional cities. Eventually the flow-on effect reaches the major cities. Small businesses in the smaller communities are the first to be affected by the lack of cash flow from the rural sector. Last week in Narromine the council convened a meeting of small businesses to consider ways and means of dealing with their financial losses. The meeting formulated a number of recommendations, which I will send to the Premier this week.

Councils should bring businesses in their areas together to develop plans to keep them going as their cash flows dry up during the drought and to help them when the drought breaks. As the honourable member for Lachlan said, when the drought breaks farmers will need funding to purchase seed, fertiliser and fuel. I know the Government is considering those matters, but guidelines should be set out to deal with them. There is no point complaining about what the State or Federal governments are not doing. At this stage the State Government is way ahead of the Federal Government. It is a great pity that the Federal Government has been so slow to implement its drought relief policy. In fact, it is extraordinary that members of the National Party in the Federal Coalition Government are not listening or, if they are listening, they are failing to convey their views to their Liberal Party colleagues. It is a great pity that the Federal Government thinks it can ignore the rural sector of Australia.

State parliaments should concentrate on what can be done at the State level to assist rural people. Recently in this House comparisons have been made between the funds allocated to development projects in the Sydney metropolitan area and funds allocated to the provision of rural assistance. Funding for the rural sector is peanuts compared to funding for projects in metropolitan areas of Sydney. Statistics referred to by the honourable member for Murray-Darling during this debate will highlight to people throughout Australia how much money is generated by the rural sector. One of the effects of the drought will be a downturn in productivity in the rural sector. Currently little grain is being harvested. Earlier the Minister for Agriculture indicated that crop production had decreased from approximately 9 million tonnes during 2001-2002 to 2.2 million tonnes for a similar period this financial year. The grain harvest is the principal commodity in rural New South Wales that sustains the economy.

The drought will impact most severely after Christmas when farmers and others in rural areas have to meet bank loan repayments. The crisis caused by the drought is far more serious than people throughout this nation realise. The drought has crept up on us and the Government must take responsible action. Government members, Opposition members and Independent members of the State parliaments should all work towards achieving one goal, namely, ensuring that sufficient financial assistance is provided to rural producers in New South Wales when it is required.

Mr BLACK (Murray-Darling) [4.20 p.m.], in reply: At the outset I thank the honourable member for Lachlan, the honourable member for Bathurst, the honourable member for Tamworth, the honourable member for Cessnock, and the previous speaker, the honourable member for Dubbo, for their contributions to the debate. I particularly acknowledge the presence at the table of the Minister for Agriculture throughout the debate. I agree with the sentiments expressed by the honourable member for Bathurst, the honourable member for Cessnock and the honourable member for Dubbo. To a large extent I agree with the remarks of the honourable member for Lachlan. It is pleasing to note some consensus in the House on this matter.

I will deal first with some of the minor comments made during the debate. To suggest that the State Government should agree to join with the Commonwealth Government in a 50-50 cost sharing arrangement for the provision of drought relief would result in New South Wales paying much more than the Commonwealth Government during drought conditions. The Commonwealth Government is attempting to shift its responsibility for exceptional circumstances assistance onto State governments. Recently that cost-shifting proposal was rejected by all State and Territory Ministers for Agriculture when they met at the Primary Industries Ministerial Council in Sydney. Essentially the position of the New South Wales State Government is that the Commonwealth Government should pay its fair share. The State Government is putting \$1 million on the table each week. What is the Commonwealth Government's contribution?

I point out to the honourable member for Tamworth and the honourable member for Lachlan the importance of acknowledging that many individual farm workers are suffering under the Commonwealth Government's policies because of the application of asset tests for Newstart allowances and other forms of social security payments. Surely during harsh drought conditions the Commonwealth Government should be prepared to exempt rural people from asset tests as a signal of its support for regional communities. I also point out that information that is being sought from rural lands protection boards about areas seeking exceptional circumstances assistance is being sought by the Federal Government, not by the State Government. The currently applicable rules are extremely complex. However, the rules are not the problem; the manner in which they are being applied by the Commonwealth Government is the problem.

I certainly agree with the suggestion made by the honourable member for Lachlan that contract sprayers and harvesters should be eligible for exceptional circumstances payments in much the same way as permanent employees. The honourable member for Lachlan expressed the view that the figures I have cited are understated. Those figures are based on a model produced by the Latrobe University; the figures are not made up. I note that the Australian Bureau of Agricultural and Research Economics [ABARE] has stated that if the drought does not break until autumn 2003, in western areas of New South Wales alone the net loss to the Australian economy will be \$3 billion. With great reluctance I suggest that honourable members must face the fact that many people in rural towns throughout New South Wales will suffer if the drought continues unabated until autumn 2003.

Comments were made during the debate about the Federal Leader of the National Party, John Anderson, and the Federal Minister for Agriculture, Fisheries and Forests, Warren Truss. At the Mildura Salinity Summit, which was held only a few days ago, John Anderson pursued a line of argument based solely on blaming the States. His position was that the State should be doing everything in the provision of financial assistance during the drought to the exclusion of everyone else. That was the extent of his contribution to the summit. I have no doubt that in due course the Government will examine the feasibility of the cropping schemes that were referred to by the honourable member for Lachlan. A similar approach was adopted in 2000 after a flood and I see no reason why the Government should not address the proposal to reinstitute the scheme during drought conditions.

I think I am correct in saying that the honourable member for Lachlan stated that he has no doubt that the exceptional circumstances assistance process is onerous, time-consuming and, in part, irrelevant. I absolutely agree with him. The 16-page form for assistance is an absolute nightmare. Intelligent people against whom I played football years ago are finding it impossible to go through those 16 pages without seeking the assistance of rural financial counselling services, and that is surely nonsense. Honourable members should not forget also that it was a New South Wales Coalition Government that discontinued drought transport subsidies in 1997 after agreeing to a five-year phase-out period in 1992. I commend the motion to the House.

Motion agreed to.

FOOT AND MOUTH DISEASE OUTBREAK SIMULATION EXERCISE

Matter of Public Importance

Mr AMERY (Mount Druitt—Minister for Agriculture, and Minister for Corrective Services) [4.26 p.m.]: I ask the House to note as a matter of public importance Exercise Minotaur and exotic disease control preparedness in New South Wales. Honourable members would be aware from the numerous occasions on which I have mentioned this matter in the House that the New South Wales Government was one of a number of participants in a foot and mouth disease simulation that was held during September. The aim of the simulation, which was named Exercise Minotaur, was to test the capacity of Australian governments and industry to manage a foot and mouth disease outbreak and its socio-economic consequences. The simulation accurately depicted the frightening consequences of a foot and mouth disease outbreak, and I reiterate that the simulation involved hypothetical scenarios.

The proposition was that in the eighty-fourth day of a hypothetical outbreak, 345 infected premises across Australia had to be managed and a further 783 farms were listed as dangerous contacts, with 43 of the infected farms being in New South Wales. At that stage the estimated cost of controlling the outbreak was \$455 million. Thank goodness it was a hypothetical case. The State and national emergency operations centres and management groups were activated to test their ability to handle the changing scenarios and challenges that were presented during the simulation. The scenarios tested disease control arrangements, communications systems, resources, logistics, strategies for relief and recovery, and trade management.

In New South Wales, both the State Emergency Operations Centre in Sydney and the Department of Agriculture's State disease control headquarters in Orange were activated. I commend the wide range of supporting agencies, industry groups and government agencies on their enthusiasm in participating in the simulation. As the simulation has been completed and debriefing reports are being finalised, I can inform the House that I am very pleased with the response by New South Wales Government agencies, industries in general and emergency support groups to the considerable challenges posed by the exercise. The response and the level of commitment of New South Wales was highly regarded and appreciated. While I am still awaiting a full assessment of our participation in the exercise, I can advise the House of the initial feedback from my department.

When I addressed NSW Agriculture staff who were preparing for the simulation in September, I said that I hoped that some shortcomings in our disease preparedness would be identified. Those shortcomings would then be corrected, so that if a real outbreak did occur, we would be better able to deal with it. I am pleased to inform the House that the simulation has shown only a small number of areas in which we could improve. I am advised that as a result of the efforts put in during this simulation, communication channels between the States and industry concerning responses to potential disease outbreaks have been improved. However, we need to develop a national approach to securing the services of volunteers and private veterinarians, whose work is often extremely important during large-scale operations.

It also became clear during the simulation that all stakeholders need to become familiar with the Australian National Emergency Management Information System. Because of its nature, that system is not routinely used. Familiarisation with the system now would enable stakeholders to utilise it more effectively during a crisis. I advise the House that a minor computer systems failure that occurred for a short period during the beginning of the exercise showed how well prepared we were. We were lucky that we had a systems failure. Despite computers being unable to relay information, a backup system using faxes and telephones was very effective. Those are the sorts of glitches that we needed to identify so we can make the necessary adjustments to minimise the chances of them happening during a real outbreak of, say, foot and mouth disease. Just as important, this experience illustrated the value of having backup systems in place, ready to fill the breach when things go wrong.

Two other key initiatives that are unfolding in this State will further enhance our ability to deal with exotic disease outbreaks. The Premier's recent announcement of \$3.5 million in funding to the State's 48 rural lands protection boards as part of a massive computer upgrade is another vital step forward in exotic disease control. That upgrade also includes the setting up of a specialist five-person information technology team in Orange. The State's 48 rural lands protection boards have key responsibilities in animal health and animal pest and insect pest control. They are often the first line of defence against an exotic animal disease outbreak. The upgrade includes faster and more efficient use of the Internet through the establishment of a broadband connection. That means that the boards will be able to access information, such as State council policy documents, over the Internet far more quickly.

The information technology [IT] strategy will lead to a more efficient, effective and relevant rural lands protection board system. I am pleased to report that the State council and the rural lands protection boards have welcomed that initiative. The State council, to its credit, has appointed an IT steering committee with board representation to oversight the implementation plans. The new rural lands protection board computer platform will enable the Government and the State's livestock industries to reap the full benefit from the implementation of livestock identification and tracing based on the National Livestock Identification Scheme. That scheme is a crucial step forward in disease preparedness and, as the Premier recently announced, it is to receive State Government funding of \$5.4 million. That funding will be used to install electronic livestock identification reading devices at saleyards, abattoirs and other key locations across the State.

The installation of those identification readers will help to combat stock theft and minimise possible disease outbreaks. Together with the industry, NSW Agriculture is forming an advisory committee to plan the implementation of a National Livestock Identification Scheme in New South Wales. Preliminary discussions have already been held with industry groups and I understand that a full committee will get together later this year. The committee will include representatives from the New South Wales Farmers Association, the dairy and beef cattle industries, NSW Agriculture, NSW Police, the Australian Meat Corporation and the National Meat Association representing the processing sector, the Stock and Station Agents Association, the Saleyard Operators Association, Meat and Livestock Australia, the Australian Lot Feeders Association, the Rural Lands Protection Boards State Council, and the New South Wales Livestock Transporters Association. An executive officer will assist the committee to develop implementation plans and a timetable for implementation.

The group will be charged with the responsibility of advising me on how best to apply the Government's \$5.4 million and the funds available from Meat and Livestock Australia to achieve the most cost-effective and cost-efficient implementation of the National Livestock Identification Scheme in New South Wales. The group will ensure that the New South Wales cattle industry is ready to meet the Australian cattle industry's starting date of 1 January 2004 for mandatory implementation of livestock identification. Those initiatives and many others undertaken in New South Wales will ensure that this State is extremely well prepared to deal with any exotic disease outbreaks, in other words, the real thing.

I compliment the many people who were involved in this exercise on their good work. Recently I travelled to Orange and addressed NSW Agriculture staff and others on the start-up to the program. I also travelled to Casino in company with the honourable member for Lismore, where we spoke to people in the operations room. We were impressed by the fact that although everyone knew the exercise was a simulation, they placed themselves under a great deal of pressure to make sure that they made the right decisions. Everyone involved in the make-believe scenario was impressed with how various government agencies and industry organisations handled each circumstance as it was put to them. It appears from the initial report that most things went extremely well. Some problems that were identified have now been corrected. As I said at the beginning of my contribution, my comments today are only an initial response. A proper assessment of the whole operation will be published in this State and nationally. No doubt that will be the subject of further debate in this House at a later date.

Mr ARMSTRONG (Lachlan) [4.36 p.m.]: It is with great pleasure that I contribute to the debate on the matter of public importance that was initiated by the Minister for Agriculture, that is, Exercise Minotaur and exotic disease control preparedness in New South Wales. The Minister listed a number of organisations that are to be represented on the advisory committee. Those organisations include the New South Wales Farmers Association. I suggest that the Minister consider adding representatives from the Department of Local Government to that committee. Local government is the custodian of a considerable amount of heavy machinery across the State. It also has public health inspectors. It would be remiss of the Government to leave local government out of the equation.

I have a serious objection to the way the previous exercise was managed. The honourable member for Lismore, as a stock and station agent, told me that he was considerably miffed that no agents were included in the process. However, as they are now to be included, I am sure that he will forgive the Minister. The Commonwealth and the State participated in a hypothetical outbreak of foot and mouth disease. That exercise was necessary because of the considerable costs incurred when Britain suffered a horrific outbreak of that disease last year. The overall cost to Britain was estimated at approximately \$1.44 billion. As an aside, the Minister might consider the effects on tourism of such an outbreak in this country. In Britain the loss of tourism cost the country \$479 million, nearly 30 per cent of the overall loss. The Minister should consider how we would handle a loss of that magnitude in tourism if such an outbreak occurred in this country.

To digress for a moment, last week I gave notice of a motion calling on the New South Wales Minister for Tourism to introduce a program to promote tourism in country areas during the drought. Those who are not involved in tourism often overlook that aspect. Tourism provides important income in country areas. Only 2 per cent of overseas tourists visit areas west of the mountains; I suggest that we seek to double that percentage. In exercises such as this the Government must always have tourism in the back of its mind. It is a large industry that supports communities in the bush.

I am not privy to the information that the Minister has, but I look forward to receiving the report on the success of this operation, once it is completed. If there were an outbreak of foot and mouth disease we must be in a position to know where livestock are, and where feral animals, such as wild pigs, are located. In recent years there has been an enormous escalation in the wild pig population. I have heard reports of wild pigs being sighted in the Riverstone area and in the western suburbs of Sydney. Wild pigs are being found across the tablelands and in areas in which they have never been seen before.

The pigs, which are at the bottom of the food chain, appear to be doing remarkably well in these drought conditions. Kangaroos, wildlife, sheep, calves and lambs are dying but there appear to be a lot of fat, shiny pigs. If we are to control any foot and mouth disease outbreak we must be able to control feral animals and, in particular, wild pigs. This morning Opposition members were given an excellent briefing on the National Livestock Identification Scheme. Representatives from the Meat and Livestock Corporation, the New South Wales Stock and Station Agents Association, the Saleyard Operators Association and the Department of Agriculture gave us an excellent run-down of that scheme. Opposition members totally support that scheme and we, like the Minister, want to see it implemented as quickly as possible.

The Minister said earlier that the scheme would be implemented on 1 January 2004. The Minister has the bipartisan support of Opposition members. National and Statewide schemes must be implemented to contain any outbreak of exotic disease. It is difficult to find sufficient numbers of trained veterinarians. We are conscious of the fact that most university graduates appear to want to work in metropolitan areas, which is just a fact of life. I urge the Government to ensure that there is an adequate distribution of graduates across New South Wales. The Australian Quarantine and Inspection Service and the Australian Customs Service would play an important role in any operation such as this. A report which I have reveals the following:

On average approximately 80% of graduating vets are female. Exacerbating this female domination of vet numbers is the decline in males currently practising. In 1981 male vets contributed 88% of all registered rural vets. These male vets will increasingly retire over the next few years as their average age is over 50.

Female veterinarians do a wonderful job, but they might experience difficulties when practising in the cattle and horse industries, where a certain amount of physical skill is required. We must ensure that they are fully equipped to deal with diseased or calving cows.

Australia is the one of the largest exporters of fibre and meat. Many European countries have greater numbers of livestock than Australia but we produce clean quality products. Our livestock and fibre producers are acknowledged as the cleanest in the world. Australia has more to lose than any other country from an outbreak of exotic disease. Australia is disadvantaged because of its geographic location. However, it compensates for that by producing clean and green agricultural products. We can never be too vigilant in maintaining our standards.

One of the priorities of this Government should be the good health of plants and animals in this country, as that underpins our overall economy. Agriculture is still the biggest employer and utiliser of materials in this country. Many organisations recently recognised that the drought is having a serious effect on farmers and on our overall economy. That might mean that we will not be able to service those clients who rely on many of our products. They depend on us to produce quality products. We must be vigilant in maintaining the quality of our agricultural products.

Mr NEWELL (Tweed) [4.46 p.m.]: I thank the Minister for Agriculture for bringing to our attention this matter of public importance. We heard first-hand from the Minister how New South Wales is preparing for a possible outbreak of foot and mouth disease. The Minister outlined earlier what impact an outbreak of foot and mouth disease would have in New South Wales. It would affect not just New South Wales; it would affect the whole of Australia. Any attempt to confine such an outbreak would result in huge economic problems. A lot of lessons were learned from the outbreak in Europe and in England in particular. The information obtained by a number of government officials and private veterinary surgeons who went to England has been disseminated across New South Wales and Australia.

We would have a devil of a job containing any foot and mouth outbreak in New South Wales. I reiterate what the Minister and the honourable member for Lachlan said earlier about the significant impact that such an outbreak would have on New South Wales and the necessity for rural lands protection boards. Recently I mentioned the fact that rural lands protection boards would play an important role in the event of a foot and mouth disease outbreak. Rural lands protection boards offer insurance against the spread of exotic disease. As the honourable member for Lachlan said, these boards will have information about where affected livestock is located and the size and sort of response that may be needed if an outbreak occurs in a particular area.

The Minister for Agriculture referred in his speech to the commitment of \$3.5 million to upgrade the boards' information technology network. Such work is vital if our rural lands protection boards are to maintain a watching brief—they play a more active role in other areas. They must be able to store important information and retrieve it at the push of a button if it is needed in an emergency. The honourable member for Lachlan highlighted the need to enhance security at our borders. The Australian Customs Service and the Australian Quarantine and Inspection Service are vital planks in our defence against the entry of exotic disease. The Federal Government must accept its responsibilities in this regard and not restrict funding for those organisations. Our borders must be secure and the required inspections must be conducted at airports and so on. We cannot fiddle around with that infrastructure: it must be first rate.

Australia is a vast country and I would like to see the implementation of a disease management zoning plan. For example, if an outbreak occurred in Victoria we should be able to confine it to the immediate vicinity and restrict exports from the area. Similar zones should be drawn up in New South Wales and Queensland. It is a long way from Victoria to Queensland. If one were to travel a similar distance from England, for example, one

would end up in Germany or Russia, having crossed several borders. The United Kingdom foot and mouth disease outbreak was isolated to that island while the countries of Europe continued to trade. A zoning plan would allow a similar arrangement in Australia.

Mr AMERY (Mount Druitt—Minister for Agriculture, and Minister for Corrective Services) [4.51 p.m.], in reply: I thank the honourable member for Lachlan, the shadow Minister for Agriculture, who led for the Opposition in this debate, and the honourable member for Tweed for their positive contributions to our discussion of this matter of public importance. Those two honourable members come from different sides of the House and represent two very different electorates: one in the west and the other on the far North Coast. Yet they have something in common in that their electorates comprise strong agricultural industries that would be severely affected by the outbreak of foot and mouth disease or any other exotic disease.

I will respond briefly to some of the issues raised during the debate. Both the honourable member for Lachlan and the honourable member for Tweed referred to disease outbreaks in Great Britain. It is interesting to note that, although we have focused today on disease detection, the destruction of diseased animals and the disposal of their carcasses, the foot and mouth disease outbreak impacted more adversely on the British tourism industry than on agriculture. I am sure all honourable members remember the graphic images of diseased animals being destroyed and the trauma of farmers. Yet tourism fared much worse than agriculture—although that industry's losses were also measured in billions of pounds.

My departmental officers will take account of the comments of both honourable members and the community's response when we review Exercise Minotaur. I point out that when the foot and mouth disease outbreak was confirmed in Great Britain the New South Wales Government was the first Australian agency to respond. We held a forum within the walls of Parliament House and asked whether we were doing enough to prevent an outbreak of foot and mouth disease and whether such an outbreak could be managed. That forum set the scene for our strategy in this area. We have never been complacent or smug about our preparedness in New South Wales. We are very proud of what we have achieved but we always believe we should do more. I advise Opposition members that that remains our strategy.

The honourable member for Lachlan asked about the number of veterinarians. My figures show that vet numbers have improved and, more importantly, that we are training vets in private practice to deal with disease management. That is very important. Many vets with small animal practices—to which the honourable member referred—could be employed during times of emergency. I was pleased that New South Wales was a major contributor to the international response to Great Britain's disease crisis. Officers from NSW Agriculture travelled to Great Britain not only to monitor disease management procedures but to help farmers destroy diseased animals and dispose of carcasses.

I have had several briefings from those officers, who gave quite moving reports. They assisted many farmers from small rural areas who faced the devastation of destroying all of their animals. Whole towns ground to a halt. The experience had quite an impact on those officers, and I hope that we deal with a situation such as that only in simulations such as Exercise Minotaur. As the honourable member for Tweed said, we would have a devil of a time if an exotic disease outbreak occurred in Australia. The honourable member for Lachlan referred to the possibility of feral animals carrying disease.

I repeat that a joint NSW Agriculture and State Council of Rural Lands Protection Boards venture has allocated \$1 million for the control of feral pigs and foxes. Submissions from individual boards are being processed and the honourable member for Lachlan and other interested parties will receive a list of future projects. We shall also work closely with veterinarians on this problem. As I said at the outset, there is much work to be done. The honourable member for Tweed is right: the Federal Government must play a major role, through bodies such as the Australian Quarantine and Inspection Service, in preventing exotic diseases entering this country in the first place. State governments would play a major operational role in managing any outbreak that occurred. I thank both honourable members for their positive contributions to this discussion.

Discussion concluded.

ROAD TRANSPORT (VEHICLE REGISTRATION) AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr STEWART (Bankstown—Parliamentary Secretary), on behalf of Mr Scully [4.58 p.m.]: I move:

That this bill be now read a second time.

The purpose of the bill before the House is to amend the Road Transport (Vehicle Registration) Act 1997 and the Motor Dealers Act 1974 to introduce measures to combat the practice of registering New South Wales based commercial vehicles in other States, to avoid the payment of New South Wales registration charges and New South Wales compulsory third party insurance premiums. Registration authorities in each Australian jurisdiction have the power to require a vehicle to be registered in their State/Territory if the vehicle is principally based or garaged in their jurisdiction. Currently, the Roads and Traffic Authority [RTA] relies on the person applying for an exemption from New South Wales vehicle registration to supply a valid interstate address indicating an interstate base of operation or garage.

The RTA and NSW Police work with interstate authorities to determine the validity of suspicious addresses, but this is time-consuming, costly and ineffective where the provision of a false address has nevertheless secured interstate registration. Insurers, motor traders, some car rental companies and the community have raised concerns with the RTA and Government about increased fraudulent activity to avoid registration and higher third party accident insurance premiums in New South Wales, such as the fixing of interstate plates on new business vehicles, and the falsification of interstate business addresses to comply with the exemption from registration for visiting vehicles.

It has become an increasingly common practice for a number of car rental, fleet management, trucking and coach companies to operate vehicle fleets in New South Wales although the vehicles are registered in Victoria, Queensland or Western Australia on the basis that the vehicle fleet is primarily based in those jurisdictions. In fact, Avis Rent a Car and Hertz Australia Pty Ltd have specifically made representations to the Government supporting changes to legislation to create a level commercial playing field for car rental companies. Mr George Proos, Managing Director of Avis, wrote to the Minister for Roads in the following terms:

The continued acceptance of this practice to register all rental cars out of the State of New South Wales by the Government results in these companies being given an unfair competitive advantage when doing business in this State.

This legislation ensures that cars primarily used by companies in this State are registered in this State, pay compulsory third party insurance in this State and do not result in the loss of stamp duty on sales and leases in this State. On the basis of those vehicles that can be identified, fraudulent activity of this kind is estimated to cost the Government \$800,000 per year in lost revenue from unpaid RTA registration charges. However, the total number of interstate registered business vehicles based in New South Wales is unknown and likely to be costing a significantly higher amount in forgone revenue. Interstate registered vehicles based in New South Wales also cost the State and private sector lost revenue in third party insurance premiums, stamp duty on transactions and the sale/lease of motor vehicles. Let me outline the details of the legislation.

Firstly, this legislation is designed to target corporations—and not individuals—that circumvent New South Wales registration requirements in three ways. The first is by creating an offence for a licensed motor dealer to affix interstate plates to a vehicle in New South Wales without the approval of the RTA. This seeks to prevent organisations that import cars through Sydney's port, have them registered with interstate plates by a New South Wales motor dealer and then operate the fleet primarily here in New South Wales. The sanctions proposed are an \$11,000 fine and power for the Department of Fair Trading to revoke a licence.

The second way in which it will target corporations is by creating an offence for a corporation to "cause, permit or allow an interstate registered vehicle owned by the corporation to be used on a road" in New South Wales unless the corporation can show: that the vehicle was less than 90 days old; that during the 90 days prior to the offence the vehicle had been outside New South Wales for a continuous period of at least 48 hours; or that, in the case of a car rental company, the vehicle was rented to the same person for the whole of the 90-day period immediately before the offence. The sanction proposed is an \$11,000 fine per offence. Finally, the bill enables the RTA or police to direct the production of documents for the purposes of ascertaining whether a corporation has committed such an offence.

The rationale on which the Road Transport (Vehicle Registration) Act is based is that motor vehicles using New South Wales roads principally should be registered in New South Wales. Currently it is an offence under the Act to use a motor vehicle or a trailer on a road or road-related area without being registered in New South Wales. However, the Act recognises that the use of prescribed vehicles does not constitute such an offence. The regulation under the Act prescribes interstate registered vehicles temporarily visiting New South Wales. In a prosecution for using an interstate registered vehicle without being registered in New South Wales, to avoid conviction, the defendant has the burden of showing that the vehicle is temporarily in New South Wales. However, to satisfy that burden the defendant only has to present or point to evidence that suggests a reasonable possibility that the vehicle is a visiting vehicle. The easy availability of this defence has, in the absence of admissions by the defendant, deterred police prosecutions being launched.

This bill introduces a strategy to eliminate, or at least minimise, the unscrupulous evasion by certain dishonest operators of motor vehicles used for business purposes. For too long these operators have been using the New South Wales road network without contributing to road funding in this State. It should be remembered that the major portion of the total registration charge for light motor vehicles in New South Wales is motor vehicle tax, which, for light vehicles, is calculated according to the weight of the vehicle and pays for maintenance of the road network. Motor vehicle tax in New South Wales is allocated entirely to road funding, which funds the building and maintenance of road services and facilities, and in particular is also used to fund road safety initiatives. Let me provide some further detail on the four parts of the legislation.

First, the bill inserts new clause 22, creating a new offence of a licensed motor dealer causing or permitting the fixing of interstate registration plates to vehicles within New South Wales without the approval of the Roads and Traffic Authority. This provision is aimed at some motor dealers who fix interstate number plates to vehicles destined to be based in New South Wales to avoid the cost of New South Wales registration and third party insurance premiums. Of course, the fixing of interstate registration plates for proper purposes will be permitted. For example, in border areas the RTA will be able to authorise certain dealers to fix interstate plates—that makes good sense. This will permit dealers in border areas to fix interstate plates to new vehicles purchased by customers who live across the border. If the RTA has not approved the fixing of interstate plates, there will be a defence where a defendant satisfies the court that there was a reasonable explanation for fixing the plates in New South Wales, and it was not done with the intent to evade New South Wales registration requirements.

Second, new clause 22A creates a new offence of a corporation causing or permitting the use on a road or road-related area of an interstate registered vehicle without New South Wales registration. The defendant corporation will not be guilty of the offence if it establishes any one of a number of defences. The primary defence is that during the previous 90 days the interstate registered vehicle was outside New South Wales for a continuous period of 48 hours. The maximum fine for this offence will be 100 penalty units, or \$11,000. This level of penalty is consistent with the level of penalty in relation to a corporation in the national road transport law. Essentially, it is proposed that the legislation will contain two classes of offence. For individuals the existing offence and penalty currently in the legislation will be retained, that is, 20 penalty units or \$2,200, and the existing burden of proof will also be retained.

For corporations, a new offence will be created which increases the burden of proof, and a maximum penalty of 100 penalty units will apply. Effectively, if prosecuted, a defendant corporation will have to satisfy a court that a vehicle has been outside the State for two days in the past 90 days. This requirement is not seen as onerous for corporations, given that a vehicle used principally within New South Wales should be registered here. The actual geographic base of vehicles used for business purposes, including hire vehicles and their movements into and out of the State, are facts peculiarly within the knowledge of the business. It is considered that imposing the burden of proof on a defendant corporation will be the most effective measure to prevent, and expose, the improper use of interstate registration. The increase in the burden of proof should not involve any undue hardship on the defendant corporation, which is in the best position to provide the relevant information to a court.

Thirdly, the bill inserts new clause 22B, empowering the police and authorised RTA officers to demand the production of documents relating to the operation of interstate registered vehicles apparently used for business purposes in New South Wales. This power does not apply to vehicles apparently used for private or domestic purposes, because it is recognised that private individuals would be unlikely to have the appropriate evidence to document their vehicles' past movements, whereas business organisations would be expected to keep that information as part of their normal business practice.

Finally, this bill also proposes to amend the Motor Dealers Act 1974 to allow the suspension or cancellation of a motor dealers licence where a dealer is guilty of the offence of fixing or permitting the fixing of interstate registration plates to vehicles within New South Wales without the approval of the RTA. The arrangements proposed in this bill will not impact unduly on law-abiding business operators. In fact, I anticipate that this bill will be enthusiastically welcomed by honest business operators. I commend the bill to the House.

Debate adjourned on motion by Mr Fraser.

Mr DEPUTY-SPEAKER: Order! It being shortly before 5.15 p.m., business is interrupted for the taking of private members' statements.

PRIVATE MEMBERS' STATEMENTS

MILITARY ROAD PEDESTRIAN SAFETY

Mrs SKINNER (North Shore) [5.11 p.m.]: I raise a matter of great distress for the constituents of my electorate of North Shore. It relates to pedestrian safety on Military Road, which is on the northern boundary of the electorate. It is a nightmare for both motorists and pedestrians alike. I wish particularly to refer to a fatality that occurred late last month at the lights on the junction of Military Road and Wycombe Road. That is within 100 metres of my home and is an area in which I have lived for the past 25 years. My children have crossed the road at that point. I have pulled people back from the edge of the street when it looked very much as if they were at risk of being hit by a car. I saw the son of a friend of mine killed on the road. The recent fatal accident involved a woman in her late eighties. According to a local newspaper report, many students and other people standing at the traffic lights witnessed the fatality and were traumatised by it.

It is not, sadly, the only occasion on which a fatality has occurred there, and it is not the only intersection on Military Road that has been the scene of a fatal accident. The issue was raised at the 11 October North Sydney Traffic Committee meeting. I strongly support the view of the police representative, who referred to two recent fatalities at pedestrian crossings and supported the need to change the pedestrian phasing of the lights. Sergeant John Ruddy of Harbourside police also suggested alterations to the traffic signals at the intersection to prohibit vehicular traffic movements either into or out of Military Road whilst pedestrians cross. That is a reversion to the previous phase of crossing lights on Military Road. On many occasions different things have been tried in an attempt to make the crossing of Military Road safer for pedestrians. Obviously, it remains unsafe. Concerns have also been expressed about the safety of pedestrians crossing Military Road at Watson Street, which is just outside my electorate office.

Senior Constable David Olsen, Harbourside police's representative on the Mosman Traffic Committee, also has expressed concern about the safety of pedestrians crossing Military Road at Belmont Road in Mosman. He has suggested that more pedestrian time is needed and that both west-bound and east-bound traffic be stopped to allow pedestrians to cross safely. Traffic is, without doubt, the most critical issue facing my constituents. The combination of very busy roads and heavy pedestrian traffic—particularly schoolchildren and elderly persons—is a lethal one. I have accepted an invitation to attend the retirement village where the victim of the most recent fatality had lived for many years. Understandably, the village residents are traumatised by this event. I will be urging them to take extreme care when crossing our very busy roads. It is in everyone's interests that people take personal responsibility and, if necessary, if they are not as fast on their feet as they used to be, miss a phase of traffic lights, wait until the next cycle, and start walking immediately the light turns green.

I have written to the Minister for Roads, the Hon. Carl Scully, about this matter. I have urged Minister Scully to urgently review the phasing and operation of traffic lights along Military Road, with a view to removing hazards for pedestrians as much as is possible. There is nothing more important than the safety of people as they use our busy roads, whether they are motorists or pedestrians. I cannot think of anything more traumatising and sad than the sight of yet another victim lying on a busy road such as Military Road, with cars stopped all round and traffic held up, as it was on that Thursday night. I was in the vicinity and saw it. Pedestrians, including young students and older people who were friends of the woman, were standing around. It is beholden on all of us to do all we can. In the long term, we need a tunnel. That is the only real solution to the problems posed by Military Road. In the short term, I ask the Minister to review the traffic light system to make the roads safer for all. [*Time expired.*]

CESSNOCK ELECTORATE SEWERAGE SERVICES

Mr HICKEY (Cessnock) [5.16 p.m.]: Today I draw the attention of the House to an important health issue that affects substantial areas in the electorate of Cessnock. Would you not agree that in the twenty-first century people living in a city with a population of some 40,000 should have access to a modern sewerage system? In certain towns and villages in the Cessnock area this is not the case. Some residents in my electorate still have the unenviable task of defecating in the outhouse, and this provides many complaints throughout my electorate. It may be fine to reminisce about the days of yore, but the unnerving stench of raw sewage in the backyards of modern communities is not something I am proud of. As we have now entered the new millennium, I believe that this is an appalling state of affairs. I am sure that the many tourists who visit the area would be disgusted if they knew what lurks in those quaint outbuildings.

I believe that the people of Ellalong, Millfield, Mulbring, North Rothbury, parts of Abermain and Kitchener villages deserve more than having to spend their early morning rituals on stinking dunnies which, if left open by accident, become maggot-infested piles of excrement. Some of the villages are totally reliant upon dunnies, aerated wastewater treatments systems or septic tank evapo-transpiration systems. The villages in question continue to sustain significant population increases at a substantial rate each year. More people mean more sewage, which has to go somewhere. Without the proper infrastructure of sewerage systems for these villages, the problem will only get worse as the populations continue to grow. It is not only the sanitary pans that are of concern. Many septic systems overflow or malfunction, and it must be noted that only 10 per cent of these systems are breaking down due to inappropriate installation or system failure. One can only surmise that 90 per cent of the complaints that Cessnock City Council receives are the result of something beyond the control of the householders.

It is obvious to me and the constituents concerned that the possible health and environment problems created by untreated waste water overflowing in populated areas, and the ineffective system of waste water sewerage disposal in communities undergoing steady growth, are not acceptable. My office regularly receives correspondence from the Crawfordville Millfield Progress Association regarding requests for sewage services to the Millfield area. The association believes it has not received a definitive reply from the Minister, even though it has made several representations.

The association drew my attention to an article published in the *Sunday Telegraph* dated 16 December 2001, which referred to areas in Sydney and on the Central Coast that were allocated \$135 million funding for sewerage services. Presently, the Cessnock City Council provides my office with a report that relates to the use of portable toilet facilities in lieu of pan collection services in the local government area. As a result of the tabling of this report, council resolved to request my office to continue to make representations about the provision of sewerage services to the Cessnock local government area. Will the Minister investigate whether the Hunter Water Corporation has any plans to provide sewerage services to areas in the electorate that currently rely on pan collection services or portable toilet services? I also ask the Minister for Land and Water Conservation to investigate all available avenues of funding, including the fringe areas sewerage scheme, and to complete the identified works in accordance with the guidelines set out by the Hunter Water Board to ensure that all areas in the Cessnock electorate have access to modern, appropriate, sewerage services.

The time is now ripe for this work to commence because the Hunter Water Board is expanding the treatment works at Cessnock and Kurri Kurri for the betterment of the vineyard area, but at the expense of the Cessnock community. The Hunter Water Board has constantly disregarded these communities, and looks after only the big end of town. It is now time for the Hunter Water Board and the Minister for Land and Water Conservation to tell my communities what they are doing or what they are going to do. It is time we brought communities in this area into the new millennium. These problems are constantly raised in my electorate office. A gentleman from the Kitchener area came into my office and said, "We can land a man on the moon, but we are still defecating in tin cans."

ARTIFICIAL LIMB SERVICE

Mr FRASER (Coffs Harbour) [5.21 p.m.]: I bring to the attention of the House the relationship between the Prosthetic Manufacturers Association of New South Wales and the New South Wales Department of Health. I refer specifically to a letter from Daryl MacDonald, Secretary, Amputee Association of New South Wales Incorporated, mid North Coast branch, which states:

It seems this argument has been current for several years and the Prosthetists of NSW feel they have no option but to withdraw services pending a more satisfactory response from the Government than they have previously experienced.

This withdrawal will be detrimental to the many amputees who rely on maintenance of their prostheses to enable them to lead an independent and productive life after loss of one or more limbs.

It will impact badly on the new amputee who needs early mobilisation to maximise his/her chances of complete independence.

The current withdrawal of that service poses several questions:

How will these people manage?

Will there be a significant increase in Additions to our already stretched Public Hospital System?

Will some of the older amputees need to seek institutional care if they become dependent on others when they can no longer wear their prosthesis or cannot get one in the first place?

Will amputees who are no longer mobile succumb to various health problems associated with inability?

Mr Fraser I ask that you apply pressure to your Government to bring this dispute to a speedy and satisfactory conclusion for all involved.

The correspondence I received from Vince Buckley, President of the Prosthetic Manufacturers Association of NSW, states:

This letter is to inform you of our Association's continuing struggle with the NSW Health Department concerning many issues relating to our provision of prosthetic services to clients of the NSW Artificial Limb Service (ALS).

These issues include:-

- The availability of Spare or second limbs as well as limbs for work, recreation or other special needs.
- The need for orthotics and other aids to enable the proper use of your limb.
- A review of available componentry to include new technologies.
- The introduction of an interim limb program.
- Abolition of the Patient Contribution system.
- And an increase of the labour rate for a fairer return for our member companies with the introduction of a system of indexation of this rate.

A brief history states:

In the early 1990s, the responsibility for the ALS was divested to the individual State Governments and in 1997 NSW Health Department began administering the ALS. Our contention is that at the time this transfer took place the labour rate was already being underpaid. So NSW Health has inherited an underfunded service. Since 1987 we have been attempting to have this situation rectified as our member companies continue to subsidise the NSW ALS.

The situation has now reached a cross roads and our members have voted unanimously to withdraw services until a satisfactory outcome for all, is achieved. So effectively immediately our member companies will not fulfil prescriptions for new or replacement prostheses for NSW ALS & Department of Veterans Affairs clients.

We will, however, continue to service limbs that were supplied within the past 12 months for warranty purposes.

Today I discussed this matter with the honourable member for Myall Lakes, who told me that Mrs Maureen Cain had written to him about her husband, who lost both his legs following an operation at Royal North Shore Hospital. She states:

My husband, Neville Cain, lost both his legs 4 years ago due to contracting M.R.S.A. at Royal North Shore Hospital after having successful femoral artery surgery, & has done all he can to try & live a normal life working 5 days a week on our oyster leases & paying large tax bills each year & now has been told that all prosthesis treatment has ceased, he is in desperate need of a new pair of legs just to go about his daily business.

This fellow and others like him work hard to get back into a normal occupation. It is unbelievable that the Government is ignoring the pleas from the ALS that the association increase its rates and, thus, make a living from assisting these people. A large number of amputees in my electorate are most distressed by the Government's attitude. I have a list of hospitals and clinics affected, but I will mention only the country ones: Coffs Harbour, St Vincent's, Lismore, North Gosford Private, Murwillumbah, Dubbo, Shoalhaven, Governor Phillip, Penrith, Bathurst, Orange, Port Kembla, Gosford, Tamworth, Woy Woy, Wyong, Hunter Valley Private, Wingham, Toronto and Maitland. I ask the Minister to attend to this issue immediately. [*Time expired.*]

PORT STEPHENS WHALE AND DOLPHIN WATCHING

Mr BARTLETT (Port Stephens) [5.26 p.m.]: Friday week ago I attended the Nelson Bay Bowling Club for the second briefing of commercial whale and dolphin watch operators to inform them of discussions that took place with the National Parks and Wildlife Service about the dolphin and whale watch regulation draft. Some 20 people from various cruise operators, commercial operators and different conservation groups attended the meeting. Submissions for the draft legislation to regulate whale and dolphin watching were due by the end of this month, which seems a very short time. I support the policy. Many people may not know, but Port Stephens is mooted to be the largest dolphin-watch port in the world. Some 230,000 passengers per year take part in whale and dolphin watching on 20 to 25 commercial vessels. It is interesting to note that the meeting highlighted that both commercial fishermen and charter boat operators were involved in dolphin and whale regulation, which is something of which we were not aware.

The dolphin population in Port Stephens is under pressure for a lot of different reasons. Port Stephens has about 200 dolphins, Jervis Bay has about 200 dolphins and Sydney Harbour has none, presumably because of noise and acoustic problems from vessels in the harbour. Since 1990 Queensland has levied operators about 3 per cent of their ticket price, which is about \$2 or \$2.50 on a ticket costing \$80. Although the figure stated in the draft for Port Stephens is \$2, 3 per cent of \$13 represents a substantially larger amount than is imposed elsewhere. Comments by the group at the meeting and subsequent discussions have convinced me that the community thinks that a charge ranging from 50¢ to \$1 would be fair.

It was evident at the meeting that not only commercial whale-watching practices associated with the distance of vessels from whales and dolphins, funding for research and enforcement require regulation; problems caused by recreational watercraft users also require regulation. Honourable members may recall that approximately 12 months ago jet skis were banned from Sydney Harbour. However, they may not be aware that there was a subsequent increase in jet skis in the Port Stephens harbour. Regrettably, some jet ski drivers and some recreational boating enthusiasts are chasing dolphins around the harbour, inflicting stress on them. Many new issues have emerged as community discussion has proceeded. Therefore, an extension of the draft consultation period would be beneficial. Through an organisation known as Dolphin Research Education and Management [DREAM], operators are voluntarily contributing funds for research to ensure that dolphins are not loved to death. If we place too much pressure on dolphins we will force them from the bay. If that happens, the businesses that have boomed over the past 10 years will face severe problems. The meeting was useful in providing a forum for discussion. [*Time expired.*]

LAND TAX VALUATIONS

Mr COLLINS (Willoughby) [5.31 p.m.]: I draw to the attention of the House and to the Treasurer of New South Wales the issue of land tax in electorates such as Willoughby. When the Carr Government introduced land tax it represented an impost on people for living in their own homes. Electorates such as Willoughby include a large trunk of middle harbour foreshore. Despite initial assurances by the Treasurer when the tax was introduced that its impact would be felt by only a select few, its impact is anything but select—in fact, it affects every land-holder who lives within walking distance of any type of harbour view in Sydney. I predict that land tax will spread and will apply to properties that are further back from the foreshores, not just multimillion-dollar properties with harbour views. Increases in land tax have partly been caused by increases in real estate prices in the Sydney metropolitan area, and land values for premium areas such as Northbridge, which is in my electorate, continue to go through the roof. The real estate boom shows little sign of abatement, especially in areas such as Northbridge, which is the subject of my statement.

Residents of Coolawin and Mimimbah roads, Northbridge, have banded together to challenge the Valuer-General's assessment of the value of their properties. Their challenge is based on information they have obtained from an independent valuer who has undertaken a study of property values of those streets relative to land tax that has been imposed upon property owners. It is worthwhile noting that the Willoughby City Council has imposed a foreshore building line which is very restrictive. In the majority of cases, the line is located immediately behind existing dwellings. While this presents major problems in expanding or rebuilding existing residences, it is also a major issue when considering hypothetical vacant land for land value purposes because many of the existing residences and the sites they occupy are relatively small by modern standards. Moreover, the combination of the Willoughby local environment plan and development control plan No. 16 has resulted in a range of development controls that have had the effect of significantly limiting the size, scale and design of any residence proposed to be built on the land.

Those controls include the requirement that the escarpment be maintained by avoiding clearing, tree removal or development in the areas; the application of a maximum height of two storeys, which has the result of requiring the new residences to be stepped in line with the topography; and the requirement that at least one side setback is a minimum of 1.5 metres. The effect of these controls is the imposition of a severe limitation on development. One might argue that such a limitation should exist, but the limitation is not reflected in land tax valuations that have been imposed by the New South Wales Carr Government. The limitations have had a number of effects—namely, a relatively limited width, a smaller site area and a steeply sloping landform. Moreover, many of the properties that are the subject of the independent valuer's assessment have more than one of those features. Those problems have been addressed in a document that I propose to forward to the Treasurer.

The impact of those limitations on the market value of those properties is profound, but there are impacts that go beyond mere market value. After some years of small increases, valuations have increased dramatically. The July 2001 valuation effectively doubled land tax. A common valuation was carried out for

most of the houses, regardless of the size of land or facilities. The report also shows that the valuation missed a number of key issues. The consequences of these flaws should be agreement by the Valuer-General to substantially lower the land tax that has been imposed on these properties. Meanwhile, however, elderly people who have lived in their homes for approximately 30 years are suddenly being confronted with the prospect of being pushed out of their homes in their twilight years to pay land tax. Land tax increases are iniquitous. I predicted this outcome when land tax was introduced. I call on the Treasurer to show compassion for elderly property owners in Middle Harbour foreshore electorates such as Willoughby, and to cease ripping off people through the imposition of iniquitous land tax. [*Time expired.*]

SOUTHERN STARS 2002 SUPERNOVA

Mr CAMPBELL (Keira) [5.36 p.m.]: I will comment on the public education system in New South Wales by focusing attention on an extracurricular activity in the Illawarra known as the Southern Stars 2002 Supernova. Young students in the public education system from primary schools, high schools and TAFE institutions and their teachers worked together to create a performing arts event involving 2,800 students from 70 schools from Helensburg to Eden and from Goulburn to the Southern Highlands. Participating schools from the Keira electorate included the Austinmer Public School, Balgownie Public School, Corrimal East Public School, Keiraville Public School, Mount Keira Demonstration School, Woonona Public School, Bulli High School, Corrimal High School, Keira Technology High School, Wollongong High School of the Performing Arts and Woonona High School. In the context of the participating schools, I mention also Koonawarra Public School because my wife was very excited to see some of her students performing at the event. I also mention the Kiama Public School because a very dear friend, a teacher named Vicki Bragg, prepared students for participation in the event.

The event's executive producer was Stan Warren, who is also the Principal of the Austinmer Public School, and the director was a brilliant woman named Caroline Chant. The musical director was Andrew Lyons, the designer was Greg Thompson, and the promotions manager was Heather Pulsford, who taught me at Corrimal High School in the early seventies and who has now retired. We had a great chat about that as the Southern Stars Supernova event unfolded. The assistant musical director was Michael Barkl. One can only wonder at the challenge that confronted choral directors and conductors Ann Clifton, Jenny Ferguson and Ina Melkerts-Smith, who were in charge of 700 students in the stands of the Wollongong Entertainment Centre—a symbol of the New South Wales Labor Government's commitment to the Illawarra and a wonderful venue for the performance.

The stage manager, Kate Schmich, worked hard to make the event a success. It was a demonstration of what young people who attend public schools can do. They are talented and they are prepared to work together. It was also a demonstration of the commitment of teachers in the public sector to hard out-of-hours work to encourage and prepare students and to encourage parents to prepare costumes. Some featured artists at that event included Mikaela Ackerman, who attends Keira High School; Stephanie Bozinovski and Tarum Charker from Keira Technology High School; Elisha Chin, Amy Denyer and Khyle Frost from Wollongong High School of Performing Arts; and a young man with a beautiful voice, Lincoln Hall, from Keiraville Public School.

Other performers included Brendan Irving from Wollongong High School of Performing Arts; Alisa King from Bulli High School; Rochelle Kirkwood from Wollongong High School of Performing Arts; David Morris and Aidan O'Brien from Bulli High School; and Hannah Patterson from Corrimal High School, whom I heard perform at the induction of the school council a week or so ago. She has a beautiful voice. Other featured performers were Kate Sharp and Chloe Skipp from Bulli High School; Jamie Slater from Wollongong High School of Performing Arts; Claire Stjepanovic from Austinmer Public School; Hayley Williams and Amanda McInerney from Wollongong High School of Performing Arts. It is important to mention that students not only sang, they also danced, and Shanteh Wong and Brendan Irving from Wollongong High School of Performing Arts entertained us most brilliantly.

Featured instrumentalists included Jessica Klages from Wollongong High School of Performing Arts. The Southern Stars 2002 Supernova was a tremendous demonstration of commitment and talent by students. Amongst the cast of 2,800 young people from public sector schools were kids who probably cannot sing a note and will never dance professionally. However, they danced and sung as part of the chorus. The Wollongong Entertainment Centre was filled to capacity for four performances. It was a great testament to those 2,800 kids from 70 schools, to their parents and to their teachers. [*Time expired.*]

Mr MARKHAM (Wollongong—Parliamentary Secretary) [5.41 p.m.]: I support the comments of the honourable member for Keira about that wonderful event. My wife and I attended the matinee of that four-event

program. As the honourable member said, the rich talent of those young people from the public education sector of the Illawarra region was incredible. I was impressed with the number of teachers who put in so much time to ensure that this marvellous event was a success, for the second year in a row, and was well received by the Wollongong community. I advise honourable members of three public education events to be held in Wollongong in the next couple of weeks. First, West Wollongong Primary School will celebrate 50 years of public education on Friday. I have been invited to speak at that ceremony not only as the local member but as a former student of the school. Second, Mount St Thomas Primary School will celebrate 50 years of public education next week. Third, Mount Keira Public School, which my mother attended many years ago, will soon celebrate 120 years of public education. Public education is coming to the fore again and students, teachers, parents and former students are being acknowledged.

PORT STEPHENS WHALE AND DOLPHIN WATCHING

Mr MARKHAM (Wollongong—Parliamentary Secretary) [5.43 p.m.], by leave: I have listened carefully to the statement of the honourable member for Port Stephens. As usual, Country Labor is raising issues of relevance to country New South Wales. The Minister for the Environment is aware of the issues raised by the honourable member for Port Stephens. He has advised that the Government's recently released discussion paper included measures to significantly increase the protection of whales and other marine mammals, to better understand their behaviour and to ensure that quality educational and promotional material is provided to local whale watching, charter boat and other tourism operators. The proposed New South Wales scheme is almost identical to schemes already successfully operating in Western Australia, South Australia, Victoria and Queensland. A small passenger levy, which will provide funding for the new scheme, has also been successfully operating in Queensland since 1990.

Over the past 12 years, whale watching tour numbers have increased from 27,500 in 1990 to around 67,000 in 2002. Numbers peaked in 1996 at 83,000. Nevertheless, as the honourable member has said, a number of issues have been raised by tour operators, and the Government is committed to resolving them. I assure the honourable member that the Government will not finalise any proposal until the concerns that have been raised have been properly addressed. Initially, the period of consultation has been extended to the end of November. The Minister will then refine the package and conduct a further round of consultations prior to legislation being finalised next year.

SLEEPY HOLLOW TRAFFIC NOISE

Mr D. L. PAGE (Ballina) [5.45 p.m.]: Recently I met with residents of Sleepy Hollow, a beautiful rural area at the northern end of my electorate that has now been bisected by the new four-lane dual carriageway between Chinderah and Yelgun. Estimates of the increase in heavy vehicle traffic vary from 40 per cent to 200 per cent on the upgraded Pacific Highway, depending on whom one talks to. Sleepy Hollow was an appropriate name for this area prior to the construction of the new dual carriageway. Unfortunately, the new road, welcomed as it is by road users, has made this beautiful and formerly quiet and peaceful area of Sleepy Hollow into a noisy hollow indeed. Many residents have complained to me about not being able to sleep at night since the new road opened. I met residents of approximately 30 homes and they raised a variety of concerns about the impact of the new road on them and their neighbourhood. I understand the Sleepy Hollow area has the greatest concentration of homes along the new road.

The main issue raised by residents was noise, especially at night when they are trying to sleep. Whilst there is general noise, especially when wind conditions are unfavourable, the main problem is trucks changing gears and braking during the night. We also need to bear in mind that there is a vehicle rest stop at Sleepy Hollow. Trucks make lots of noise braking and accelerating to and from that area, and the noise from the refrigeration units on those trucks also impact on residents. Residents complained about trucks starting up and moving away from the truck stop. Other residents complained that passing truck drivers often honk their horns at all hours of the day and night at their mates who are resting at the rest stop. All residents pointed out that the cement surface is very noisy and whilst they can close their windows in the winter to reduce the impact of that noise they want to keep their windows open during the hot summer months to take advantage of any breeze that may be available. Understandably, residents do not want to be prisoners in their own homes, forced to close windows and sweat it out in hot periods in summer. They also made the point that at night there is often no breeze at all, which means that the impact of the noise is far greater than if the breeze is blowing the noise away from their homes. I am advised by the Sleepy Hollow residents that the length of road from which residents are especially impacted by noise is approximately three kilometres. Therefore, the question arises: what can be done to assist those residents? Several options have been put to me. First, a hot-mix surface could be installed over

this section of road. I know from experience on other roads in my electorate that that solution significantly reduces noise levels. It has also been put to me that open grade porous asphalt, or a stone matrix asphalt, would reduce noise by at least three decibels.

I am advised that in addition to reducing noise, this latter option would reduce water spray, improve skid resistance and greatly improve the effectiveness of line marking, which in turn would improve wet weather visibility. These are all safety benefits in addition to the noise reduction argument. I understand the cost of open grade porous asphalt is about \$5.50 per square metre and has a service life of at least 12 years. The other major solution to the noise problem is the construction of noise barriers. I note that the Roads and Traffic Authority has invested heavily in that option on the M2 and sections of the F3. Whilst the installation of those noise barriers is more expensive, they have a life of around 40 years and are very effective.

I ask the Roads and Traffic Authority and the Minister to consider resealing the stretch of road with hot mix or porous asphalt, whichever is more effective in noise reduction, and the barrier option. I note that the Roads and Traffic Authority, which is doing its own noise testing, will decide whether to do anything. It seems to me and to residents of Sleepy Hollow that the appropriate body to do the noise testing is the Environment Protection Authority. At least the testing would be independent and objective. I would also ask that the noise tests be conducted at night, which is when noise has the greatest impact on nearby residents. I also want that testing to be done in such a way as to ensure that loud noise events, which wake people up in the middle of the night, are not averaged out over a longer period, perhaps an hour, to reduce readings to an average hourly noise level. That seems to me to be sleight of hand by the RTA as it would have the effect of reducing the recorded levels from actual maximum noise to an average reading, which is much lower than the noise that wakes people up. We all know that loud noise events cause sleep disturbance. That should be recognised in the testing.

In summary, there is a genuine noise issue at Sleepy Hollow. I know that other residents along that road are affected by noise. People living further to the south in Ewingsdale are also affected, but I will deal with that issue on another occasion. I call on the Minister to direct the RTA to seriously consider what I have said on behalf of my constituents and to formulate an appropriate response, by way of resurfacing that section of road and/or the construction of sound barriers, so that Sleepy Hollow residents can sleep at night and not suffer the serious effects of sleep deprivation. [*Time expired.*]

WYEE DEBUTANTE BALL

Mr CRITTENDEN (Wyang—Parliamentary Secretary) [5.50 p.m.]: It is a my pleasant duty to inform honourable members of the Wyee Debutante Ball that was held last Saturday night, 26 October, at Wyee Community Hall. My wife, Jenny, and I were guests at the ball. Every three years or so the ball is organised by local Wyee residents. I particularly thank Mavis Bateup, Ada Hawkins and Debbie Woolven for their excellent job in bringing the community together. Eight debutantes and their partners, three flower girls and three page boys attended the ceremony. The matron of honour was Mrs Cheryl Roberts from Wyee nursery. There are plans to hold an over-thirties debutante ball in the not-too-distant future. I look forward with anticipation to that event.

On the night I was pleasantly surprised by the transformation of Wyee Community Hall. I have attended a number of public meetings at the hall and it was great to see how much it had been transformed. Much of the work that went into the hall was undertaken by the parents and siblings of the debutantes, together with a willing band of workers from Wyee Community Hall committee. They polished the floors, cleaned the doors and windows, painted the hall inside and out, and purchased new tables and chairs. It was a tremendous effort. A small band of community-minded people in Wyee offer their assistance whenever it is needed. Last Saturday night was the culmination of their hard work.

It would be remiss of me not to mention those who made their debut. Debutantes and their partners raised all the funds that were required for the night, primarily through the sale of chocolates. The debutantes and their partners were Lauren Bateup and Josh Hochkins, Tahli Giles and Tom Temperley, Rebecca Lancaster and Hamilton Jones-Mashman, Kasey McKenzie and Brendan Flack, Ashleigh Whitbourne and Darryl Hennessy, Danielle Martin and Brendan Mitchell, Kylie McKewen and John Sonter, and Lisa Mason and Adrian Sharpe. The flower girls and page boys were Brianna Terry and Tyler Lee, Bonnie Mason and Jacob Giles, and Jorden McKenzie and Bodee Hemers. The ushers were Jake McKenzie, Amber Mason, Ashley Britton, Madelin Lee and Terena-Jane Roberts.

Dance preparations were supervised by Vicki Gregory. Peter Campbell, a former long-time resident of Wyee who now resides in another part of the Central Coast, was the master of ceremonies. It was a most

enjoyable night and my wife, Jenny, and I had a good time. Traditions such as the debutante ball are being observed in a rapidly growing part of New South Wales. Wyee maintains its sense of community. The debutante ball, which is held every three years, is a tradition that binds the community together. We must maintain such traditions, especially when we remember some of the negative things that have occurred in Australia recently. I refer particularly to the Bali tragedy that rocked many communities. We must maintain strong bonds in our community. Many young people who attended the ball are students at the Hunter Performing Arts High School, so they were skilled at dancing. There was no bad behaviour, everyone had a good time and it was good, clean fun. I look forward to further debutante balls and to the over-thirties debutante ball that is soon to be held in Wyee.

MITTAGONG LIONS INTERNATIONAL CONVENTION

Ms SEATON (Southern Highlands) [5.55 p.m.]: I advise honourable members of an important event that occurred in my electorate over the weekend: the Mittagong Lions International Convention. People at the Mittagong Returned Services League Club welcomed District Governor Ian Hughes as well as Lions International President Kay K. Fukushima and his wife, Denise, who came all the way from California to attend the Mittagong convention, which was organised primarily by the committee of the Mittagong Lions Club, with the able help of our colleagues in Bowral, Marulan, Bundanoon and many other places. It was an excellent convention.

The convention was opened with a reception at Wingecarribee council chambers on Thursday evening hosted by Mayor Phil Yeo, who also attended the opening on Friday night. He warmly welcomed all the guests. Joanna Gash, my parliamentary colleague the member for Gilmore, was also a speaker on that evening. She spoke not only as the member for Gilmore but also as a member of the Federal Parliamentary Lions Club. On the evening it was noted that there is now a Lions club in both the Federal Parliament and the State Parliament. I am an associate member of the State Parliamentary Lions Club because, first and foremost, I am a member of the Mittagong Lions Club.

Other speakers at the opening ceremony included Kay K. Fukushima and Ian Hughes. That important ceremony commenced with the traditional flag ceremony. Flags from all countries in which Lions clubs operate were paraded in the hall. It was amazing to see how many Lions clubs there are. Small countries in Africa and countries such as Bolivia and New Guinea all have Lions clubs. It was a great experience for me as all Australians come to grips with the tragedy in Bali and its after effects. People of goodwill are generous and willing to give to their communities, which is an excellent starting point from which to rebuild our foundations after the events on September 11 in New York and Washington and after the events in Bali.

After the flag ceremony Major Phil Mitchell, who organised an exceptional core of school cadets, gave a spectacular drum presentation. The young men in the cadet core could be part of any national celebration or commemoration service in the future. I will try to promote them to those who organise such ceremonies as they were absolutely outstanding. Contributions on Saturday included presentations by Lions clubs members of events conducted in their areas. On Saturday night they all celebrated a Beach Boys dance and dinner.

On Sunday there was a presentation about the current state of stem cell research, a project that many Lions clubs around Australia support. I was privileged to be asked to give the closing address at the convention. I was delighted to do so and to take the opportunity to thank Kay K. Fukushima and his wife, District Governor Ian Hughes and my many Lions friends and mentors, including Franz Mairinger and his wife, Lorraine, from Kangaroo Valley, Bruce and Rita Dodd from Mittagong, the many Mittagong Lions members who worked so hard on the committee, friends of the Mittagong Lions, including the Thatchers from Bundanoon and many people from Marulan whom I had not seen for a long time. It was nice to see them again.

We were all inspired at the convention by the words of our international president, who drew to our attention the fact that Lions members are basically people who want to give generously to their communities. He contrasted Lions and other service clubs and volunteer associations with corporate organisations and the problems that they have experienced recently. High-flyers have taken large bonuses, driven companies into the ground, put many out of work and then disappeared. Kay K. Fukushima said clearly to me and to others in conversation that it is unlikely that such people would be members of Lions clubs or similar organisations. He proved his point absolutely that people join service organisations because they want to contribute to their communities. I congratulate the Lions club on an excellent convention.

NRMA OPEN ROAD MAGAZINE

Mr E. T. PAGE (Coogee) [6.00 p.m.]: As my constituent members know, the NRMA was originally formed in 1920 as an independent advocate body for motorists. Its founding president was former Labor Prime

Minister John Watson. In keeping with the budding association's mutual charter, John Watson and his board established the *Good Roads* magazine to ensure that members were reliably informed about the association's activities. In time, the members' journal came to be known as the *Open Road*, which today continues the tradition established by the NRMA's founding fathers of independently informing its two million members about matters affecting their interests. The importance of maintaining the editorial independence of the *Open Road* cannot be overstated.

As a result of the demutualisation of its insurance company, the association was basically left with its road service and its *Open Road* magazine. There are now plans afoot to hand over the *Open Road* as a money-making vehicle to News Ltd's *Daily Telegraph*. Guess who came up with this plan? It was none other than former NRMA President Nick Whitlam and his Members First team, including Alex Sanchez and Mark Coyne, who should have been voted off the board two weeks ago but who, along with new team member Ross Turnbull, have refused to allow the special general meeting [SGM] vote to be declared.

The story of the *Open Road* sell-out begins after last year's annual general meeting, when the Nick Whitlam-led Members First team rorted the vote to keep themselves in power. They knew then that they needed to find a major media outlet to give them favourable press and to attack their opposition so as to ensure their survival. Nick Whitlam, Alex Sanchez and Mark Coyne formed a committee, which they kept secret from the board and initially even from the Chief Executive Officer [CEO], Rob Carter. Their plan was to deliver the *Open Road* magazine into the hands of News Ltd.

Early in 2002 they informed the CEO that they had decided to call for expressions of interest for the external publication of *Open Road*. They pretended to follow due process by receiving submissions from various publishing groups when it was a fait accompli as the deal had already been done. Carter became suspicious of the process as months went by without the board's being informed about anything. On 2 July he confronted Whitlam and the other members of the secret committee and threatened to resign over the matter. The board was finally informed of Carter's request to be released from his contract on 22 July 2002, but Whitlam refused to allow Carter any chance to explain his reasons.

Following Whitlam's departure from the board, the remnants of his Members First group placed on the agenda of the 10 October board meeting a presentation to be made by Alex Sanchez. No explanation as to the subject of the presentation was provided to the directors in their board papers. By this stage Carter had become so troubled by the proposal that he had initiated a full external audit of the entire process. When the time came for Sanchez' presentation to the board on 10 October, the News Ltd sales team came into the boardroom. No other group was invited before, or has been invited since, to make a presentation. Carter sought to address the board about his concerns over the processes that led to the News Ltd presentation, but was gagged during the meeting. For the next hour directors sat agog as they listened to what the Members First group had planned in partnership with News Ltd for the *Open Road*.

It was their intention that the *Open Road* magazine would cease to be an independent publication of the NRMA. Instead, six *Open Road* magazines would be produced annually, including four quarterly magazines published by the *Daily Telegraph* and two *Open Road* travel magazines published by the *Sunday Telegraph*. The association would pay News Ltd \$4 million for this privilege in the first year alone, and members would have to buy the *Daily Telegraph* to obtain a copy of their *Open Road* magazine. The board was told that the *Open Road* brand would be integrated into the fabric of the *Daily Telegraph* and that its content would become subject to the newspaper's editorial standards and controls. In other words, NRMA members would be fed what News Ltd wanted them to hear. Richard Talbot, Jane Singleton and the other anti-Whitlam directors expressed their incredulity at both the process and the proposal. Talbot asked News Ltd:

Have I got this right? We give you our brand name and pay you \$4 million for the privilege, so that members will have to buy your paper to get their *Open Road*?

The attacks on Richard Talbot, Jane Singleton and other anti-Whitlam directors by the *Daily Telegraph* and the *Sunday Telegraph* have been relentless. News Ltd knew that the surest way of securing the *Open Road* contract was to see them removed from the board at the SGM on 17 October. To this end, it has published scurrilous attacks upon them while promoting the group of directors who will vote to deliver the *Open Road* into the hands of News Ltd. So much for the editorial standards and independence foreshadowed to the board!

News Ltd has been completely compromised by this whole scandal. There can be no clearer example of a conflict of interest: it is cash for comment in print. I call upon the Press Council of Australia and the Australian Securities and Investments Commission [ASIC] to investigate immediately this serious misconduct

and outrageous misuse of NRMA members' assets. It is time for ASIC to ensure that the results of the SGM are declared so that the NRMA directors responsible for this outrage can be removed from the board once and for all.

Mr DAVID HIGGINS GUARDIANSHIP ORDER

Mr McGRANE (Dubbo) [6.05 p.m.]: Last week was Carers Week, and I join all other honourable members in acknowledging the important role of carers in our community. My electorate, like many others, has a great number of carers who attend to their charges with dedication and total commitment. Many people with disabilities are often cared for by family members, and there is an extra bond that comes from caring for a loved one who has a serious disability or who is chronically ill. In general, I receive few complaints from carers so when I do I feel that it is my responsibility to intervene and to assist where possible in order to improve services or to speed up some bureaucratic process.

A case of glaring concern recently came to my attention. David Higgins is 32 years of age and is severely disabled. At eight years of age David was injured on a joy ride in a public place and suffered a brain injury. At 21 he received a \$1.5 million compensation payout. This money has enabled David to employ carers who have helped him with his personal development, particularly with his speech and improving his behavioural problems. I make particular mention of Brenda Harper, who has cared for David for the past eight years. As part of her caring regime Brenda has instigated a social and educational program that has all but eliminated David's bad behaviour and improved his ability to be a little more self-sufficient. David can now heat a preprepared meal and serve himself, he goes tenpin bowling and is taking reading lessons. David now enjoys activities that it was said he could never manage. David understands everything that is said to him but his own speech is difficult for others to understand. He speaks very slowly but the listener who takes the time can understand and make sense of his words. After eight years, Brenda understands David's speech easily and translates what David says. When she translates David nods his head to confirm that she has conveyed his words correctly.

As David has become more competent he has sought information about his financial status from the Office of the Protective Commissioner and Public Guardian. In the past few years several requests have been made for his financial statements. These statements were made available to David recently and they show that most of his money is gone. The list of expenditure makes for interesting reading. Rather than speculating about that expenditure, I have referred the matter to the Attorney General, as the Office of the Protective Commissioner is in his portfolio.

The realisation by the Office of the Protective Commissioner that David's remaining funds would be insufficient to meet his needs for more than a few more years has led to attempts to reduce his expenditure. The Office of the Protective Commissioner contacted the Department of Community Services [DOCS], which took action to move David from Dubbo to a group home in Orange where residents share the expenses of carers and accommodation. At the start of this process David was unaware of his dire financial situation. He rejected the move to Orange on the basis that it offered him fewer social opportunities and a lower level of care. DOCS disagrees with David but I have heard both sides of the story and I am inclined to agree with him. Taking David away from his familiar surroundings, social and educational activities and his friends would severely disrupt his life and mental stability.

My immediate concern is that on 21 October, last Monday, the Office of the Protective Commissioner attempted to dismiss Brenda Harper from her position without notice. Brenda's employer, Chubb Health, refused to dismiss Brenda without notice and advised the Office of the Protective Commissioner that it is customary to give two weeks notice in such circumstances. This action was not notified to the Department of Community Services. DOCS was informed only when my office notified it of the intention of the Protective Services Commissioner. I am very concerned about what arrangements will be made for David's care if, in a few days, Brenda ceases to be his carer.

To sum up, David Higgins' carer, Brenda Harper, should be reinstated until an investigation into the financial management of David's funds is completed and the results are made available to him and to relevant concerned parties. Further, the wish of this young man as to his own future care, needs and accommodation requirements should be heard and considered properly without assumptions being made by somebody in the bureaucratic system.

Mr MARKHAM (Wollongong—Parliamentary Secretary) [6.10 p.m.]: The honourable member for Dubbo has commented on a very sad case, which has touched us all. David has gone through a traumatic

experience and he should be helped. The Attorney General should look closely at whether his money has been frittered away by a guardian. The Attorney General will sympathetically consider what the honourable member has said when I bring this matter to his attention tomorrow. People such as Brenda who attend to young people who need one-on-one assistance are important to our society. If they are taken away from society people such as David would be left to flounder and would end up in a nursing home with no attention whatsoever.

The Attorney General should also consider that it is important for David to communicate with his carer. This case contains some anomalies. Why is the award of compensation for his accident not sufficient to maintain him for the rest of his life? Something is amiss, and the Attorney General should investigate this matter fully to find out what has happened. People in Dubbo who know about this matter must be very concerned and should raise their voices to make sure that Brenda is reinstated to carry out the loving work that she has been doing for so many years. David should have every chance to lead as normal a life as possible. I will refer this matter to the Attorney General.

Private members' statements noted.

BUSINESS OF THE HOUSE

Routine of Business: Suspension of Standing and Sessional Orders

Mr WHELAN (Strathfield—Parliamentary Secretary) [6.13 p.m.]: As honourable members know, the Civil Liability Amendment (Personal Responsibility) Bill is currently before the House. As I indicated earlier, debate on the bill will begin at 7.30 p.m. and, regrettably for Hansard and honourable members, I would like the debate to conclude tonight. At least 15 or 16 members wish to speak to the bill. I urge honourable members to be restrained in the duration of their speeches. I intend to move a motion to suspend standing and sessional orders to enable the House to run a little more smoothly. The House will automatically adjourn at the conclusion of the debate.

I have discussed this matter with the Opposition spokesperson to allow members to organise their speeches. I understand that the Opposition does not intend to call for a division on the bill. If that is the case, it is not likely that there will be a division. The bill will go through; I will not gag debate. Every honourable member will have the opportunity to contribute to the debate. It will be a matter for the Whips to organise the speakers so that the House can run efficiently. I move:

That standing and sessional orders be suspended to provide for the following routine of business for the remainder of this sitting:

- (1) The only business to be dealt with shall be consideration of the Civil Liability Amendment (Personal Responsibility) Bill;
- (2) No divisions or quorums to be called;
- (3) The House to sit beyond 10.30 p.m.; and
- (4) At the conclusion of the debate on the Civil Liability Amendment (Personal Responsibility) Bill or by midnight, the House to adjourn without motion until tomorrow at 10.00 a.m.

Mr TINK (Epping) [6.15 p.m.]: I would ask the Leader of the House to confirm that there will no other business before the House tonight, there will be no limitation on the number of speakers, and debate will not be cut off. If that is correct, I do not have any objection to the course proposed.

Mr WHELAN (Strathfield—Parliamentary Secretary) [6.16 p.m.], in reply: I confirm all of those points.

Motion agreed to.

[Mr Acting-Speaker (Mr Mills) left the chair at 6.16 p.m. The House resumed at 7.30 p.m.]

CIVIL LIABILITY AMENDMENT (PERSONAL RESPONSIBILITY) BILL

Second Reading

Debate resumed from an earlier hour.

Mr SOURIS (Upper Hunter—Leader of the National Party) [7.30 p.m.]: Like the drought enveloping rural and regional New South Wales, the public liability crisis has wreaked havoc on the activities of businesses, community groups and individuals. There is not one community in country and coastal New South Wales

untouched by the exorbitant hikes in premiums, or the inability to even insure a risk. Events that have endured for generations without a public liability claim are now being cancelled by the dozen. Those cancellations mean our local communities are significantly poorer in terms of the loss of social opportunities and economic activity. The precise factors responsible for this crisis have been the subject of much public debate and are disputed depending on which stakeholder group one talks to.

One issue cited as a major cost driver for increased premiums is a big rise in the number and size of claims: from 55,000 claims in 1998 to 88,000 claims in 2000, an increase of 33,000 claims. Other factors are also blamed, such as the increasing costs of re-insurance associated with global disasters such as September 11; the collapse of HIH; an increase in litigation and associated legal costs; and exacerbating factors such as "no win, no pay" advertising campaigns by some members of the legal profession. Whatever the case, it is impacting severely on everyone from our Diggers on Anzac Day to the organisers of local fetes. There is general agreement from all sides of politics that premium increases have hurt our communities, particularly sporting groups and not-for-profit community organisations.

The following is just a small sample of events, organisations and individuals who have been affected in one way or another by the public liability crisis: Australia Day celebrations in Victoria Park, Dubbo, due to a five-fold increase in public liability costs; the Mudgee Christmas Festival; drought-stricken farmers driving stock along public roads; the Bacchus Fun Run at Griffith; the Forbes Wheelbarrow Race and Forbes Wool Show Festival; Wellington's Vintage Fair; a horse riding centre at Tumbarumba; Ballina's Scottish Games; Dubbo's hydrotherapy pool; Nimbin School of Arts; many small country hotels; the Scone Horse Festival, which is held in my electorate; the Kyogle Shire Council, which resigned as manager of a range of showground, caravan park, public reserve, community centre and community hall trusts because of concerns over public liability; the Terranora Pitch-and-Putt Golf Course; the Miss Tweed Ball; and the Kingscliff Residents and Progress Association, which is also facing increased premiums despite its members "simply sitting, talking and writing letters".

These events or organisations are run by hardworking, dedicated volunteers striving to make their local community a better place. As was noted in a recent paper by the Parliamentary Library on this issue, local councils are particularly open to a significant number of negligence actions and public liability claims. This is because of the wide range of services and facilities provided by councils to the general public on a daily basis. Facilities provided to the public by councils generally include a high proportion of recreational and sporting facilities, including playgrounds, swimming centres, sporting grounds, child care facilities, community centres and libraries. The paper rightly noted that these sporting facilities can have a greater degree of exposure because sporting activities contain more risks than other types of activities. Additionally, local government is usually responsible for maintaining infrastructure that is continually used by the public, such as footpaths and roads.

The responsibility for maintaining such infrastructure further increases councils' potential exposure. The paper notes that the cost of claims against councils arises predominantly from bodily injury to members of the public involved in accidents on footpaths, roads, beaches, rivers, cliffs, in parks, playgrounds, community halls, swimming pools and other sporting and leisure facilities. The public is clearly looking for a decisive response from Government and its elected representatives. To this end, the New South Wales National-Liberal Coalition has been ready and willing to work with the Government in the interests of genuine reform to fix this problem as quickly as possible. The first stage of public liability reform passed through this Parliament several months ago.

The Civil Liability Act 2002 made changes in relation to personal injury actions caused by negligence such as capping general damages, capping damages for loss of earnings, introducing a threshold to eliminate small claims, abolishing exemplary damages and making lawyers liable for defendants' costs in speculative claims. The New South Wales Labor Government has been well aware of this issue since the collapse of HIH Insurance, which left 79,000 insurance policies for townhouses, supermarkets, beaches and other public places without coverage.

For seven months the New South Wales Liberal-National Coalition has consistently demanded Labor bring the second stage of reform into the Parliament as quickly as possible. I am pleased that today we finally have an opportunity to debate stage two of these reforms: the Civil Liability Amendment (Personal Responsibility) Bill, which seeks to narrow the legal definition of negligence and to create statutory legal defences in a number of situations, including recreational activities, inherently risky activities, conduct by professionals, conduct by public authorities, self-defence and recovery claims by criminals, claims involving intoxicated plaintiffs, and conduct by good Samaritans and volunteers.

As I have said previously in this Parliament, we urgently need reform to combat litigation that goes against the traditional Australian ethos of taking responsibility for one's own actions and basic commonsense. Of this there are many examples, including the case of a youth injured while vandalising State Rail trains suing the Government and a man injured after diving into the surf at Bondi Beach suing the council. As I have said on other occasions, the genuinely seriously injured should be looked after and adequately and fairly compensated. Unfortunately, despite the Carr Government's political spin that premiums will magically fall, there is no concrete evidence that that will happen or has happened. In a highly qualified report, PricewaterhouseCoopers actuaries pointed to possible reductions in insurance premiums of about 12 per cent on average as a result of the civil liability bill reforms.

Increases of 700 per cent in premium costs have not been uncommon during this crisis, so a potential reduction of 12 per cent will not make coverage significantly more affordable for businesses and groups. That same report stated it would be optimistic to assume that an estimated 14 per cent reduction in claims costs due to the proposed changes will be permanent. It is worth noting that the Federal Government has taken a key role in this debate by convening a national ministerial meeting in March to investigate causes and possible solutions to the present situation. The Senate has also conducted an inquiry into the impact of public liability and professional indemnity insurance cost increases. However, it must be remembered that the New South Wales Government has a clear responsibility for public liability insurance.

In support of State action, the Federal Government has introduced tax legislation reforms to encourage the use of structured settlements in personal injury claims and has commissioned the Australian Competition and Consumer Commission [ACCC] to monitor insurance market developments and premium prices. I have attended several rallies outside in Macquarie Street relating to the insurance crisis, one of which was organised by the New South Wales horse riding industry. The horse industry is a very large employer and has an economic impact that is estimated to be \$6.2 billion across the Australian economy. Because of the nature of horse sports, sporting bodies associated with the horse industry are among the most severely affected of the large sporting bodies. Many businesses have already closed and more are set to close in the near future. In many situations premiums have increased by more than 500 per cent but, more significantly, for a large number of businesses and associations, insurance is not available at any price.

As the Australian Horse Industry Council points out, if affected groups cannot obtain insurance, there will be widespread economic and cultural loss across many parts of our community. A State Chamber of Commerce and NRMA Insurance survey in August this year in southern New South Wales was provided with the following responses to the question whether the rising cost of public liability insurance directly had caused the closure of businesses or events in particular communities in the last three months: "Business closures—7%; Events, festivals, etc closures—25%; Business & event closures—39%". This issue, along with the crisis in medical indemnity insurance and home owners warranty insurance, is having a major impact each day on the lives of people living in rural and regional New South Wales. I sincerely hope that we can quickly implement sensible and effective measures to bring the availability and cost of public liability insurance into a much more affordable and accessible realm.

Mr BARTLETT (Port Stephens) [7.41 p.m.]: I am delighted to support the Civil Liability Amendment (Personal Responsibility) Bill, which seeks to amend the Civil Liability Act and other Acts to effect civil liability reforms and for other purposes. At the outset I wish to advise honourable member of what has happened with regard to public liability insurance in the Port Stephens electorate over the past 15 months. In July 2001 I was contacted by a number of operators of recreational activities in the electorate, including the operators of the Tomteland Australia Fun Park, a Shoal Bay parasailing club and the Tomaree Toboggan Run. The operator of the Shoal Bay parasailing club, who had been in business for 15 years, informed me that his public liability insurance had increased in that period from \$2,500 to \$16,800 and, as result, he was forced to close his business in July 2001—two months before the events in the United States of America on September 11.

The operators of the Tomaree Toboggan Run could not secure public liability insurance. The operators of Tomteland advised me that their public liability insurance had increased from \$11,000 per annum to \$8,000 per month. As a result, the local tourism industry, which employs many local people, has been threatened. Armed with that information, in October 2001 I asked the Attorney General to visit Port Stephens to speak with tourism operators in the region. This he did, and to his credit upon his return to his ministerial offices he set up a task force comprising officers of his department and the Premier's Department to address the problem.

In February I conducted a summit on the crisis in public liability in the Hunter. The 80-odd people who attended the summit expressed feelings of overwhelming hopelessness, uncertainty, despair and even depression

because they could see no solution to a problem that was closing businesses into which they had injected so much time and money. The summit comprised three major groups—councils, recreational users and volunteers—all of whom were experiencing huge problems. The Hunter Koala Preservation Society Inc., a volunteer group that cares for sick, injured and orphaned koalas and other fauna, has advised that its public liability insurance premiums increased from \$574.05 in 2001 to \$1,818.30 in 2002—a threefold increase.

The summit put forward eight major recommendations in an effort to solve public liability problems. The aim of summit was to seek solutions to the crisis through the brainstorming activities of the various bodies affected. Over the past 15 months we have come a long way with reforms that have been implemented, and the reforms in this bill will provide further relief. The gloom, hopelessness and despair felt by many over the past 15 months have lifted because of their confidence in these reforms. Earlier this year the Government introduced the first tranche of reforms, which related to tort law. At that time it was thought that the reforms would result in a 12 per cent reduction in the cost of premiums. Last week the managers and owners of Tomteland advised me that prior to the introduction of these reforms one claim a fortnight was being lodged against them, but since their introduction in the middle of this year no claims have been lodged against them. Clearly, the first round of reforms will make a difference to future premiums.

The second tranche of reforms, which are contained in this bill, represents the greatest change in the past 70 years in negligence law in New South Wales—which is at the forefront of negligence reform, due in part to input from my electorate. The reforms provided that people will now be responsible for their own actions. This bill will change the perception that all accidents are the fault of someone other than those involved in the accidents. From now on people who take risks, fail to train for a risky activity, abandon commonsense, take a chance, or ignore warnings and signs, must bear the consequences of their actions. That is the message being sent to the New South Wales community. Even though the results cannot be predicted with any certainty, I am sure that this measure will result in reduced premiums, thus enabling people to engage in activities that it was possible to engage in 10 years ago, before the civil liability crisis.

The bill encompasses many issues, and I do not have time to address them all. Division 5 deals with recreational activities, and they include any sports, whether or not the sport is an organised activity, and any pursuit or activity engaged in for enjoyment, relaxation or leisure. There will be no liability for harm suffered from obvious risks of dangerous recreational activities. The courts will not allow a duty of care for recreational activity where a risk warning is given. The operators of the Tomaree Toboggan Run had erected numerous signs to warn warning people coming down the hill to reduce speed or that they were approaching a curve, and so on. In the past, if a person ignored the signs and broke a leg, the owner of the toboggan run was liable for damages. People can no longer seek damages if such warnings signs are erected or if the risks of one's actions are apparent. On the other side, new section 5M (7) provides:

A defendant is not entitled to rely on a risk warning if it is established (on the balance of probabilities) that the harm concerned resulted from a contravention of a provision of a written law of the State or Commonwealth that establishes specific practices or procedures for the protection of personal safety.

So those who contravene State or Commonwealth laws requiring equipment to be maintained at a certain standard, or requiring certain safety procedures, will be liable. Therefore I say to operators of commercial recreational activities: This bill does not give you cart blanche protection from civil liability; you still have responsibility to abide by State and Commonwealth regulations and laws applying to you. New section 5N relates to the waiver of a contractual duty of care for recreational activities. A waiver will acknowledge that the person is taking part in a recreational activity that has risks and dangers associated with it, giving protection to the operator of the recreational activity.

I turn now to a matter of particular interest to me as a person who served for 16 years on the Port Stephens Council. I refer to new part 5, which relates to the liability of public and other authorities. Councils and other public authorities carry out a seemingly limitless number of tasks on behalf of their communities. They have more work orders than they can possibly fund. It must be recognised that services provided by public authorities are being rendered for the common good. They are not services rendered for commercial gain. Recreational facilities such as swimming pools, surf clubs and ovals are being provided for community use. Those facilities must meet a standard of care commensurate with the financial resources available to the council or other public body.

From my experience as a member of the Public Bodies Review Committee, which produced a report on nonfeasance of councils, it struck me that councils were on a treadmill from which they could not escape. It seemed absolutely absurd that councils should be required to pay increasingly large amounts of money for liability insurance. As an example, over the past four years the cost of Port Stephens Council public liability insurance increased from \$70,000 to \$200,000, to \$400,000 and then to \$1.2 million.

A large proportion of money that previously had been spent on providing services, such as repairing potholes or fixing pavers, was being diverted to payment of premiums to insure against liability should people fall on them. Therefore, the council had less money to fix the problems. That struck me as absurd. The capital works program of the Parkes City Council, for example, was only \$500,000, yet the Port Stephens Council was paying \$1.2 million to cover itself with liability insurance. New section 45 deals with special nonfeasance protection for roads authorities. It provides in subsection (1):

A roads authority is not liable in proceedings to which this Part applies for harm arising from a failure of the authority to carry out road work, or to consider carrying out road work, unless at the time of the alleged failure the authority had actual knowledge of the particular risk the materialisation of which resulted in the harm.

Thus, if council does not know about something and it has not been reported to the council, the council will not be held liable for failure to carry out works in respect of it. Further, if that something is reported to the council, and the council does not have the funds necessary to carry out repairs or otherwise fix the problem, the council also will not be liable. That, in effect, will obviate the premium hit that councils have been wearing. Consequently, the council will be able to afford more public works and capital works, providing safer works and facilities for the community. I now refer to volunteers. I suppose I should add that on Friday I will make a speech welcoming people from all over Australia who will attend the national Tidy Towns awards, which were won by the Port Stephens Council last year. Part 9 applies to our wonderful volunteers. New Section 59 (1) states:

This Part applies to civil liability of any kind, other than liability for defamation.

So do not say what you think about somebody. New section 60 contains a number of definitions applicable to the part, including:

community organisation means any of the following that organises the doing of community work by volunteers and that is capable of being sued for damages in civil proceedings:

- (a) a body corporate,
- (b) a church or other religious organisation,
- (c) an authority of the State.

community work means work that is not for private financial gain and that is done for a charitable, benevolent, philanthropic, sporting, educational or cultural purpose, and includes work declared by the regulations to be community work...

Basically, under this bill, volunteers will not incur personal civil liability. I have much more to say about the bill, but time does not allow.

Mrs SKINNER (North Shore) [7.56 p.m.]: My contribution will be brief. However, I want to put on record my comments on this bill, which is of great importance not only to the people of my electorate but in respect of my shadow portfolio responsibilities. First, I want to put on record that it was the Coalition that started the push for this civil liability reform. That was, first, in respect of medical indemnity and associated liabilities. This debate has been going on for years. Some honourable members of this House would know that it was upper House members the Hon. Dr Brian Pezzutti, former Attorney General the Hon. John Hannaford and former Attorney General the Hon. Jeff Shaw and others who got together to try to develop a bipartisan approach to the whole issue of medical indemnity, developments in medical indemnity and what was predicted to become a major issue in terms of the impact that this question would have on doctors and their ability to maintain delivery of treatment for their patients. That push started back in 1995. The discussions went on for years, but they came to nought.

It was in February last year that, in frustration, the Coalition developed a discussion paper—which was released for public comment—on tort law reform as it applies to medical negligence. This paper was developed primarily by the shadow Attorney General, Mr Chris Hartcher, but I made a contribution to it, as did other Coalition members. That paper was much sought after wherever one went in New South Wales. In the middle of last year the Government introduced the Health Care Liability Bill—I believe only because of the impetus that the Coalition gave to the issue. The Coalition supported that bill. It was the single most important issue as it would enable patients to continue to access treatment by their doctors, particularly for services considered high risk, such as obstetrics, neurosurgery, orthopaedic surgery and so on. At the time the Coalition released its discussion paper it raised the possibility that the Government would have to move to cover premiums relating to the treatment of public patients from the Treasury Managed Fund.

At the time the Minister for Health ridiculed the Coalition. He said that the policy was absolutely unaffordable and it was a stupid idea. However, in December last year the Minister adopted it. But it is only

because the Coalition pushed the matter that we made any progress. The Coalition supports the bill, which deals with many issues that need reform, but it has been far too long coming; it should have been dealt with a long time ago. I congratulate Senator Helen Coonan on her work on insurance reform. I have spoken to her on many occasions. All honourable members could tell stories of difficulties in their electorates caused by civil liability and its impact on community gatherings, street parties, charitable organisations and the good, innocent pursuits of families and their children as they try to participate in healthy activities that create healthy communities.

Small business people, particularly subcontractors in the building industry—carpenters, plumbers and electricians—have been affected by the difficulty builders have encountered in obtaining insurance cover. The bill is much needed, but I am sad that it is so overdue. We need to do much more, just as we need to do much more in the health care liability tort law reform. The Coalition will not oppose the bill because we understand its necessity. But we need to do much more to ensure the future activities of volunteers and small businesses.

Mr HICKEY (Cessnock) [8.02 p.m.]: I support the bill. It is pleasing to see both sides of the House embrace the legislation, which will benefit all communities, and to hear the Opposition recognise the hard work of the Minister for Health and accept his reforms for the betterment of all communities. The main purpose of the bill is to acknowledge the importance of greater personal responsibility and diffuse the public liability insurance crisis through stage two of tort law reform. The honourable member for Port Stephens told us about his hard work to ensure that the concerns of businesspeople in his electorate were brought to the attention of the Minister, who worked tirelessly to ensure that the reforms dealt with the concerns within the community.

Stage one reforms were passed on 7 June in the civil liability legislation. Stage two reforms deal with more complex issues that change the relevant test for negligence, for example, risk warnings, defences for public authorities and criminals. The bill was released for public consultation on 3 September. The Attorney General also released a discussion paper to accompany the bill. The draft bill incorporated some aspects of the expert panel's first report on the review of the law of negligence, which was released on 2 September. The expert panel's second report was released in late September. The final version of the bill incorporates some of the reforms proposed by the panel. It also incorporates some changes suggested in submissions.

The bill will limit the scope of a reasonable foreseeability and codify rules for causation, limit when plaintiffs can recover for injuries caused by obvious or inherent risks or their own contributory negligence, limit liability for recreational activities when there is a risk warning or waiver, introduce proportionate liability for certain claims other than personal injury, provide a new profession-focused defence for professional negligence, and limit liability in tort of public authorities including road authorities. Honourable members will recall that the honourable member for Port Stephens referred to matters relating to councils.

The bill will also prevent plaintiffs from succeeding when the injury is due to their intoxication, prevent plaintiffs from succeeding when their injury is sustained in the course of a serious crime, protect people who act in self-defence in response to a criminal act, protect good Samaritans from liability for their good faith acts, protect individual volunteers and volunteer rescue organisations from liability for their good faith acts, limit the availability of damages for nervous shock, prevent apologies from being used as evidence of liability or fault, facilitate structured settlements in personal injury cases, and introduce a new rule to calculate the limitation period for personal injury claims.

The bill provides that a possibility has to be not insignificant before it can be considered reasonably foreseeable. A court cannot rely solely on hindsight, evidence of subsequent remedial action, or the mere fact that a risk was easily avoidable in determining liability. To limit claims from an inherent or obvious risk or plaintiff's own contributory negligence there must be a presumption that a person is aware of obvious risks. There is no duty to warn of an obvious risk, provided any applicable New South Wales or Commonwealth safety laws are complied with. There is no liability for the obvious risks of dangerous sports and other activities, and no liability for inherent risks. The bill will allow the court to find that a person's conduct should mean that the person is 100 per cent responsible for injuries sustained.

The bill provides no liability for injury, death or property damage resulting from a risk of a recreational activity in respect of which a risk warning has been given. The participant in a recreational activity will be able to waive the requirement that services be provided with due care and skill. The new protection will be subject to compliance with any applicable New South Wales or Commonwealth safety laws. The bill will protect volunteers from liability for their acts and provides no liability for good faith actions of volunteers doing work for community organisations. It is un-Australian to take volunteers to court and sue them for damages when they are only trying to help people. The bill will also prevent apologies from certain persons being used as evidence of liability or fault.

An apology by or on behalf of the defendant will not constitute an admission of liability and will not be relevant to the determination of fault or liability in connection with civil liability. I am proud to be part of a Government that leads its community, one that listens and acts for the betterment of the communities we represent, and one that shows a level of commonsense that must be shown at these times. The introduction of the bill is a triumph for commonsense and it has the support of the general community. The Government has shown great leadership by dealing with an issue that has plagued this State for some time.

As the Premier stated in his second reading speech, personal responsibility will assume a much higher profile in our law, thanks to these reforms. The Carr Labor Government held a seminar for the benefit of honourable members, and we now have a better understanding of how the law of negligence has been developed. The Government provided for a period of consultation to facilitate it being able to listen and to act. The Labor Government has taken the lead in responding to the Ipp report and understands that this State, which is the most litigious in Australia, is in need of prompt action.

As the Premier stated, national consistency is needed in some of the reforms. That is why the Government has modelled many of the reforms on the recommendations of the Ipp report, as they are more likely to have national impact on the law of negligence. The insurance catastrophe served to highlight how far the courts have drifted away from the idea of personal responsibility. The Americanisation of our legal system has gone too far and has cost our communities dearly. It is time to wind back our culture to the Australian way of ensuring that the community's access to socially important activities is conserved. All honourable members know of festivities that people attend in their electorates. The Cessnock electorate is no exception. The community enjoys many festivities and activities. The main festivity is known as Budfest and is the celebration of the commencement of the vineyard season and the bursting of buds on the grapevines. This festivity was placed in jeopardy owing to public liability issues. It is great that the Government is addressing the issues.

The bill does not establish a complete code; rather, it modifies particular aspects of common law. The Government has adopted the approach in the Ipp report to duty of care and causation. The problem is that the current common law makes liability for insignificant risk too easily imposed. The changes in this bill emphasise the community's reasonable expectation that people should have to guard only against risks that are a real possibility. By placing these considerations in the bill, the willingness of some courts to find an inventive way around restrictions will be limited. The bill will also deal with causation. Its purpose is to guide the courts as they apply a commonsense approach. The bill will limit claims that arise from an inherent or obvious risk, or from a plaintiff's own contributory negligence. Inherent risks are those that no amount of reasonable care and skill could avoid or minimise.

If plaintiffs have acted with such little regard for their own safety that they should not recover costs, the court will be able to find them 100 per cent responsible for contributory negligence. It is important to note that warnings of risks must be given in a manner that ensures people understand them. Courts will be required to apply an objective test to establish the effectiveness of warnings. The bill will clamp down on persons who are intoxicated making claims for compensation, and such a person will have to show that damages would have occurred even if the person was not intoxicated. A person's damages will be affected by a presumption of contributory negligence unless that person's intoxication played no part in the accident.

Quite clearly, honourable members could speak at length on the bill because it goes a long way toward addressing the problems confronting people in all electorates in this State. It is sad that legislation limiting public liability has become necessary. Commonsense should have prevailed in the courts to prevent the cost blowout in public liability insurance. One only has to consider the increases in rates of public liability insurance premiums to appreciate the scope of the problems sought to be addressed by this bill. I commend the bill to the House.

Mr WEBB (Monaro) [8.13 p.m.]: At the outset of my contribution to the debate on the Civil Liability Amendments (Personal Responsibility) Bill I make the observation that the title of the bill will probably be the most successful part of this legislation. Part of the problem is that throughout the twenty-first century, governments have gone to great lengths in legislating to cover every eventuality that may affect people in our society. Rules, regulations and legislation have been created for almost every foreseeable event, even though the role of common law is to protect the individual. The need for legislation has emerged after many years of decline and decay in the legal system. Honourable members who preceded me in this debate have stated that New South Wales leads the world in litigation. The Government introduced the first stage of public liability reforms earlier this year and delivered for insurers, but Opposition members have been calling, for more than six months, for the introduction of stage two to address personal liability.

In October last year I gave notice in this House of the concern of community groups in my electorate over the looming insurance crisis. A month ago I gave notice of a motion calling on the Premier to introduce this bill in September, as he had promised. I ask the House to note that, as November approaches, the legislation has finally been presented. In spite of this legislation's shortcomings, the Opposition will not oppose the bill because public liability reform is urgently needed. To some extent this legislation provides proof for community groups throughout New South Wales that protection has been provided and that there is light at the end of the tunnel. The bill provides detailed definitions of negligence and sets out statutory defences in a number of circumstances. The bill also makes it plain that it will apply to inherently risky recreational activities and to those conducted by professionals and public authorities, including the discharge of responsibilities by local governments in maintaining facilities such as footpaths and roads. I know from my previous experience in local government that local authorities are gravely concerned about costs associated with liability for the maintenance of public facilities.

The bill also addresses an obvious need for reform by barring persons from suing for injuries sustained during the course of committing a criminal offence, irrespective of whether the injury is caused by a person who is seeking to prevent the offence from occurring or by commonplace occurrences. Similarly, intoxicated persons who act in a foolhardy manner while their blood alcohol content is over the prescribed legal limit will forfeit their rights to claim damages. The bill also provides much-needed protection for good Samaritans and volunteers, which are also major reforms that communities have been crying out for over a considerable period. Contributory negligence factors will be taken into account by virtue of this legislation. They should have been taken into account all along. If they had been, we would not be in the mess that has caused so much concern for communities through this State. The problems addressed by this bill have been plain for everybody to see.

Members of Parliament are well aware of the problems associated with public liability that have confronted small businesses, large businesses, community groups, sporting groups, providers of recreational activities and individuals. I recall instances of people who, despite signs showing "No Toboggans", used the for-sale signs as toboggans and consequently injured themselves. A huge court case ensued and a plaintiff received compensation, at great cost to the taxpayers. On a more recent occasion, a person who dived into the ocean at Bondi Beach and was injured received compensation for injuries. Both incidents show how ridiculous public liability claims have become. I have engaged in similar activities all my life and have carried all the concomitant risks because I realise that I have a duty of care to myself and to members of my family and members of the public. People must look to themselves and protect themselves from unfortunate events that may occur, and should accept responsibility for loss caused by activities such as white-water rafting, skiing, mountain climbing, mountain biking or horse riding.

The Leader of the National Party has referred to rallies of horse riders he has attended. Over the next weekend, I will also be attending a horse ride organised by Access For All in my electorate to raise funds for the Braidwood hospital. Social and community project activities have been placed in jeopardy because of problems associated with public liability insurance. I have had a great deal to do with mountain horse riding businesses in the Snowy Mountains in my electorate that have almost gone out of business because they were unable to obtain public liability insurance coverage. The cost of public liability insurance premiums for shows and sporting events in my electorate has gone through the roof and has almost totally prevented events from occurring.

One small organisation with an income of \$1,600 a year was charged \$1,600 for an insurance premium despite engaging in virtually no activities involving public liability risks, which is plainly absurd. Insurance premium costs for a senior citizens organisation in my electorate were originally \$500. The costs have now increased to \$1,500 and potentially to \$6,000 per annum, which is similarly absurd. Volunteer organisations must be provided with the protection they need. For example, lifesaving groups should be able to obtain the same type of cover that is provided for bushfire and emergency service groups. Community groups, service clubs, organisations such as the Country Women's Association and local government authorities must be protected, and the bill goes some way toward achieving that aim.

We have to resolve the problems caused by recent events that have encouraged people in New South Wales to sue one another, or to sue an organisation or a small business, or to lie down in a fish and chip shop and pretend to have slipped on a greasy floor. I could recite many examples and precedents that have upset the law, that have involved lawyers arguing in courts and making outrageous claims. Large payouts have bankrupted small businesses. It is hoped that this bill will address all those factors and give individuals, volunteers, community groups, good Samaritans and others the protection they deserve. It is hoped that this bill will, once and for all, educate criminals, intoxicated people and those carrying out risky activities that they must take that risk upon themselves.

I support the Coalition's stance in encouraging and pushing the Government to bring this bill to the House for discussion. I am disappointed that the bill is very much overdue and that businesses have failed or disappeared in the meantime. We must have this bill, because it protects all our emergency services personnel and other groups that contribute to society. I do not oppose the bill, but we need to make sure that our remaining concerns are dealt with. Our society, including its culture and activities such as horse riding, should be protected in the future.

Mr BROWN (Kiama) [8.21 p.m.]: I support the bill, which has been on the drawing board for quite sometime. It is a credit to the Carr Labor Government for leading the nation in tackling this important and complex issue. Ever since the common law developed the law of negligence in *Donoghue v Stevenson*, more than 70 years ago, the law has expanded as judge-made law continued to find more reasons to pay out and compensate certain victims of certain torts, particularly in the area of negligence. The Premier announced stage one of the reforms earlier this year and it was passed on 7 June in the Civil Liability Act. Tonight we are dealing with stage two of the reforms. That involves much more complex issues relating to changing the relevant tests for negligence, looking at risk warnings and offences for public authorities, and ensuring that criminals are not able to go about suing the owners of homes in which they engage in criminal activity.

Earlier this year the president of the Kiama Jazz Festival came to my office, quite distraught. He could not get insurance cover for the Kiama Jazz Festival, a festival that has been held in my hometown for as long as I can remember. We pride ourselves on that annual festival; it attracts terrific artists to the area and visitors participate in it. It helps small businesses and increases the cultural awareness of many people in the community. The festival is also a showcase for the Kiama area. However, there was no way that the Kiama Jazz Festival could be held this year without insurance cover. Following the collapse of HIH Insurance in 2001 and while problems with home warranty insurance were being sorted out, the tragic events of September 11 created a massive drop in share values. Major international insurers, including QBE, decided that they would not take the risk of insuring small markets such as those in New South Wales, Australia.

That decision had a trickle-down effect to my local community, not only to the Kiama Jazz Festival but also the many other street parades arranged by well-meaning community groups. The Premier and the Treasurer tried to do everything possible to change certain aspects of the law of negligence that had been developed through the common law over many years. I was very happy to support that leadership. Many aspects of this bill deserve to be discussed tonight. One aspect dear to my heart is the protection of volunteers and their role in the community. One of the first organisations I joined whilst at high school was the local surf-life saving club. I obtained my bronze medallion and was a very proud local who ensured that the beaches in Kiama were safe for residents and tourists.

The small local businesses were always very generous in their support of the surf-life saving club; they knew that we needed their support. They also knew that if we did not patrol the beaches—and we were volunteers—people would be less inclined to come to the Kiama beaches. One of the first things I was told after I gained my bronze medallion was to be extremely careful, especially if a patient had a potential spinal injury. Patients could sue me, as the person trying to rescue them or save them from drowning, or sue my surf-life saving club. I was aghast to know that there was a law under which that could potentially happen. We always practised the carrying of patients with a spinal or neck injury, and were very careful when practising on the surf rescue boards out in the water at the Kiama surf beach, or at Jones Beach where I did most of my training.

We ensured that we did everything possible to not further harm patients at risk of drowning while, at the same time, opening up their wind passage to give them air. We needed to use cardiopulmonary resuscitation on their chest and we were very concerned about doing that correctly and safely. The bill at long last gives volunteers such as myself protection while doing the right and honourable thing while attempting to save the life of a person who may be at risk of drowning. As well as lifesavers, other volunteer organisations try to keep our communities safe. In effect, they allow citizens to play and partake in recreational activities. Australians know in the back of their mind that there is a strong community spirit to look after each other should the need arise. I support this bill because it protects good Samaritans from liability for their acts.

Under this bill there is no liability for good-faith actions of good Samaritans who go to the assistance of a person in danger. There is no liability for volunteer rescue organisations such as the Kiama Surf Life Saving Club or the other six surf-life saving clubs in my electorate, while engaged in a rescue. There is no liability for good-faith actions of volunteers who do work for communities. This bill is an enormous help in the setting of insurance premiums of those volunteer organisations. The bill gives confidence to those who give up much of their time and learn skills to assist our communities, and we are proud to have them.

Another aspect of this bill requires discussion. A number of years ago, as common law developed in this area, an English case established what is known in legal circles as the Bolam test. Common law provided that "a practice accepted at the time as proper by a reasonable body of medical opinion" would be acceptable to a court when assessing whether a duty of care was properly exercised. In 1992 the High Court in the famous case of *Rogers v Whitaker* determined that that would no longer be the test for the duty of care of a professional person. In the Bolam case the professional person was a doctor. The briefing paper that I have states:

What must be determined is whether a reasonable doctor, exercising reasonable care and skill, could not, on the available material, have reached the conclusion or given the treatment that the defendant doctor did. This is an objective test and whether the conduct of the medical professional meets the standard of care in particular circumstances is to be determined by the court.

That started to create a divergence in law. As time progressed and common law progressed that 1992 case placed a much bigger burden of care on professional people. We have only to talk to any specialist in the medical profession and other professions to realise that, over the last few years, insurance premiums have continued to skyrocket as cases have come before the courts. As courts have looked at the duty of care and the concept of causation, more damages have been paid out. I am pleased that the Premier, in introducing these significant reforms, went back to that well-thought-out 1957 English case of Bolam. The court will now have to assess the duty of care of a professional body.

Certain people in the community recently received payouts from the courts. I refer to the teacher who took a group of kids to the snow. He took with him a for-sale sign, used that sign as a sled to go down a slope in a non-recreational area, smashed into a rock and then sued the Government for a few million dollars. Many of my surf club friends and I were aghast when a person dived into a sandbank at a beach that was patrolled and on which flags had been erected. He then sued council for damages. Flags are always erected on beaches where there are sandbanks. If there are no sandbanks there are rips that pull people out to sea where they might drown. Some people attempt to sue clubs or councils for damages. It is a good thing for community groups and people in this State that this Government is introducing, through this legislation, some degree of fairness.

Another issue about which I am concerned is that a criminal who breaks into a home and who performs some sort of criminal activity is able to sue the owners of that establishment for negligence. This bill attacks that premise. The general rule in this bill is that no damages are payable if the injured person was engaged in conduct that constituted a serious offence. No damages will be payable for pain and suffering if a criminal is injured through reasonable self-defence. No damages will be paid if a criminal is injured through excessive self-defence, unless the court considers that the circumstances are exceptional. Those are good changes to the law of tort that has developed in the courts over many years.

When I was getting my driver's licence I was told that, if I ever had an accident and it was my fault, I should never apologise as it could be taken to be an admission of guilt and I could be sued. Australians are happy to apologise if they are at fault. They try to work things out. It is totally un-Australian not to apologise if one thinks that one has done something wrong. The Carr Labor Government has included provisions in this bill that will ensure that any apology made by or on behalf of a defendant will not constitute an admission of liability and it will not be relevant to the determination of fault or liability in connection with civil liability. The Government, through this bill, is restricting the rights of individuals that have developed through common law in protection of the community. That is what the community expects the Government to do. That is what the Carr Labor Government is doing. It is doing everything it can to change the law of tort in New South Wales. I encourage other States to change the law of tort.

I encourage the Federal Government, using its powers through the Australian Competition and Consumer Commission and the Australian Prudential Regulation Authority, to ensure that insurance companies do not just pocket the money and see this as a windfall for them. Honourable members should continue to put pressure on the Howard Liberal Government to use its regulatory powers to ensure that insurance companies such as HIH—which it ticked off as having a clean bill of health before it collapsed—do not make the citizens of this State pay exorbitant premiums. Community groups in this State must be able to continue to prosper in the great Australian tradition.

Mr R. W. TURNER (Orange) [8.36 p.m.]: The Opposition supports the Civil Liability Amendment (Personal Responsibility) Bill and looks forward to it providing relief to many sections of the community, whether it be councils, service clubs, individuals or groups. I refer to part 6 of the bill that deals with intoxication. It provides that an intoxicated person will not be able to recover damages for personal injury or property damage unless a court is satisfied that the action is likely to have occurred even if the person had not been intoxicated. Many people welcome Part 7 of the bill, which deals with self-defence and recovery by criminals. That part states that one can take what one deems to be reasonable defence if threatened by a

criminal. Criminals will no longer be able to sue a property owner if they happen to be injured on that property whilst carrying out a criminal activity. The courts will ultimately test those and other provisions. I am sure that solicitors in courts will test any unclear provisions in this bill.

Part 8 of the bill deals with good Samaritans, those who arrive at the scene of an accident or who see someone in danger and, in good faith, provide assistance. They can no longer be sued or held liable for contributing to a person's injuries while acting in good faith. Service clubs and community groups will be affected by this legislation. Those organisations have insurance but, from time to time, they have asked friends or relatives to assist them for a few hours when a club member has not turned up. They are now reluctant to seek such assistance. I am a member of the Orange Rotary Club, which has run a market for many years. The club has always had liability insurance to cover its members and those who visit the market. However, in the past few months we have had to insist that all stallholders take out insurance on the car spaces that they rent for the morning.

As a result, many stallholders no longer come to the market—those who came only once a twice a year do not want to pay annual insurance of approximately \$180—and it does not attract such large crowds. Local swimming pools and horse riding schools have been similarly affected. Last Saturday I visited the Carcoar show in my electorate. A lady innocently asked the secretary whether she could slip through the fence and take a photograph of the draughthorses that were taking part in a competition. The secretary told her quite genuinely—she did not really think the secretary was serious—that unless she had personal accident insurance she was not allowed inside the fence. She could take a photograph from outside, but she could not get any closer. That is how ridiculous the public liability insurance situation has become. In some cases councils have offered cover under their policies to organisations that have been unable to buy insurance. But that is a one-off arrangement that will not pertain next year. Let us hope that the market will expand and people will be able to secure affordable insurance more easily.

Councils face the nightmare scenario of lawsuits initiated by people who simply tripped on a crack in the footpath. Many councils try to limit the risk of litigation by spray-painting, and thus highlighting, cracks on footpaths. Increases in the cost of public liability insurance have been accompanied by workers compensation increases. We have a medical indemnity crisis and builders are facing a home warranty insurance crisis. The list goes on and on. We keep asking who is to blame for the current litigation epidemic in our society. Some blame the media for highlighting big damages payouts, some blame the collapse of HIH Insurance and others blame the legal fraternity. However, lawyers would not appear in court unless potential litigants asked for legal representation. I blame no one individual or organisation—I do not even blame the bill—it is simply a phase that we are going through. I am sure that these problems are not confined to Australia. Many of the bill's clauses will be ultimately tested in court, and I hope that it will prove to be as strong as it appears. I hope that it will lead to less litigation and a changed community attitude. I commend the bill to the House.

Mr CAMPBELL (Keira) [8.43 p.m.]: The Civil Liability Amendment (Personal Responsibility) Bill is landmark legislation because it changes some fundamental principles of tort law and common law. In that respect, it is a somewhat humbling privilege to participate in this debate. The bill was drafted for a range of reasons, not the least of which is—as its title states—personal responsibility. People in our communities have sought over time, and more obviously recently, to try to shift responsibility and to blame others for things they have or have not done. That is one reason why we are debating this landmark legislation. Of course there are other mitigating circumstances. I, for one, believe insurance companies must take considerable responsibility for what has occurred in the civil liability area. For too long companies have underpriced premiums, which has caused many to collapse, and the civil liability insurance market has not been robust or responsible. These factors have contributed to the crisis in civil liability insurance that led to the first stage of civil liability reforms introduced earlier in the year and ultimately to the second stage of reforms in this bill.

I am critical of insurance companies for not pricing their premiums appropriately. This year some companies simply stopped underwriting civil liability insurance, which has caused difficulties for the many community groups that honourable members have mentioned. One such group is the Thirroul Railway Institute Preservation Society [TRIPS]. Its members simply want to restore and maintain the Thirroul Railway Institute, which is an old building in which railway enginemen—they use that sexist term because that is what they were—guards and so on were trained. People have held engagement parties, twenty-first birthday parties and weddings in the hall. On 12 August GIO wrote to TRIPS and stated:

Reference is made to the above-mentioned policy due for renewal on 12/09/02.

We appreciate your support in the past but due to changed underwriting guidelines I regret to advise you that GIO will not be inviting renewal of your policy.

All cover ceases at 4.00 pm on 12/09/02. I would recommend that you seek alternative arrangements as soon as possible to ensure you are not uninsured after this policy expires.

I am sorry that we have been unable to assist you on this occasion, and I wish you every success in the future.

I think that says it all: insurance companies have walked away from small community groups. This organisation has never made a claim. Time and time again community groups have said, "We always paid our premiums and we never made a claim but the insurance company has deserted us." I also think it is extremely unfair of insurance companies to take premiums from numerous people or organisations to cover the same event held at the same location on the same day. Insurance companies still cannot make money—

Mr R. H. L. Smith: So they say.

Mr CAMPBELL: Yes, that is what they claim. I think it is a blatant rip-off for insurance companies to demand that several people be covered for the same event or function. That is much of the background to this debate on this landmark bill. The bill will prevent people who are intoxicated from being successful in litigation. I have discussed this issue with my constituents, most of whom find it pretty offensive that a person who has a skinful can dive into a swimming pool or jump in front of a bus and then blame someone else for any ensuing injury. It is appropriate for the bill to make changes in this area. People also think it is crazy that someone who is injured while unlawfully breaking into a home or business is able to take action against the home or business owner who failed to offer protection. Such cases receive a great deal of publicity, and I think it is entirely appropriate that the bill reform the law in that area.

The bill is extremely complex and makes many changes. The bill restricts the availability of damages for nervous shock, which is appropriate. Only those who are victims of or present at an accident, or a family member of a victim, can recover damages for nervous shock. However, damages for nervous shock will not be available if the person who was injured could not have claimed damages—for example, if he or she was a criminal at the time. Damages will be reduced if the victim contributed to the negligence.

The provisions of the bill are set out in detail. As I have said, this is landmark, complex legislation. There has been much community debate and discussion about this issue. The Government has consulted widely and released a discussion paper. It has encouraged debate amongst the legal profession and the broader community. It has not only encouraged debate, but it has listened to much of it and made changes to the draft bill. As a result, we now have the bill before the House. A hallmark of this Government, particularly the Attorney General, is community participation, discussion and debate.

As a result, a number of important pieces of legislation have been changed. The New South Wales Government, particularly the Premier, has provided national leadership in this regard. Other States are following the lead of this Government. The Premier has talked to country show societies and to the surf-life saving movement, among others, in an attempt to solve this crisis and to get the bill right. Provisions contained in this legislation will be tested in the courts, as is appropriate under our system of government. I trust that, having been the subject of robust debate in this place and elsewhere, the bill will stand the test of time and provide security for our community. I commend the bill to the House.

Mr R. H. L. SMITH (Bega) [8.52 p.m.]: The Opposition does not oppose the Civil Liability Amendment (Personal Responsibility) Bill. The first stage of this legislation was introduced last session—several months ago. There has been a great deal of angst within the community, particularly by people who run voluntary organisations, about the amount of money people have to spend on public liability insurance—if they can obtain it. Organisations—including agricultural shows, sporting events, pony clubs and the surf-lifesaving movement—have held events year after year. I refer to the blessing of the fleet at Ulladulla, an event that brought this issue into the limelight because the organisers had difficulty obtaining insurance at a reasonable price. A number of honourable members have said that the courts will determine whether this legislation needs to be amended in the future. This bill is a move in the right direction; it gives personal responsibility a higher profile than it has had for many years. It brings about fundamental changes to the law of negligence.

I do not think anybody—the insurance companies or lawyers—is to blame. New South Wales is simply the most litigious State in Australia. One wonders whether we are on a par with what happens in America, which is sad in a lot of respects. Insurance—including workers compensation—is great, provided the principles on which it is formed are not abused. An expert panel, under the chairmanship of Justice David Ipp, reviewed the law of negligence. The panel did a good job in relation to a difficult matter. It is important that the States and Territories pass similar legislation in this regard. I congratulate Senator Helen Coonan on obtaining a consistent

national approach in relation to civil liability. There will be some differences in the legislation introduced in each State and Territory, but it looks as though the format will be similar throughout Australia. That is certainly a step in the right direction.

The law has drifted away from personal responsibility. This legislation will bring it back into line. The bill will limit claims from inherent or obvious risks. There will be a duty of care. Warning signs will have an impact on reducing the risk to people concerned. I am a member of the Public Bodies Review Committee, which recently compiled a report on nonfeasance. The High Court ruled out nonfeasance for local councils, which was particularly disturbing for them. Australia is probably the only place in the world that still has nonfeasance. However, because of the High Court ruling, councils could get around not doing all of their roadworks and footpaths. This legislation gives councils some protection. The work and obligation of councils never stops. Councils have limited resources and need some kind of protection. If councils carry out the necessary inspections and the like they will not necessarily be able to be sued by people who injure themselves on something that was not known to the council.

I refer to professional liability. Honourable members are aware of the problems faced by obstetricians and other medical practitioners. They have had to pay out unbelievable premiums on policies for civil liability. Many professionals have either threatened to leave or have left their profession because civil liability has got out of hand. This bill limits the claims that can be awarded against them, provided they point out to their patient the risks involved in a particular operation. Even though this bill might not be perfect—I do not know whether there is a perfect solution—it will, to a large degree, help to keep to a minimum the premiums that must be paid by medical professionals.

I will not deal with all aspects of the bill, because I am aware many other honourable members want to speak on it. Another good provision of the bill is that good Samaritans, as other honourable members have said, will be protected under it. It is unbelievable that those who stop to try to help somebody could be sued for doing what all of us would do. We would probably not even think about being sued for a certain amount of money if we were just trying to help someone out. Obviously that is happening in America. The honourable member for Blacktown said earlier in the debate that a doctor friend was unsure whether to help somebody who was injured. That is quite un-Australian. This bill will afford those professionals certain protections where they carry out good Samaritan deeds. As I am mindful that other honourable members want to speak to the bill, I conclude by saying that generally the Coalition will be supporting the legislation. It is well and truly needed. Sporting clubs and so on in my electorate require us to get something going that will afford them reasonable opportunity to get public liability insurance coverage at a reasonable cost.

Mr ASHTON (East Hills) [9.02 p.m.]: I am pleased to speak to the Civil Liability (Personal Responsibility) Bill. All honourable members will be aware of the need to try to rein in the cost of public liability insurance. The cost of getting public liability insurance has become so prohibitive that it has been virtually impossible to obtain for groups, particularly those that conduct sporting, social and cultural events. The collapse of HIH Insurance had a devastating impact on the insurance industry in Australia. Of course, the events of September 11 last year in the United States of America and continuing acts of terrorism in our region will continue to affect civil liability in Australia and of course New South Wales. I feel sure this legislation will lead the way in Australia as an attempt to rein in the cost of civil liability insurance. This bill cannot by itself mandate cheaper civil liability insurance, although the Insurance Council of Australia has said that should happen. I do not know that there is yet any great proof of that. I hope there will be.

Mr Hazzard: I would wager that there will not be.

Mr ASHTON: You might be right. The point is that we know we cannot, by legislation alone, force down the cost of insurance, but this legislation will set a reasonable test for insurance companies, and they must pass that test. The Government and the Coalition, by passing this legislation in unison—with perhaps a few amendments to be moved later—at least are showing their good faith. It will then be up to the insurance companies to demonstrate their good faith. What the Government's bill does is provide a very detailed series of changes to the test of negligence; that is, to find a balance between a person's right to compensation due to clear negligence involved in an event and the provision of a defence that a plaintiff could have been aware that their own contributory negligence could have led to a claim being made in the first place.

This bill has been widely circulated—it was released for public consultation on 3 September 2002, with a discussion paper. The main objects of the bill include limiting the scope of reasonable foreseeability—a possibility of a risk has to be "not significant" before it can be considered reasonably foreseeable. A court will

not be able to rely solely on hindsight—that is, look back and say, "Perhaps you should have foreseen this event would happen because of A, B, C and D." We are all aware that hindsight is 20:20 vision. Anyone can foresee things after they have happened. One of the essential reforms of the bill presumes that persons are aware of obvious risks they take, and that there should be no duty to warn of an obvious risk—like that involved in white water rafting, skydiving, bungee jumping and a range of other dangerous sports that I could list, but will not do so to save the time of members.

Another vital provision in the legislation disallows liability for injury or death of which a clear risk warning has been given. A case in point is our coastline. For many years on the Georges River there have been signs saying "Sharks: Do now swim". Yet I have seen numerous kids swim straight out past the signs. You think to yourself, "What fools!" But the kids say, "Nothing has ever happened with sharks before." Unfortunately, sharks have taken people and dogs in the Georges River. But you cannot give history lessons from 1936 to kids in 2002. As long as appropriate safety laws apply and other legislation—for example, occupational health and safety legislation—is followed, a participant in recreational activity will be able to waive the requirements that a service be provided with due care and skill.

People who are drunk, of course, will not necessarily be able to claim damages, unless the accident could have occurred regardless of the person's intoxication. There can be a reduction of 25 per cent or more in an award if a person was intoxicated when an accident occurred, based on a presumption of contributory negligence. A person committing a criminal offence which can attract a penalty of over six months gaol generally will receive no damages. No damages are paid if reasonable self-defence or even excessive self-defence which leaves a criminal injured was caused while the criminal committed such an offence. This is an area in which we must suffer the probably reasonable criticisms of the media and the wider community: the law has allowed criminals to sue for being assaulted or attacked by a dog while trying to rob your house or attack your children. That has been a stupidity. This bill will go a long way towards correcting that kind of anomaly.

One of the more controversial aspects of the bill is the introduction of a new defence to alleged professional negligence, if the professional acted in a manner widely accepted in Australia by peer professional opinion as competent professional practice. This should not eliminate all claims against doctors or lawyers, anaesthetists and the like, if there is evidence that peer opinion was irrational—perhaps given only after the incident leading to the damages claim, that is, with hindsight, that a procedure was appropriate. We may need to monitor closely what happens if the peer group agrees that the practice was generally accepted practice, even though the group may not have held that opinion before the event occurred. This is a matter of some concern to people in my electorate who have virtually waged a lifelong campaign following the Chelmsford matter. Mr Justice Slattery conducted an inquiry into procedures carried out at the Chelmsford private hospital some 25 years ago. All procedures such as surgery, beauty treatments, invasive and non-invasive health procedures, dentistry and the like still should be attended by advice on risks so that informed consent can be given by the patient.

I served on the Public Bodies Review Committee inquiry which examined the liability of councils, given that councils had lost nonfeasance protection against liability. As the honourable member for Bega said—and I acknowledge that he, the honourable member for Wagga Wagga, the honourable member for Swansea and the honourable member for Port Stephens also served on that committee with me—the committee did a lot of work to try to find ways of dealing with a council's liability. Essentially, the bill before the House will help do that. It will give councils the right to depend on a defence based on the fact that, given its available resources, it had targeted problem areas of footpaths, roads, road shoulders, dangerous trees and the like. If those problems have been brought to the attention of the council and policy has been adopted to mitigate against those events leading to some claim, councils will be protected. That answers one of the questions raised by the honourable member for Coffs Harbour in a previous speech. So, as long as the authorities have a recognised plan for correcting road and footpath problems, they will be satisfactorily covered by this legislation.

A very positive aspect of this bill—and one referred to by other honourable members—is the good Samaritan clause. I agree with the honourable member for Bega, who used terms that are probably widely used today—sometimes used dishonestly in Australian politics—such as doing the right thing, being a good Australia, doing things the Australian way. When we were young it was always the case that if a mate fell into the water after being pushed, his mates would at least try to drag him out and make sure he was okay. If someone were in a car accident people would pull up and try to help. Unfortunately, we followed the American path: if people tried to help and inadvertently made the situation worse or did not improve it they could be subjected to a massive liability claim.

The legislation will allow people to use the good Samaritan clause as a defence and, as a result, claims against good Samaritans will be unlikely to succeed. In France it is illegal not to act as a good Samaritan. If

people drive past an accident scene and do not stop to assist, they are liable. If people do not help someone who needs assistance, they are liable. As the honourable member for Orange said, volunteers acting in good faith doing community work will be protected. It is an important part of the legislation.

People muck in to help out their mates if there is a problem with a fair or a fundraising barbecue. If something goes wrong people should be reasonably covered. In my electorate there is a Blue Light disco at the Revesby YMCA. We have the successful Panania and Revesby markets and the Bankstown Paceway. The Milton show, which is held in February or March, is vital to the economy of the Ulladulla area. The Ulladulla markets are held every second week. Those sorts of events depend on goodwill and the belief that people will not be sued if someone trips over a pot plant they are trying to sell at the markets. The honourable member for Bega would be aware of the Blessing of the Fleet, which was threatened because of problems with civil liability insurance. State Emergency Service work will be able to continue. A range of events will be covered by appropriate insurance.

We have been brought up to say we are sorry. Most of us know that if we make a blue there is nothing wrong with saying, "Sorry about that." Yet people who sign on with either the NRMA or the GIO could not admit liability in that way. Saying "Sorry" is not necessarily an admission of liability. It may not be the driver's fault that he was accidentally hit from behind and pushed him into the car in front. If he were to get out of the car and say, "I am sorry, Madam. I hope you are okay", that could be held to be an admission, but it is only reasonable that it should not be construed that way. The legislation will go a long way towards rectifying the situation. Structured settlements can be negotiated. The bill will not apply to civil liability cases arising from deliberate criminal acts, nor will it affect motor accident, workers compensation or dust disease claims. I commend the bill and the Government for a genuine and properly considered response to excessive and time-consuming claims that do not reflect the interests of the vast number of people affected in minor ways by civil liability cases.

Mr HAZZARD (Wakehurst) [9.13 p.m.]: If this interesting legislation, which has been brought before the House by the Premier and his colleagues, is passed, which appears likely, it will provide work for lawyers for years to come. The majority of the bill is unclear and uncertain. Like any new legal framework it will provide enormous opportunities for interpretation as the community tries to come to grips with what it intended. I am concerned that neither the Premier nor the Government knows what is intended. The current New South Wales law of negligence has developed over the past 100 years. Most lawyers learn early in their careers about the case of *Donoghue v Stevenson*, which lays down the duty of care from one neighbour to another. In law we are all neighbours, one to the other.

I wonder how the Premier is carrying out his duty of care to the people of New South Wales in the presentation of the legislation. It certainly seems as though he has not exercised the duty of care that one would expect from a Premier of this State. The law of negligence provides that we owe each other a duty of care. If we breach that duty of care and a foreseeable injury flows from that breach, we are liable to pay an appropriate level of damages to the injured person. That principle would have been considered in thousands upon thousands of legal cases. Various facts would have been considered and interpreted and, until recently, fairly satisfactory conclusions would have been arrived at. It appears that a perception in the community, driven by the popular media, that the law of negligence has led to an escalation of premiums, particularly for public liability insurance, is driving this change in the law. Every member of the Coalition is extremely concerned about increasing premiums. We do not want our small community groups, our sporting groups, those groups that form the very fabric of our society, to be unable to carry out their activities because insurance premiums are out of this world.

We have been asked to consider this legislation by a government that has a history of not treating its workers very well, if the workers compensation legislation is any indication. We have been asked to consider it in a vacuum. We have been asked to believe on faith that somehow these changes will produce a better outcome for premiums. The legislation is about premiums. We have not been asked to support legislation that will necessarily produce better outcomes for the community or individuals, particularly vulnerable individuals. We have been asked to support legislation that the Premier claims will reduce premiums. If that is the price we have to pay to reduce premiums, then arguably it is worth it. But the problem is that the Premier is asking to be taken on faith and thus far, in almost a decade of governing the State, he has not given anyone in New South Wales any reason to trust him.

Mr Debnam: He's got form.

Mr HAZZARD: He has form, as the honourable member for Vacluse said. He has a lot of form. He is an arrogant Premier who has proved himself incapable of managing the fundamental day-to-day issues that

people care about. Some months ago the unions saw his elitist behaviour for what it is. I am sure all honourable members recollect the image of the Premier standing on the steps of this, the oldest Parliament in Australia, waving his hands in the most arrogant of gestures to the workers and then, with a rather silly cat-like smile on his face, encouraging Ministers and backbenchers to break the picket lines. That type of behaviour is truly farcical from the Premier of New South Wales, who is allegedly trying to reduce premiums for the good of the people. Did he ever stop to think about whether the people thought it was an appropriate outcome?

We must consider whether this bill is the best outcome for the people of New South Wales. I have serious concerns that the legislation will not result in any reduction in premiums. But there is one absolute about the legislation. It has so fundamentally turned the common law system of negligence that has existed in New South Wales for the past 100 or so years on its head that thousands upon thousands of cases will be undertaken in the courts of New South Wales to try to interpret a number of new and rather odd definitions relating to the law of negligence.

One only has to refer to the provisions of new section 5B to realise that general principles are no longer stated in the affirmative but, rather, in the negative in this bill. New section 5B begins by stating the circumstances in which a person is "not negligent". Parts of that new section will pose stimulating and interesting questions for examination by legal students for years to come. New section 5B (1) (a) refers to a concept with which all honourable members would be familiar, namely, that the risk was foreseeable, but subsection (1) (b) requires consideration of whether the risk was "not insignificant". Nowhere in the bill is the term "not insignificant" defined, so what does it mean? If that were the only problem with this bill, the Opposition might be able to live with it, but every part of the bill has new language which has not previously been interpreted in the context of negligence law.

The one clear and abiding outcome of this legislation will be the certainty that members of Parliament have guaranteed that people seeking compensation will be put to great expense while lawyers try to interpret what the provisions of this bill mean. The people about whom members of Parliament should be most concerned are those who are the most vulnerable and who are probably the poorest in our community. Those people can suffer damages as a result of their neighbours, as they are defined in law, breaching a duty of care that all citizens should observe in a civilised society. The Premier, Bob Carr, purports to be doing his neighbours, his constituents, a favour, but for the people who are most in need and who seek to achieve a reasonable level of compensation as a result of the negligence of others, the Premier is delivering a system that is more likely to be chaotic, to prevent people from being able to enforce their legal rights and to ensure that those who are most vulnerable will never get a look in. The Premier has failed so many times, nobody will be terribly surprised when he fails with this measure.

If this bill at the end of the day makes arbitrary statements and decisions mixed with vague definitions of what it is meant to achieve—and that generally reflects a government that does not know what the legislation means but has presented a bill so that it will appear to be doing something—there will be chaos when the people of New South Wales try to recover appropriate damages. One of the popular propositions in the press is that someone who has had too much to drink should forfeit any entitlement to damages. The matter is not as simple as that. If a person who has had a few drinks happens to be doing what he does every day—walking down the same path on the same road, along the same route and going to the same home—but is injured one night when traversing the same path on the same road by a large obstacle that was left across the road by that person's legal neighbour who had not bothered to put any light on the obstacle or place a sign near it, that injured person would be entitled to an appropriate level of compensation in an absolute sense.

This bill imposes an amazing provision in part 6, which arbitrarily provides that, irrespective of the damages to which that person may be entitled, those damages will be reduced by 25 per cent simply because the injured person is intoxicated. Where is the logic in providing that a person who has not in any way contributed to the injury and damage he has sustained will forfeit 25 per cent of the award of damages because of some arbitrary, almost contrary, provision in the bill? The illogical approach reflected by that provision epitomises the problems associated with this bill. When people realise the arbitrary and capricious way in which this legislation has been presented, Premier Bob Carr will be tagged as a simplistic Premier who is able to recognise a problem but is incapable of resolving it. The Premier has simply put words on paper which purport to address the issues, but they do not.

I look forward to hearing what other honourable members will have to say during this debate. Unfortunately, the Premier will take a strong stand in a simplistic vox-pop approach and attack anyone who opposes this legislation. For that reason this legislation will undoubtedly receive general support for the time

being. However, it should not be thought that all honourable members think that this legislation has any merit. If it has any merit, it is hard to find. As the legislation is enacted and implemented, the community will eventually realise that the Premier is playing games when he talks about reducing the cost of premiums. Unfortunately, nothing in the bill will reduce the cost of civil liability insurance premiums.

Mr COLLIER (Miranda) [9.25 p.m.]: I am pleased to support the Civil Liability Amendment (Personal Responsibility) Bill, which is the second stage of the Carr Government's reform of public liability insurance. Stage one of the reforms became the Civil Liability Act on 7 June 2002. Stage two of the reforms is before the House and deals with more complex issues relating to changes in the relevant tests for negligence. The bill represents the most important reforms to tort law—that is, the law of negligence—in the past 30 years. The first important decision in the development of the law of negligence in the twentieth century arose in the now famous case of *Donoghue v Stevenson* (1932) Appeal Cases 562, which was decided by the House of Lords. That now famous case resulted from Mrs Donoghue consuming ginger beer which allegedly contained the remains of a snail. As a result of drinking the ginger beer, Mrs Donoghue became unwell and sued the manufacturers. The court held that a manufacturer of food or drink owes a duty of care to the ultimate consumer when there is no opportunity for intermediate inspection. The decision in that case provided a clear statement of principle from which most English-speaking jurisdictions have derived principles of negligence, namely, the fundamental requirement of establishing a duty of care, establishing a breach of that duty of care, establishing damage, establishing that the damage was reasonably foreseeable, and establishing each of those elements on the balance of probabilities.

The modern law of tort in Australia begins with the decision of the Privy Council in the case of *Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty Ltd (The Wagon Mound No 2)* (1967) 2 Appeal Cases 617. In that case, workers on a wharf were carrying out repairs using oxyacetylene equipment. Nearby, a tanker, the *Wagon Mound*, was taking on bunkering oil from another nearby wharf. Because of the carelessness of the ship's engineers, a large quantity of oil overflowed from the *Wagon Mound* onto the surface of the water. It drifted to and accumulated round the first wharf and two other vessels. A spark from the oxyacetylene welding work, which involved cutting and welding, caused a piece of hot metal to fly off and fall into the sea. It ignited the oil and caused damage to the boat and the nearby wharf. An action was taken in negligence and was successful. In that case, Lord Reid expressed the test for negligence to be:

If a real risk is one that would occur to the mind of a reasonable man in the position of the defendant's servant, and which he would not brush aside as far-fetched, and if the criterion is to be what that reasonable man would have done in the circumstances, then surely he should not neglect such a risk if the action to eliminate it presented no difficulty, involved no disadvantage, and required no expense.

The result is that what was once reasonably foreseeable became anything that was not fanciful or far-fetched. However, while that law has been accepted in Australia there is community concern about how that test has been applied. The law is no longer in line with community standards. Earlier this year, under the auspices of the Commonwealth, State and Territory governments, the Ipp expert panel was appointed to review the law of negligence. The Ipp committee found that there are widespread community perceptions that the law of negligence as applied in the courts is unclear and unpredictable and it is too easy for plaintiffs to establish negligence on the part of defendants.

Currently liability is too easily imposed: if it is conceivable and it happens, one should sue. The bill gives effect to the most important recommendations made by the expert panel. The Government intends the bill to form a template for legislation in all States and Territories, and the Commonwealth to respond by changing the laws applying to those areas for which it is responsible. Once again, New South Wales has led the way in responding to community concerns about the law of negligence and the Government is working hard to promote uniform laws across Australia. The bill contains a number of important amendments to the law of negligence. First, the law limits the scope of reasonable foreseeability. A possibility has to be not insignificant before it can be considered to be reasonably foreseeable. That derives from the Ipp report. In determining liability a court cannot rely solely on hindsight, evidence of a subsequent remedial action, or the mere fact that a risk was easily avoidable.

The bill limits claims from an inherent or obvious risk or a plaintiff's own contributory negligence. The presumption is that a person is aware of obvious risks. There is no duty to warn of an obvious risk provided that any applicable New South Wales or Commonwealth safety law is complied with. There is no liability for obvious risks of dangerous sports and other activities. There is no liability for inherent risks. The bill allows the courts to find that a person's conduct should mean that person can be 100 per cent responsible for his or her own injuries.

The bill limits liability arising from recreational activities. There is no liability for injury, death or property damage resulting from a risk of a recreational activity in respect of which a risk warning has been given. A participant in a recreational activity will be able to waive the requirement that services be provided with due care and skill. That is the combined effect of the bill and an expected amendment to the Commonwealth Trade Practices Act 1974. The new protection will be subject to compliance with applicable New South Wales and Commonwealth safety laws.

In certain circumstances the bill prevents plaintiffs succeeding where the injury is due to their intoxication. A defendant will not owe a plaintiff who is intoxicated any higher standard of care than if the plaintiff were sober. No personal injury damages will be available for an intoxicated person, unless the accident was likely to have occurred even if the person had not been intoxicated. However, if the accident was likely to occur anyway, the intoxicated person's damages will still be reduced on the presumption of contributory negligence by 25 per cent, or more if appropriate, unless the person's intoxication played no part in the accident.

An example was given by the honourable member for Wakehurst. He said that if a person in his usual course of his activities had a few beers at the pub, wandered down the road, and fell over something left on a footpath, that person's intoxication would have played no part in the accident. If that were so, the accident would have occurred anyway and under law the person's damages would not be reduced by 25 per cent for contributory negligence. In that case the person's intoxication would have played no part in the accident.

The bill also limits those involved in criminal activity from recovering damages for injuries received while committing a crime. The general rule is that no damages are payable when the injured person was engaged in conduct constituting a serious offence. If the accused person were injured through reasonable self-defence, no damages would be payable. There would be no damages when the criminal was injured even though there was excessive self-defence, unless the court considers that the circumstances were exceptional. There would be no damages for pain and suffering for any criminal injured through self-defence.

The bill introduces a new defence for professionals accused of negligence. There will be an additional defence to alleged professional negligence if the professional acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice. However, a court can still find that peer opinion was irrational if that is warranted. There is no change to the duty of any professional to advise, inform or warn about any risks in the provision of services such as health care, beauty therapies, tattooing, and so on. It is important that people who ask professionals for advice in the areas of health and beauty care are entitled to rely on that advice.

The bill introduces proportionate liability for certain claims. Proportionate liability will be introduced for claims for economic loss or property damage, other than in personal injury claims. A person jointly responsible with other persons will be liable only to the extent of that person's responsibility. The bill limits liability in tort of a public or other authority. The court must take into account principles relating to financial and other resources available to the authority, the general responsibilities of the authority, and its compliance with general practices and applicable standards. There is no liability for a public or other authority for breach of statutory duty unless it has acted irrationally. There is no liability for a regulatory authority that has not exercised a function unless it could have been compelled to exercise that function. There is no liability for a roads authority that has not exercised a function unless it knew about the particular risk.

The bill protects good Samaritans from liability for their acts. There is no liability for good-faith actions of good Samaritans who come to the assistance of persons in danger. That is important for surf-lifesaving organisations. In the Bate Bay area there are four lifesaving clubs: Wanda, Elouera, North Cronulla and Cronulla. They are all wonderful volunteer groups and they perform a wonderful service for the people of the Sutherland shire and those who visit its wonderful beaches. Clearly, the bill protects those who go to the assistance of someone in trouble in the ocean. If the person whose life was in danger receives some injury in the course of receiving assistance, the volunteer lifesaver is protected. There is no liability under the bill for a volunteer organisation, such as a surf-lifesaving organisation, in connection with a rescue. The bill protects volunteers from liability for their acts. There is no liability for good-faith actions of volunteers working for community organisations.

The bill also limits the availability of damages for nervous shock. The only persons who can recover damages for nervous shock are victims of, or others present at, an accident or a family member of a victim. However, damages for nervous shock will not be available if the person who was injured in the first place, for example a person engaged in criminal activity, could not have claimed damages. That will avoid a repeat of the

case at Peakhurst in which a person was allegedly breaking into a hotel and was apprehended by the hotel licensee. The offender's mother claimed damages for nervous shock when she saw the injuries to her son. This provision will rule out claims of that kind.

Damages will also be reduced if the victim was liable for contributory negligence. The bill prevents apologies by or on behalf of the defendant from constituting an admission of liability. It is not relevant in determining fault or liability in connection with civil liability. One key feature of the bill is that it facilitates structured settlements in personal injury cases. The court will notify the parties of the terms of any proposed award so as to give the parties a reasonable opportunity to negotiate a structured settlement. Indeed, failure to negotiate a structured settlement may lead to an adverse costs award. The bill is about reforming the law of negligence and is the second stage of the Carr Government's reform of public liability insurance. In some ways the bill is complex and in other ways it makes a great deal of sense. It is a victory for commonsense and I commend it to the House.

Mr ARMSTRONG (Lachlan) [9.40 p.m.]: Legislation that comes before this Parliament is important to the community and to all honourable members. But no legislation is more important than the Civil Liability Amendment (Personal Responsibility) Bill because of the impact that it will have on our community. All honourable members are aware of the enormous impact of negligence claims on community organisations, businesses, individuals and society over the past few years. The first tranche of this legislation was introduced in the last session of Parliament. The Government promised to introduce the second tranche of the legislation in September. It is a month late but I am sure that all honourable members will welcome it.

Having read the bill and the Minister's second reading speech I am sure that many of the provisions in this legislation will be tested by the courts over ensuing years. Courts will have to make many determinations in relation to this legislation. It could take years before we are certain that we have achieved our objectives in every area. Only tonight I learned about businesses that are vulnerable and that are unable to obtain insurance to continue their everyday activities. I became concerned about one issue after holding public liability forums in Forbes and Cootamundra in February this year—forums that assisted in enlightening many people as to what is happening in the community. Guardians or parents are responsible for signing disclaimers to enable minors to participate in sporting activities or businesses.

Parents or guardians have signed disclaimers for minors participating in whitewater rafting, canoeing, trips with a local football club, hiking, riding in a pony club, or participating in country shows. That meant that minors competed at their own risk and the organisation conducting the event was not held responsible in the event of an accident—a disclaimer that has not stood up under current law. Some people have been able to successfully prosecute an organisation for injuries that they sustained as children. This legislation addresses that matter, but it is not clear whether organisations that hosted events are exempt or whether protection is given to guardians and parents once a minor reaches the age of 18.

When the Minister responds to this debate I hope he will clarify the position relating to parents or guardians taking responsibility for minors who participate in sporting and other activities. Will people be able to sue organisations later if they are injured at events such as school fetes, agricultural shows and riding schools? Those bodies are all apprehensive at the moment. About 40,000 security guards are registered in New South Wales. If alcohol is being served at a public event the law in this State requires the body hosting that event to employ a number of security guards. When dances are held at hotels on Friday or Saturday nights a certain number of security guards must be employed to maintain some form of order.

It is mandatory for anyone organising a wedding reception or a twenty-first birthday party to employ security guards—for reasons that most people understand. It has become extremely difficult—it is impossible in many cases—for security companies to obtain comprehensive insurance to protect their workers. If we host a party and we ask an employment agency that does not have adequate insurance to provide security guards and those guards are injured while performing their duty, we might be held liable. Employers who are experienced in this area are saying that it is impossible to obtain comprehensive insurance.

The hotel industry is finding it difficult to offer that sort of security to security guards, despite the fact that an independent contract is entered into between the principal employer and the hirer of labour. Every weekend, with the exception of the Christmas weekend, new and second-hand cars are advertised in the newspapers. People all over Australia are invited to test drive new and second-hand cars. It is a traditional way of testing motor vehicles and thousands of people do it. When people want to buy a new or second-hand car or truck they take it for a test drive. It is extremely difficult—almost impossible these days—for owners of second-hand car yards to obtain comprehensive insurance to protect car owners when potential clients takes those cars out for a test drive.

If cars are involved in an accident and the persons who borrowed the car for a test drive are injured, who is responsible and who bears the cost for any injury that is sustained? The law is vacant in that regard and, therefore, insurance is almost impossible to obtain. I am not too sure whether this legislation covers professional risk. At the moment the law appears to be quite vacant in relation to that issue. I hope that the Minister will address those issues when he replies to debate on this bill. Quite often, when a court is making a determination in relation to this type of legislation it refers to the Minister's second reading speech and to debate to establish our interpretation of it.

Issues that are raised by members in debate must be addressed by the Minister to ensure that the judiciary is clear about any legislation. Unless we get it right it will be difficult for many organisations to continue to operate. I referred earlier to parents and citizens associations. We are approaching the Christmas season when many parents and citizens associations will hold school sports days, end-of-school functions and fundraisers for the next year. Other organisations are arranging country shows. This year the Agricultural Society Council of New South Wales was able to negotiate a bulk insurance rate for all show societies with a nominal increase of 5 per cent. Queensland, which was not successful in negotiating a bulk rate, had a 70 per cent increase and South Australia had a 15 per cent increase. The Agricultural Society Council of New South Wales is not sure whether it will be successful in negotiating a 5 per cent increase next year.

The law relating to these areas is not comprehensive. Many organisations that are run by volunteers or trustees are not prepared to take those risks. I said earlier to some of my colleagues that a few years ago half a dozen people in country electorates would have been willing to fill vacancies in a local showground or sports trust. They were considered by the community to be positions of honour. My secretary now spends about an hour a week begging people to take up positions on certain trusts. People do not want to accept that responsibility. A few years ago we witnessed the debacle involving the Cootamundra Racecourse Trust. The directors of that trust, through an oversight, were not covered by insurance for some time while their insurance was being rewritten after the change of government. Those trustees became singly and severally liable. It took about four years to sort out the mess. Although the Government picked up the cost, each of the seven trustees paid about \$3,000 on average. They volunteered their time and expertise to the Cootamundra Racecourse Trust and it turned out to be an expensive exercise.

That case stands as a warning to others and it is well known by others in similar trusts throughout the State. The legislation must address all these areas in order to maintain a reasonable quality of life. Organisations run by volunteers must continue to serve their communities, and businesses—particularly small businesses—can continue to hire security guards or loan motor vehicles for test drives. The current problems with civil liability affect not just car dealerships but individuals. If a person advertises a car for sale in the weekend newspapers and allows a potential buyer to take it for a test drive I am not sure whether the owner would be covered in the event of an accident. I would appreciate the Minister's comments on that interesting question.

Mr LYNCH (Liverpool) [9.50 p.m.]: I have a number of particular reasons for interest in this legislation. One is that I was a legal practitioner for 14 years before I entered this place and practised in the personal injury field. I thus perhaps bring somewhat more expertise to this debate than most. My other and greater particular interest is that I represent a Western Sydney electorate. I am acutely concerned about the economic future and wellbeing of those of my constituents who are injured. I do not care much about the rich who are injured—frankly, they can look after themselves—but I do care about ordinary people who are injured. The rich who are injured have their own financial resources to fall back upon. In many cases they can afford personal income insurance arrangements. That cannot be said for most of my constituents.

An injury for many of my constituents would have catastrophic consequences upon their ability to feed and clothe themselves and their families, and their ability to pay their mortgage and rent—in fact, upon their very existence. This legislation is a companion to the Civil Liability Bill. These bills are justified by what is called the public liability crisis. This term describes the extraordinarily high increases in premiums for public liability insurance and sometimes the refusal of insurance altogether. The premiums are set by privately owned, profit-driven organisations called insurance companies that have currently created a de facto oligopoly. In my view the crisis is described more accurately as a market failure to provide insurance at affordable premiums, or at all.

This market failure has many curious aspects. I have certainly had many people complain to me about premium increases that they regard as unreasonable. They share a number of characteristics. One is that they are often community-based, not-for-profit organisations and a second is that in many years of existence they have had no claims against them. If there were the slightest bit of fairness in the way in which insurance companies

set their premiums one would assume that premiums for such groups would not rise as there have been no claims against them. Of course, if organisations that have had no claims against them have received dramatically increased premiums one must conclude that the numbers, level and quantum of claims will not necessarily impact upon premium levels.

Another case involves a retailer of babies clothing and furniture well known in south-west Sydney. This retailer has had no claims against it. Moreover, its commercial association has very responsibly and sensibly been developing industry-wide standards. That should logically lead to a reduction in the likelihood of successful claims and thus the level of premiums. Of course, exactly the opposite has occurred. One is inclined to believe that there is not the slightest connection between the level of claims and premiums. Much of the difficulty in this debate comes from the inadequacy of the tabloid media—encouraged, aided and abetted by tabloid politicians—in reporting this issue correctly and accurately.

Two examples are instructive in this regard. There was considerable public outrage, both from the tabloid media and some politicians, at a case earlier this year when significant damages were awarded to a student who was injured in a playground. The outcry was extraordinary—indeed, almost hysterical. Some of the most hysterical cries came from politicians. Of course, neither politicians nor the media were honest in their reporting of the case. The court did not completely lose its mind over the issue. The only reason that any money was able to be awarded was that liability was admitted by the defendant. In plain English, the present State Government, through the Department of Education and Training, marched into court, threw up its hands and said that it was guilty of the negligence as claimed.

Precious little in the present bill will have any impact upon cases such as that. Either the Department of Education and Training did not have proper grounds to admit liability—as one would imagine from the various tabloid rantings—in which case it should have disputed liability and fought the case, or, as seems far more likely, there were in fact no good grounds to defend the case and liability should have been admitted. Another interesting recent case is that of someone who was awarded about \$50,000 following an incident in or near the premises of a hotel. The almost universal media presentation was of a rampaging drunk intent on robbery—or, in some presentations, murder—who broke into a residence and was justly attacked by the publican in self-defence.

The truth is very far from that: the drunken teenager was trying to find a backdoor into a nightclub to which he had been refused entry. Whilst he might be guilty of trespass—and perhaps stupidity—he certainly was not guilty of breaking in, in the common sense. He posed no threat to anyone and certainly was not trying to steal anything. The hotel manager went searching for him and found him cowering. He then seems to have attacked him with a baton. The teenager was badly injured and seems to have offered no resistance. It is worth acknowledging that Richard Glover, a *Sydney Morning Herald* journalist, is the only journalist I know of who got the details of the case correct.

I would also like to comment about some of the rhetoric and the florid claims surrounding this debate. Take, for example, the oft-repeated claim that this is groundbreaking legislation, a groundbreaking intervention in tort law and the most dramatic development in the history of the English-speaking world. That is just not right. As Chief Justice Jim Spigelman pointed out in his exotically titled paper "Negligence: The Last Outpost of the Welfare State", the common law of negligence has been the subject of statutory interference for more than a century. Spigelman points to Lord Campbell's Act in the nineteenth century and the English Employer's Liability Act as early as 1880. The so-called reform in this legislation is actually still quite limited. Spigelman in his paper advocated principle-driven reform that covers the entire field of common law negligence.

This bill apes that approach by dealing with the principles behind negligence. However, it is a quite pale and inadequate imitation of what Spigelman proposes. There is still a multiplicity of different schemes, which means for similar injuries one gets different amounts of compensation. We now have separate schemes for workers compensation, public liability, industrial accidents, victims compensation, claims for medical negligence and motor vehicle accidents. Frankly, at one level it is a bit silly. It is so confusing that it really endangers the delivery of justice. It is fundamentally unfair to treat similar injuries differently. Whatever else this represents, it is the antithesis of a sensible Labor program of law reform.

As the Chief Justice points out, this and the legislation that preceded it is underwriter-driven change. The groups cheering for these various packages—such as the Insurance Council of Australia, the Royal Australian College of General Practitioners and employers bodies—are, frankly, not constituents with which I am very comfortable. Their short-term financial interests are being well served but I am sure not too many other

people's are. Another overblown claim that has permeated this debate appears at page 6 of the Attorney General's Department's position paper. The law is said to be nebulous and difficult to evaluate, and therefore this legislative package is justified. This is a nonsense argument. If it were a serious argument the legislation would have been needed more than a century ago—or certainly with *Donoghue v Stevenson*.

On the other hand, any suggestion that this bill will remove uncertainty is sheer fantasy. I have read the legislation: it clearly increases uncertainty and will undoubtedly add to complexity. Another oft-repeated premise of this legislation is that there has been, and is, some onward, pre-destined, deterministic expansion of the scope of the law of negligence—that is, that more and more situations are automatically and inevitably being covered by negligence claims. That is simply not right. This teleological fantasy keeps appearing in the debate but it is not justified by results in the courts. For example, Professor Luntz from Melbourne has argued that it has recently become harder, not easier, to successfully sue for damages.

That view is supported by Professor Nicholas Mullany from the University of New South Wales in an article entitled "New tort reform agendas. Same old myths". Even Chief Justice Spigelman, who is so enamoured of some of the proponents of change in this debate, makes precisely this point in the paper from which I have quoted already. Another piece of grandiloquent rhetoric one sometimes hears is that Australia is in danger of developing an American-style culture of litigation. Anyone with the slightest knowledge of the truth of the situation knows that that American phenomenon thrives on the absence of adverse costs orders—that is, if people go to court and lose they do not get costs awarded against them. That is very different from the position in New South Wales.

Moreover, in New South Wales there are mechanisms to allow the use of offers of compromise, which makes those costs penalties even greater. One element we do have in common of course is contingency fees. The irony is that the people now leading the charge to change all this were the same people who a few years ago led the charge to bring the legal profession into the modern world, making it engage with free and competitive markets and having contingency fees rather than the traditional scaled costs that used to be charged. Hand in hand with the view that we are all being submerged by American litigation is the rather shrill demand that people accept personal responsibility. That mantra has been heard frequently over the past decade—and, frankly, it is usually code for kicking the daylight out of a sector of the community that is often powerless to defend itself.

In this context, the call for personal responsibility is translated into a demand that injured people not be compensated. This call is almost always hypocritical. I think there is a genuine case for people to accept personal responsibility—most especially those insurance company executives who extract higher premiums but who lobby to avoid the responsibility to have to pay claims; those doctors whose negligence injures and maims but who refuse the responsibility to compensate; those employers whose negligence hurts and kills employees but who always deny responsibility; and all prospective defendants whose negligence hurts others but who will escape their responsibility through the passage of this bill. It is quite curious that it is alleged that the law of tort is somehow or other eroding personal responsibility because the origin of that law lies precisely in personal responsibility. As Justice Spigelman noted in his paper, we were all weaned on Fleming's *The Law of Torts*, and we inevitably have to quote from it. On page 3 of the fifth edition of the 1977 copy, which I have at home, he wrote:

The law of torts then is concerned with the allocation of losses incident to man's activities in modern society.

Tort law developed with changes in English society, with industrialisation and urbanisation. It imposed responsibility on individual wrongdoers. Once again at page 8 Fleming said:

Fault alone was deemed to justify a shifting of loss, because the function of tort remedies was seen as primarily admonitory or deterrent. An award against a tortfeasor was seen as a punishment for him and a warning to others.

Whilst Fleming goes on to make other points, these comments jar considerably with the concept that somehow or other the law of tort attacks personal responsibility. In fact, the greatest criticism one could make of the law of tort is that it focuses exclusively on personal responsibility. Another piece of rhetoric in this debate that jars with my sensibilities is some of that used by Chief Justice Spigelman. I have already referred to his document. Some of his arguments are less than impressive. His article is entitled "Negligence: The Last Outpost of the Welfare State". Certainly he has no apparent sympathy for the social democratic project.

Equally certain, he has travelled a very long way from the freedom rides. The only element absent from this neoliberal rendition that he goes on with is a reference to Francis Fukuyama and Daniel Bell. The Chief

Justice also goes on to attribute parts of day-to-day judicial decision making to something he pejoratively describes as welfare state paternalism. This is an argument often used by the most conservative—anything that looks as though it may help the poor against the rich or the weak against the powerful is described as paternalism. Slogans replace analysis in that type of discourse. Turning from the rhetoric to the bill, there are major structural weaknesses in this bill. One is that there is absolutely no mechanism to achieve the result the legislation is said to aim at.

There is absolutely no mechanism to ensure that premiums will actually come down. This shows a touching and horrifying naivety. The present crisis is a major market failure in the delivery of insurance. Why on earth does anyone then trust the market to correct itself? If, of course, there were direct Government intervention in the marketplace by way of a government-owned insurer, then there might be a chance of actually doing something about market failure. In fact, in this case, to begin with, this market failure may well have been avoided. The Government Insurance Office in New South Wales was established to deal with the market failure of the 1920s, when Jack Lang introduced the workers compensation system.

The moral to be drawn from that is obvious: we need a government-owned insurer. To those who say it is no role for the Government to do this, I say they are simply spouting tired ideology. One should replace ideology with analysis. To those who say it is too expensive, I point to the vast sums of public money already spent in dealing with the consequences of market failure in the field of insurance. The second structural weakness I should mention is that the bill does not address the actual problem.

This bill aims to reduce the number and quantum of successful claims. There is no significant evidence—indeed no real evidence at all—that this market failure of prohibitively high insurance or no insurance at all has actually been caused by an increase in the number or quantum of claims. There is simply no causal connection. The structural weakness reflects the fact that the market failure in insurance stems from a number of factors. Those factors in turn have precious little to do with this legislation. Even the Insurance Council of Australia concedes there is a multitude of factors leading to the present situation, those factors being untouched by this bill. [*Extension of time agreed to.*]

The fact that many of the particular provisions of this bill will make no real difference to results in court confirms the proposition that the cause for this market failure lies somewhere other than in the number or quantum of claims. I spoke in this place in March and referred then to some of the factors that led to this market failure. One was the nature of an unregulated market and aggressive competition between insurers that led to driving premiums down. The classic recent example of that was the third party insurance field. Shortsighted insurers, obsessed only with short-term profits, behaved in a manner that in the long-term was irrational. And then there is simply incompetence.

The classic example of this is the field of medical negligence. The insurer was chronically underfunded over a lengthy period, and the consequence now is a denial of responsibility of members of the medical profession and a comparative impunity for them to injure their patients without having to compensate. Another putative cause in the market failure stems from an analysis of how insurers and reinsurers actually make their profits. Much of this comes from their investments. Their investments have not been doing quite as well recently—so community groups get sluggish with extraordinary premiums, even when they have had no claims against them. One variant of this argument points to the very substantial amount of money invested by insurers and reinsurers in the dot-com bubble and by the significant losses they sustained when the bubble burst. The injured thus became the victims of roulette wheel capitalism.

The honourable member for Vacluse, who led for the Opposition in this debate, referred to the cyclical nature of insurance company profits. That is a similar aspect to this argument. That is, that is one of reasons the premiums are being increased—totally unrelated to the level of claims. Additionally, some analysts point to the alterations in the international risk environment to explain why premiums are going up. There are, of course, significant disagreements as to which, if any, of these explanations is correct. The one thing they all concur with is that the level and size of claims alone does not explain the market failure—and many explanations discard it as being a factor at all. If that is the case then the best one can say about this legislation is that it simply is beside the point. It flows from that that I do not regard the precise provisions of this bill as being all that crucial. I will however, note two. The good Samaritan provision in this bill is, of course, unobjectionable. That is because it is almost impossible for people to be sued on this basis at the moment. To quote Professor Mullany from the article I have already cited:

There is no need for a "Good Samaritan" law—as the law now stands the prospects of recovering damages from those who assist others but have no obligation to do so is virtually nil.

One other change that will make a difference, and which I personally find offensive, is the introduction of peer assessment in professional negligence cases, especially against doctors. The so-called Bolam test is to be reinstated to enhance the eminently fair and reasonable test of the High Court in 1992 in *Rogers v Whitaker*. Certainly, the current proposal has a suggestion from the Ipp report that has been added to the draft bill which makes it marginally better. In plain English, doctors will no longer be held accountable for their mistakes unless a group of their mates says it is okay. That can hardly be helpful to anyone, except the doctors. Granted the near impossibility at one stage in medical negligence cases of any doctor being prepared to give evidence against another, that change is likely to provide an indemnification to doctors against all claims. This really is a triumph for tortfeasor and underwriter-driven change. Insurance company profits go up and my constituents will bear the consequences.

Mr ROZZOLI (Hawkesbury) [10.06 p.m.]: I congratulate the honourable member for Liverpool on his erudite address. I suggest that if he wishes to vote against the legislation, I will be happy to join him on this side of the House at that time. I am in agreement with many issues raised by the honourable member for Liverpool and consider this bill to be deficient in many respects. I also suggest that if the honourable member for Miranda, whom I am sure is equally skilled in the legal profession as the honourable member for Liverpool, were on this side of the Chamber he would have made an entirely different speech to his self-serving and inconsequential contribution to this debate. He really only read the bill into *Hansard*.

This bill could be described as bringing about the most significant change in tort for 30 years, as the honourable member for Miranda said. If that is so, the Government stands accused of irresponsibility in introducing this legislation and allowing very little time for an in-depth examination of it. I do not argue that this legislation is necessary to make some improvements. During my years in this Parliament I have read many bills, and this is as difficult and complex to read in a hurry, absorb, digest and understand as any bill I have read. That is indicated by the fact that very few people who have contributed to the debate have addressed the content of the bill. They have spoken only in general terms because that is about all they can do.

I condemn the Government for the time frame in which it has introduced this bill, and the lack of time available to members of Parliament to consider it in any depth. I draw attention to the general lack of relativity of this legislation to the four excellent presentations in this Chamber by experts in this field. According to the Premier, the Government undertook that exercise to enable honourable members to understand this bill. It enabled us to understand in a limited way, but the four eminent gentlemen highlighted a number of factors that led to the crisis which this legislation tries to address and which the honourable member for Liverpool accurately summarised. They are absent from the bill. So, even though there was an expectation that this legislation would address the matters raised as being important to this debate, most of them are missing from the bill.

The success of this legislation—as was pointed out earlier by a number of honourable members—will be known after it has been tested in court. I do not think we will understand how this legislation will operate until cases come before the court and this legislation is interpreted by the court in dealing with those cases. Then a body of case law will build up on this legislation. Another test will be the reaction of insurance companies: whether insurance premiums come down, and whether insurance is easier to obtain for the wide range of organisations to which reference was made by the honourable member for Lachlan. Those two external tests will tell us whether this legislation will work. I think the jury will be out for some time.

As was mentioned by the honourable member for Liverpool, the concept of negligence, as pronounced in *Donoghue v Stevenson*, has been altered greatly over the years by statutory change. If we could in fact still measure all questions of duty of care against the simple *Donoghue v Stevenson* principle, we would probably be much further down the track than we are today. But Parliament has sought to change the concept, and led the courts to extend the concept and raise the bar on the duty of care higher than they might otherwise have done. The Parliament has led them into that position by passing various pieces of legislation. One or two such pieces of legislation that come to mind and the vast bank of consumer legislation, which places enormous responsibilities on producers of goods and services and virtually abandons the principle of caveat emptor. This places all responsibility on one side and no responsibility on the other.

The other is occupational health and safety legislation, which almost completely removes the need for any duty of care on the part of an employee in the workplace. I would be the last person to argue against safety in the workplace. It is very important. But I fail to see how an employer can be held liable for events that occur through the direct actions of employees. The enshrinement of principles that break down the duty of care owed by the person taking the action, as distinct from the person who sets the framework for the action, has led the

courts to raise the bar even higher and higher for those defending a claim of negligence. This legislation attempts to turn that position around, to try to adjust the sense of imbalance that has grown up through court decisions.

As I said earlier, the testing of this legislation in the courts will be a long and expensive process. I refer, as an example, to a very famous case in the insurance field that concerned a constituent of mine, Barrel Insurances. There, a question arose as to who had the duty of care in regard to a lapse of workers compensation coverage—whether it was the broker, who had failed to negotiate workers compensation insurance to cover the insurer from the time the previous policy elapsed, or whether it was the employer. Ultimately, it was found the broker was responsible—but that was about \$4.5 million and many, many years later, after much pain and suffering for the person injured in the accident. Those questions—which appeared to me at the time, because I was involved in the case, to be eminently simple—required a lot of legal argument to resolve. This legislation introduces a number of absolutely fascinating phrases and contexts that will keep lawyers engaged for a long, long time. I will refer to only a few of those. One is new section 5M, entitled "No duty of care for recreational activity where risk warning". Subsection (3) provides:

For the purposes of subsections (1) and (2), a risk warning to a person in relation to a recreational activity is a warning that is given in a manner that is reasonably likely to result in people being warned of the risk before engaging in the recreational activity.

That sounds perfectly logical. But the next sentence of that subsection is:

The defendant is not required to establish that the person received or understood the warning or was capable of receiving or understanding the warning.

The first phrase is "given in a manner that is reasonably likely to result in people being warned of the risk" followed by what appears to be a disclaimer—that is, that the defendant is not required to establish that the person received the warning. Questions such as how the warning was given, whether it was likely to result in a warning being given, and whether the person was capable of receiving the warning are among a whole host of interesting legal questions that will arise from that provision. Subsection 10 (b) provides:

The fact that a risk is the subject of a risk warning does not of itself mean... that a person who gives the risk warning owes a duty of care to a person who engages in an activity to take precautions to avoid the risk of harm from the activity.

How does that bear upon the question of warning against risk? How is the warning against risk to be balanced against precautions to avoid risk of harm from the activity? The honourable member for Liverpool mentioned the standard of care for professionals, and claimed that this legislation would give a very strong level of indemnity to doctors. But even on that issue there would seem to be—I put it no higher than that—confusion in the wording of section 5O (2):

However, peer professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.

The question becomes: How will a court determine whether the opinion is irrational or not irrational? Subsection (3) of the section provides:

The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.

We have differing peer professional opinions. If one peer group says, "This was bad practice, and it was negligent" and another peer group says, "This was perfectly customary, the way we always do it," how is the court to balance out these competing opinions? That is a question that a court will have to decide if a matter comes before it. To further confuse the issue, subsection (4) states:

Peer professional opinion does not have to be universally accepted to be considered widely accepted.

The court may then, if it considers appropriate, regard a very narrow body of peer opinion as outweighing a much wider range of professional peer opinion. So, first, it may be there is an explanation for this. Or, second, if this legislation had been given a slightly longer maturation period, some of these matters could be more clearly explained, worked through or improved so that the intention of the legislation—which I am sure is good—would be more abundantly clear. My concern is that the legislation, as it stands, will do little to improve the two things that it sets out to improve. One is ease of getting insurance, and the other is reduction of insurance premiums.

Of course, the bill has some good aspects, such as confirmation of the good Samaritan defence and the clarification of contributory negligence. Another is the situation regarding volunteers—although even that is a

little unclear when it comes to the status accorded a volunteer. Does the provision apply to the volunteer who is part of a group that contributes its time and labour to the carrying out of some general task? Does it apply also to the organisers of the activity, and should they take a much higher responsibility to ensure the integrity of the framework of the activity? These are matters which are not spelt out clearly enough in the legislation. The legislation would have benefited greatly from being out in the community a little longer to enable some of these issues to be clarified.

I sat through the whole of the presentation given in this House a few weeks ago, and I would have welcomed a similar address once the legislation was in front of us. One of the criticisms at that time was that four people were talking to us about pending legislation. We listened to what was said without any idea of what would be in the legislation. It would have been far more informative if the legislation had been introduced, then we were addressed by those four eminent speakers so that we could weigh up what they had to say against the legislation. Unless the honourable member for Liverpool is prepared to join me on this side of the House, I have no intention of voting against the bill.

Mr NEWELL (Tweed) [10.20 p.m.]: The bill recognises the importance of personal responsibility in an attempt to defuse the public liability insurance crisis. The bill is the second stage of the reforms. Stage one, the Civil Liability Act, was passed in June. These reforms deal with more complex issues that change the relevant test for negligence—for example, the risk warnings and defences for public authorities. The bill was released for public consultation in September and the Attorney General released a discussion paper to accompany it. Although the bill has attracted guarded criticism from a number of honourable members, it is a good response by the Government to the insurance crisis. It may not be everything to everybody, but it has been generally recognised that the State Government has done a great job in both the stage one and stage two reforms. We always knew they would be rather complex and difficult amendments, and that they would attract a great deal of scrutiny, particularly from various sections of the legal profession.

The draft bill incorporated some aspects of the expert panel's first report of the review of the law of negligence, which was released in September. In late September the second stage of the report was released. The final version of the bill incorporates many of the proposed reforms. The community has been hanging out for the bill for some time. There is no doubt that the State Government has done a great job in attempting to deal with the difficulties faced by many of our organisations. During the time I have been waiting to contribute to the debate, a number of honourable members have referred to the impact of civil liability insurance on the ongoing viability of different community groups and commercial activities in their electorates. Next week the Tweed River Agricultural Show will be held at Murwillumbah. That organisation, as part of the show society, has been lucky enough to obtain group insurance that will provide some relief from increasing premiums. Other organisations have not been so lucky and have had to withhold their community work.

Although we cannot quantify the amount of reduction in premiums that is likely to result from these reforms, we can be confident that insurance premiums will be reduced. The Talgan Diggers Festival and the markets on both the coast and at Uki in my electorate have been reduced because of the difficulty in obtaining insurance. Uncertainty has caused many in the community to retreat from undertaking public activities that help to build and bind a community. The bill tackles aspects that are difficult to get a legal handle on, but there is no doubt that the legislation and the comments from the second reading speech will give the legal profession a new definition of "negligence". It has been the ratcheting up or down—depending on which way you look at it—of the law of negligence and subsequent payouts that have got us into trouble. The bill will limit the scope of reasonable foreseeability. The possibility has to be not insignificant before it can be considered reasonably foreseeable. A court cannot rely solely on hindsight, evidence of subsequent remedial action or the mere fact that a risk was easily avoidable when determining liability. The bill will also limit claims from an inherent or obvious risk or a plaintiff's contributory negligence. There has been nothing but support for this aspect of the bill.

People have been dumbfounded at the decisions handed down in a number of high-profile contributory negligence cases in the run-up to the introduction of this legislation. The bill will limit the liability arising from recreational activities, particularly when risk warnings and waivers have been given. It was always difficult when waivers were not worth the paper they were written on. But amendments to the Commonwealth Trade Practices Act will enable us to introduce complementary legislation to ensure that, in appropriate cases, waivers and risk warnings will stand up to the scrutiny of the court. The bill will prevent plaintiffs from succeeding when injury is due to their intoxication. A recent case in Sydney is a case in point. The bill will ensure that no personal injury damages will be available to an intoxicated person unless the injury is likely to have occurred even if the person had not been intoxicated.

If the accident is likely to have occurred in any event, the damages for the intoxicated person will be reduced by 25 per cent on the presumption of contributory negligence or more if appropriate, unless the person's intoxication played no part in the accident. I have not heard anyone argue about limiting criminals recovering damages for injuries received while committing a crime. These are the types of commonsense amendments that people are looking for in the legislation. The bill will introduce a new defence for professionals accused of negligence. Professional negligence, particularly medical negligence, has always been a bugbear. Doctors and medical practitioners who have been struck off the register for medical negligence could be named in only very small numbers and isolated cases, yet we could probably reel off a number of names of people who have been injured as a result of medical negligence.

The changes provided for in the bill will ensure that when a professional is judged by his or her peers to be delivering services in line with competent professional practice the professional will not be sued for negligence. That is fair enough, provided that people recognise that in some instances medical practitioners, for example, are required to deliver services in emergency circumstances and have to make decisions when they are under a great deal of pressure. It is only fair to recognise that training can take professionals to only a certain level. People should accept that when professionals provide services in accordance with a standard that has been set by professional training, the professionals should not be charged with negligence. Peer assessment is one way of ensuring that services are delivered according to professional standards. This provision has attracted some criticism, and it is possible that an amendment to the legislation will be required at a later stage. However, at this point, I indicate my concurrence with that provision.

The bill also provides protection for volunteers against liability for acts or omissions. When volunteers act in good faith in carrying out work for community organisations, by virtue of this bill, no liability for damages will arise. That provision is certainly not before time. Numerous examples support the inclusion of this provision, but time does not permit me to deal with those examples in detail. Unequivocal support has been given to provisions that remove lifesaving groups and other community-based groups from the scope of negligence actions. These organisations perform good work and people who act in good faith should be given protection. This legislation has targeted volunteer groups and in many respects has rewritten the law on liability to ensure that volunteers are protected.

This bill also provides that an apology will no longer be able to be used by litigants as evidence of the acceptance of liability. A case that is under way involving the Cudgen Headland Surf Life Saving Club at Kingscliff is based on comments made by a person after another person had drowned in the surf. The club and the local council were taken to court. In the future this legislation will rule out those types of actions by ensuring that volunteers and any comments made by them during times of crisis will not be able to be held against them or their organisation at a later stage. The bill addresses a number of issues that have been of concern to communities throughout New South Wales. I commend the bill to the House.

Mr STONER (Oxley) [10.32 p.m.]: This bill represents the second stage of reforms to laws governing public liability insurance. It represents the Government's response to increasing costs of public liability insurance cover and is recognition of the inability of many groups and individuals to obtain public liability insurance. The bill represents a long overdue reform. The Opposition has been calling for reform for some months. Having said that, I point out that the Coalition offers its support for the bill in a gesture of bipartisanship and will not oppose the passing of these necessary reforms. However, the Opposition will highlight a number of issues that should be addressed by the Premier in his reply. There is no doubt that the public liability insurance crisis has affected all aspects of society in New South Wales, including cultural life in regional and rural New South Wales. I will provide the House with examples of individuals and groups in the Oxley electorate who have contacted me to voice their concerns.

Jill Ashley is the proprietor of the Nambucca Valley Indoor Sports Centre which provides hydrotherapy services and aqua fitness classes. She has told me that the centre's public liability insurance premium quote was \$17,000. If the cost of the premium is not reduced, this invaluable centre at Nambucca Heads will be forced to close. The Macleay Home Modification and Maintenance Service is a not-for-profit service which provides support for aged and disabled people. It has been unable to obtain public liability insurance and that threatens the continuation of this valuable service. The very same threat has also put at risk the ability of other agencies to provide relevant services in the Macleay district, and six direct jobs are at risk. Gerard Wade of Bellbrook is a martial arts teacher. He and his colleagues are also having difficulty obtaining public liability insurance cover. Many people are closing their businesses because they cannot afford the cost of insurance premiums.

I have made a number of representations, including statements I made in this House in early June, on behalf of the equine industry. People involved in adventure rides, pony clubs and the horseracing industry are

desperate for measures that will ensure the survival of the industry and protect them from litigation. The idea of celebrating the Year of the Outback without horses and horse-related activities and sports throughout this State is almost impossible to contemplate. A ridiculous situation arose when the Lower Macleay High School Establishment Association—a volunteer group which meets approximately 10 times a year by sitting round a table to discuss issues—was refused insurance. The Rosewood Ensemble was forced to cancel its popular opera concerts in May in both Kempsey and Nambucca. The latter event raises substantial funds that are donated to the Salvation Army's Red Shield Appeal. Members of surf-lifesaving clubs have been forced to contribute \$6 each in increased membership dues to meet the costs of public liability insurance, which clubs were able to obtain only from overseas sources.

Recently the Coalition announced a policy of cover by the Treasury Managed Fund for invaluable rescue service volunteers, to place them on equal footing with other emergency service volunteers in the State Emergency Service and the Rural Fire Service. Notwithstanding that, and despite the provisions of this bill, those volunteers need to continue their insurance policies because of gaps in protection. As the shadow Minister for Sport and Recreation, I have had contact with a number of organisations involved in outdoor and adventure sports. I understand that a proposal involving participants signing waivers is being considered by the Federal Government and the State Government with a view to preparing amendments to the Trade Practices Act. That would be a welcome measure in addressing the problems. Volunteer Landcare and Dunecare groups are in a similar position and the Department of Land and Water Conservation has recommended that those community groups obtain their own public liability insurance coverage.

Cycling clubs have been asked to submit ride plans for every ride because of the current insurance climate. Massive insurance hikes in public liability premiums—in some cases involving increases of up to 500 per cent—are crippling small groups that have limited resources but much to offer for smaller rural communities. Hopefully this bill will provide some relief to those individuals and groups and address farcical outcomes whereby litigants have been awarded huge payouts, despite high levels of personal responsibility for the injuries they sustained.

I cite the example of a person who illegally entered a hotel with criminal intent and who was injured by the owner. Similarly, claims made by people who were under the influence of alcohol or drugs when injured and who ignored warning signs or other obvious dangers should be addressed by this legislation. The bill aims to provide a legal definition of "negligence" and creates statutory legal defences in a number of circumstances, including recreation activities, inherently risky activities, conduct by professionals, conduct by public authorities, self-defence and recovery by criminals, intoxicated plaintiffs, and conduct by good Samaritans and volunteers.

The bill is largely consistent with the Ipp report that was commissioned by the ministerial meeting on public liability. The Federal Government generally supports the thrust of this bill. Earlier I mentioned business and community groups in my electorate that remain under stress in obtaining insurance at affordable premiums. Generally they welcome the stage two reforms. The Insurance Council of Australia has announced a new insurance product for the not-for-profit section that is contingent on the passage of this bill. On the other side of the argument I will outline concerns that I hope the Minister will address in his reply, and which I hope will be dealt with as the bill passes through both Houses of this Parliament. The bill significantly reforms the law of negligence. Mr Ipp said:

If implemented, the recommendations made by the Panel will, to a degree, shift the cost of injuries from injurers to injured persons.

There is no guarantee that premiums will fall and there is an argument that the current insurance crisis is partly cyclical. Concern has been expressed that as insurance companies have sought to recover their losses of recent years, including those related to the tragic events of September 11 and those possibly due to a lack of competition domestically resulting from the collapse of HIH Insurance, insurance payouts have assumed a higher profile. Despite a requirement for lower overall payouts, insurance companies will absorb the margin to cover their losses.

Some community groups, including the Volunteer Rescue Association Inc.[VRA], have raised concerns with me. That association was concerned about the exposure draft bill. It seems that the bill has not addressed the concerns raised by the VRA. Schedule 4.9 inserts a new section 59 into the State Emergency and Rescue Management Act 1989. That new section covers the activities of emergency services volunteers carried out in good faith "in connection with a rescue operation or otherwise in response to an emergency..." The VRA has pointed out that its volunteers routinely undertake bona fide activities on behalf of the community. Those volunteers ought to be covered by the bill when carrying out activities that assist the community.

Volunteers should be covered when giving assistance to ambulance or police in a wide range of support roles including body recoveries, safety patrols and other preventative measures such as those undertaken by ski patrols, aerial patrols, maritime and inland water groups and other specialist groups affiliated with the VRA and the day-to-day operations of maritime radio bases. The VRA is concerned that those bona fide and routine activities undertaken in support of members of the public may be excluded from the new section 59, which is to be inserted into the State Emergency and Rescue Management Act. I ask the Minister to consider broadening the definition in that new section to cover the activities mentioned by the VRA, which obviously relate to other emergency services and volunteer groups. Hopefully, those concerns will be addressed by way of amendments to the bill.

Some definitions are likely to be challenged and interpreted in the courts. Earlier I mentioned surf-lifesaving clubs, and there is no doubt that community and other groups will be required to maintain public liability insurance despite the provisions of this bill and with no guarantee that premiums will be reduced. The New South Wales Coalition does not oppose the bill. It offers bipartisan support to resolve the public liability crisis and to assist members of the community, but we seek detailed responses to the issues and concerns that have been raised.

Mr MOSS (Canterbury—Parliamentary Secretary) [10.45 p.m.]: As promised, the Government has introduced stage two of its civil liability legislation. In one sense stage two is not all that different from stage one. One of the main aims of both stages of this legislation is to ensure that public liability premiums and payouts are more realistic and more affordable. However, stage one provided fair compensation to claimants for injury and at the same time ensured that the payouts are affordable for the person who is sued. Stage two is more difficult, because it aims to establish who is liable for compensation. I believe it has achieved that aim. The legislation also establishes who is liable to pay compensation and who is entitled to receive compensation.

My view on one important aspect of the Civil Liability Amendment (Personal Responsibility) Bill can be explained in a nutshell. The bill will exonerate the company Bridgeclimb from paying damages should someone claim damages after suffering a heart attack while walking on the Sydney Harbour Bridge. That attack could come from an extreme case of vertigo, but the company would still be liable for damages, of course, if the cable attached to the climbers were to snap and someone fell over and broke a leg or fell off the bridge. The bill provides the correct balance: payouts for negligence will be made only when negligence is squarely sheeted home to a second party. The bill is about establishing personal responsibility for an individual's actions unless that individual falls victim to an accident that could not have been safeguarded against.

The bill reverses the culture of litigation. Over the years our concept of blame has grown out of all proportion in an amazing way. I have spoken to a number of people about this bill because, like many other honourable members, I have in my electorate groups and organisations that are concerned about the impossibility of maintaining their public liability premiums. When I remind people that under this legislation they will be prevented from making public liability claims if they are injured when they are committing a crime, their usual reaction is, "Surely people who commit crimes could not have claimed compensation in the past?" All honourable members would be aware that such people were entitled to compensation. Under this bill no damages are payable when a person is injured while committing a serious crime.

When I explain to people that this bill will stop those who are injured when intoxicated from claiming, their usual reaction is, "Surely people could not have claimed in the past if they became injured whilst they were intoxicated? Surely it was their fault?" Under previous law, people were able to make such claims. The legislation will close that loophole by ensuring that a defendant will not owe a plaintiff who is intoxicated any higher standard of care than if the plaintiff were sober. No personal injury damages will be paid to a person who is injured while intoxicated unless the accident was likely to have occurred even if the person had not been intoxicated.

They are only a few of the provisions in this bill that I wanted to address. I could refer at length to a number of other changes in this bill, but I want to refer now to only one other issue. The bill will ensure that unrealistically high standards cannot be imposed on public authorities such as local councils, schools and the like. Some people might argue that the Government is setting two standards: one for itself and one for everybody else. My response to them would be: if that is so, so be it. In the past people have been too anxious to sue the Government. If the Government happens to be involved in an incident in which someone is injured, in the past the argument has been, "Let's go for broke."

We all know about the supposed bottomless Treasury barrel. In short, too many people in the community see the Government as easy prey. A good example of that is the accident that occurred on Bondi

Beach a few months ago. Under stage one of this legislation that unrealistic amount would never have been awarded. If lifesavers had been patrolling the beach at the time that injury occurred, it is possible that the person might not have bothered to make a claim. There was an opportunity to get stuck into the council and go for broke, and that is what occurred. The bill will put an end to all of that. The Government must protect itself from unrealistic claims and professional claimants. At the end of the day all that the Government is doing is protecting taxpayers from unjustifiable claims. The community owns government departments and taxpayers fund government instrumentalities. Those provisions in the bill will protect the taxpayer.

This legislation is straightforward. The law relating to personal injury cases must be reformed because insurance costs have blown out beyond the capacity of ordinary individuals, countless organisations and the majority of businesses to pay. The Government is obliged to do something about it. If we continued to ignore the problem and did nothing about it we would not be facing up to our responsibilities. Clearly, we are trying to tighten the reins on thrifty insurance companies, judges who lack perspective and greedy lawyers. I know a great story about litigation lawyers which goes something like this: Why are litigation lawyers immune to shark attacks? The answer is: Sharks do not attack litigation lawyers as a matter of professional courtesy.

There is a great deal of truth in that statement. The problem is that the cost of claims for minor injuries has blown out. If we continue to ignore the fact that a lack of personal responsibility is to blame for many accidents for which compensation is being paid and continue to build on the current culture of blame, huge payments will continue to be awarded by judges, many of whom have no concept of the difficulty faced by those who have to pay the damages. This bill will reverse the practice of paying frivolous, exorbitant and unrealistic claims and, at the same time, it will provide compensation to the legitimate victims of accidents. The bill has my support.

Mr MAGUIRE (Wagga Wagga) [10.56 p.m.]: There is an old saying that the wheels of bureaucracy move ever so slowly. The Civil Liability Amendment (Personal Responsibility) Bill is an example of the bureaucracy moving slowly. Communities have been pleading with the Government to introduce legislation. Concerns were raised by Opposition and Government members as far back as June or July last year. Community groups were making representations to their local members because they could not obtain public liability insurance. They were experiencing problems in holding functions, many of which had to be cancelled. The Civil Liability Amendment (Personal Responsibility) Bill deals with negligence, recreational activities, professional negligence, superannuation entitlements, non-economic loss damages tariffs, structured settlements, mental harm, proportionate liability, liability of public and other authorities, intoxication, self-defence and recovery by criminals, good Samaritans, volunteers and limitation periods.

I refer to correspondence that I have received from two groups. The Mangoplah Cookardinia United-Eastlakes Football Club Inc. wrote to me about its attempts to get insurance cover for its Mangoplah Motorcycle Muster. Unfortunately, that function, which was due to be held on 1 and 2 November, had to be cancelled as the group could not obtain public liability insurance. The other correspondence that I received was from the City of Wagga Wagga Eisteddfod Inc., which has been operating for 82 years. It was having trouble obtaining public liability insurance. The cost of that insurance was to rise—if it could obtain insurance—from \$900 to \$4,000. I have referred to that correspondence because I want to thank Chris Henry and the Insurance Council of Australia.

My office managed to obtain insurance for those groups and many others so that they can continue to function. The Government should have introduced this bill a long time ago. It should have been put out for public discussion and community groups should now be taking advantage of it. Crises are occurring throughout New South Wales. In my electorate there are two crises, one relating to medical indemnity and the problems obstetricians are experiencing in obtaining insurance, and the other relating to breast screening.

The crisis experienced by the Greater Murray Area Health Service, BreastScreen New South Wales and Calvary Hospital could result in the loss of breast screening for the region. Calvary is a non-government organisation that provides breast screening services, and it is contracted by BreastScreen New South Wales. If that service were provided in a public hospital or facility the specialists would be covered by the Treasury-managed fund. However, this public service is provided in a private facility and, therefore, the doctors are not covered.

Those are some of the complexities we have been experiencing while the indemnity insurance crisis has been continuing, without enough attention being paid to it by this Government. Recreational activities have also created great angst. I shall relate what happened to a constituent of mine who runs an indoor climbing gym. He

asks every patron who comes in to sign a waiver. He runs through a rigorous training session and then asks them to sign off saying that they have been taught and understand the safety instructions they have been given. He has attached a copy of the waiver and highlighted the most appropriate sections that apply to this specific case.

A patron entered the gym with a group of people, including her sister. She failed to do up her safety equipment as shown at the training session, and they failed to check each other's equipment before leaving the ground. Both of these points are always highlighted in the initial instruction given to every climber, and it is one of the rules of the gym. When patrons sign in they say that they have read and understood that they will check each other's equipment. As a result of not doing up the safety equipment, the girl fell from the top of the climb and fractured her ankle. This required surgery and time away from work. She is now claiming damages, including her inability to work after 60 years of age. I understand that this bill attempts to address the concern of my constituent.

Obviously, a person running a business needs this legislation. I would like to have had more time to consult community groups. When legislation is rushed through I am sure the time will come when concern is raised about parts of the legislation that perhaps did not achieve the outcomes they were originally drafted to do. I highlight that part of the bill relating to nonfeasance. I was a member of the committee that examined and reported on the loss of nonfeasance by councils. The Premier, in his speech, said:

A "roads authority" that has not exercised a discretionary power to mend, for example, a pothole will not be liable unless it actually knew about the particular risk that led to the injury. This will reintroduce a protection for certain "non-feasance" on the part of roads authorities. If a roads authority did know about the particular risk, it will still be able to rely on the general "resources" protection in the bill for public authorities.

I am concerned about that statement by the Premier because it is very broad. When the Minister responds I would like him to spell out more clearly exactly what that means. Basically, it is giving total immunity to all kinds of government organisations and instrumentalities when I do not believe that is the real intention of the bill. As the honourable member for Lachlan said earlier, this bill will be interpreted in a court of law. The bill is so complex that in some cases I believe we are using a sledgehammer to smash an acorn; the bits will be splattered all over the place and they will need to be picked up in the future, and it will most likely be through a court of law. The recommendations of the Public Bodies Review Committee, after much work, were put forward in a bipartisan way to provide guidance on what forms of legislation might be implemented to address councils' concerns about public liability and the loss of nonfeasance.

I am concerned that this is almost a total immunity. In our report we recommended that councils should meet certain parameters to give them indemnity cover. I would like the Minister to respond to that. Nowhere have I heard anyone refer to insurance premiums. Indeed, earlier I said that the fees for the Wagga Wagga Eisteddfod increased from \$900 to \$4,000. Not one member has said what effect this bill will have on fees. Indeed, I would go so far as to say that community groups that have ceased to operate because of their inability firstly to get insurance and secondly to afford it will not instigate or reignite their programs, community functions or other events because the costs are out of hand. Unfortunately, I think we have lost those programs and functions forever, although this legislation, particularly the good Samaritans clause, is meant to assist them.

I should like the Minister to predict what the community can expect in terms of fees, because obviously the community needs to plan for years to come. Tonight I spoke to the organisers of the Mangoplah Motorcycle Muster. They advised me that they are still battling, with the help of Chris Henry from the Insurance Council of Australia. He said that it is looking good because, as I said before, the Insurance Council has worked closely with my office. We have managed to get insurance with the Insurance Council of Australia for all community non-profit organisations that have come to me for insurance. The situation has been much different for commercial operations. Indeed, many businesses have ceased to function because of their inability to gain insurance. Earlier I touched on medical indemnity and obstetricians in particular. Last Friday I met with the obstetricians and specialists at Calvary Hospital, who expressed concern about the problems they have with increased insurance premiums and the public's general attitude that it is good to sue.

Indeed, I want the Minister or the Premier to respond with regard to expanding exactly what this legislation will do for obstetricians and the complexities they face. In Wagga Wagga we have Calvary Hospital, which is a private hospital, and Wagga Wagga Base Hospital. This legislation addresses the concerns put to me by the obstetricians with regard to being able to afford insurance and the effects that will have on making claims. They expressed concern that the courts or the judiciary will be making judgments without the good knowledge or professional opinion of their peers. The legislation states that a peer review or opinion can be dismissed by the judiciary. I am concerned about that. Certainly, I would like the Minister to expand on the implications of that; if we cannot secure obstetricians for Calvary Hospital, Wagga Wagga Base Hospital will be forced to take up the overflow.

Indeed, I predict that, apart from a private hospital in Canberra, if the obstetricians withdraw their services from Calvary Hospital, no other private hospital will offer women the opportunity to have their babies. Wagga Wagga Volunteer Rescue Association has written to me about its problems with this legislation. I know that my good friend the honourable member for Tamworth will raise this concern in his contribution to the debate. He will put the case energetically and seek answers from the Premier about the impact of this legislation and what it will mean for those volunteer organisations that we rely on so much in our communities.

As I said before, I will not oppose the bill. I keenly await the Minister's response to my questions. Much more could be said on this matter but it is late in the evening and other honourable members wish to speak about constituency issues. I am disappointed that the bill did not come before us sooner and that inappropriate time was allowed for community discussion. This is a complex bill and the myriad issues it comprises should be explained in detail with greater clarity so that the judiciary and the community are fully apprised of its ramifications.

Mr PRICE (Maitland) [11.10 p.m.]: I support the Civil Liability Amendment (Personal Responsibility) Bill. I suspect that the expectation of the honourable member for Wagga Wagga of some indication regarding likely fees is a bit off the mark. The best that any government can do is create circumstances that may return the insurance industry to a stage that permits the purchase of insurance. However, fees remain the responsibility of the industry and the Government cannot anticipate what they will be. The various companies will set the fees according to their particular requirements. Like all honourable members I have been approached by people who are most concerned about the loss of public amenity that will result from the withdrawal of public liability insurance.

Several public hall committees in my electorate have closed. Even a small group of 12 women quilters were unable to obtain insurance, which halted their activities. I have no idea what risks could possibly be associated with making a quilt—one might prick one's finger with a needle, but that is about it. A cycling group for older people—who used to cycle every Saturday morning for two hours along a set route—was also unable to obtain insurance. Several sporting bodies have suffered extreme increases in their insurance premiums, and the scouts and guides have faced similar problems. We must also reflect on the impact on local government, which is not insignificant given some of the decisions made against public authorities in the past few years.

I shall respond to some comments made in the second reading speech and discuss briefly the obvious and inherent risks. Anyone with any commonsense would understand that people are usually well aware of obvious and inherent risks. Particular risks may have to be pointed out by the group proposing a sport or activity, but there is a general understanding that if people wish to write away their common law rights, it is a matter for them. Risk-taking associated with particular sports and activities should not reflect upon the general community by way of significant compensation payouts when a problem occurs. Likewise, intoxicated persons should not be covered by public liability insurance, particularly when signs or other warnings would ensure that they avoided danger or risk under normal circumstances.

As to those who seek compensation for injury incurred during the commission of a serious crime, I do not know why they think they have particular rights. I may not have such rights as a general citizen, but these people claim them and our courts respond accordingly. This bill will go a long way towards preventing that from occurring in future. Some of the weird claims brought before our courts will receive a nil response. Judges may consider that they are being put in a straitjacket but they must learn, like the rest of us, that a response is required to public concern. If legislation is needed to spell it out, this bill will do that. I think the bill is a great step forward. It has certainly taken some time to get here, but I think honourable members on both sides of the House realise that it is extremely complex.

All levels of government and many professional bodies have had significant input in the legislation. It is certainly a move in the right direction that will enable the insurance industry to re-enter several areas of insurance from which they had withdrawn since September 11 last year. The fee structure will be commensurate with the companies' perceived profit margins and the absolute risk from their point of view. I commend the bill to the House and look forward to its rapid passage through Parliament.

Mr CULL (Tamworth) [11.15 p.m.]: Since my election to Parliament in the by-election of November last year the problems associated with public liability insurance have caused major concern to my constituents. The Opposition is quite concerned at the speed with which the changes have been devised. There is no doubt that public liability insurance and the issues associated with it threaten the very existence of some of our rural communities and the small voluntary organisations within them. Concern has been expressed to me about the availability of public liability insurance and the ability to ensure coverage for basic events such as arts council activities.

Eisteddfod societies and similar organisations have experienced enormous difficulties trying to secure public liability insurance. When such coverage was available, it came at great cost that threatened the existence of many organisations. I believe the impact of the public liability crisis has been felt more in rural areas where communities are smaller and it is difficult to spread the costs associated with public liability insurance. The small social clubs in the back blocks of New South Wales that get together every weekend for a tennis match, barbecue or whatever could not afford to purchase public liability insurance and many have closed. That will have a detrimental effect on our rural communities.

The proposed changes in the Civil Liability Amendment (Personal Responsibility) Bill address many of our basic concerns about the impact of public liability insurance. Several provisions will impact particularly on my electorate. The risk warning aspect of the bill is particularly pertinent to the Tamworth electorate as the equine industry is one of our biggest industries and nothing impacts upon it more than public liability. There are many farm-stay operations in the region, many of which have been forced to close because the owners could not secure insurance or they could not afford the insurance that was available. The bill makes commonsense changes with regard to intoxicated persons. It prevents people from seeking compensation for injury sustained while under the influence of alcohol or while committing a crime. These are good policies that probably should have been introduced many years ago.

Another aspect of the bill that is particularly important for rural areas concerns roads authorities. Many roads in country New South Wales are in a poor state of repair due to lack of funding and local councils have been concerned about their exposure to public liability claims as a consequence. The bill's good Samaritan provision also makes sense. People who assist those in need must be protected from litigation. The structured settlements also make a great deal of sense. Much concern has been raised about the size of recent payouts, which cannot be justified. Part of that is being able to limit the discoverability of these claims to three years.

I want to mention a letter I received today from the New South Wales Volunteer Rescue Association [VRA]. This has been referred to by the honourable member for Oxley and the honourable member for Wagga Wagga. The association is an affiliation of 75 non-government volunteer organisations providing a significant emergency response capability to the State. It is the second-largest supplier of primary response rescue units in New South Wales. The VRA operates about 50 State Rescue Board accredited primary response units, part of which are land rescue units which provide a wide range of services, including road accident rescue and industrial and domestic rescues. It conducts land searches and rescues, it assists ambulance officers at accident scenes and on other occasions it provides floodlighting and assists police with the recovery of bodies and with evidence searches.

The New South Wales Volunteer Rescue Association's concern with the bill is that it provides cover to its members only when they are in the middle of a rescue or during a response to an emergency. We all understand that a large proportion of their work is in assisting police or the Ambulance Service, but neither in a rescue nor in response to an emergency. The rescue squad in Manilla, a small town just west of Tamworth, provides about 100 ambulance assists a year, supporting local ambulance staff with patient treatment, handling and transport. It also assists with the recovery of bodies, which is neither a rescue nor an emergency. It has safety controls and other preventive measures which, again, are neither a rescue nor a response to an emergency. It also conducts day-to-day operations at our marine radio base.

All these services are very important to the local community but under this bill they are neither emergencies nor rescues. These people are concerned that they will not be covered when they are carrying out their duties. As I have indicated, we are not opposing this bill. We believe it is a commonsense bill, but we are concerned that it will not achieve the desired results if we do not reduce the price of public liability insurance premiums. Smaller organisations within our community cannot afford the types of premiums insurance companies are asking. Unless premiums can be reduced as a result of this bill we will not achieve the results we want to sustain our local communities.

Miss BURTON (Kogarah) [11.22 p.m.]: The New South Wales Government led the way in tort law reform earlier this year with its comprehensive package of changes to the law governing damages. During debate on the Civil Liability Bill the Government promised it would introduce measured, principled reform to the law of torts. This is what we have now done. New South Wales was the first State to release substantive, principled tort law reform proposals when it released this bill in draft form for public consultation on 3 September. The bill before the House represents the Government's commitment to the reform process. We also envisage, however, that aspects of the bill could become a national template for reform. This is because the bill embodies many of the recommendations made by the Expert Panel on Negligence. This group was jointly commissioned by the Commonwealth, States and Territories to develop proposals to restore the balance in favour of personal responsibility on tort law.

The Premier has sent copies of our bill to other State and Territory leaders suggesting that the provisions based on the Ipp report might form the basis for a nationally consistent approach. As the Premier has already noted in this debate, not all reforms in this bill, or in the Ipp report, need to be made in other jurisdictions or made in exactly the same terms. But it would be helpful to the community and the courts if those reforms dealing with basic principles of the law of negligence were consistent. That is why the New South Wales Government has been so ready to change the draft bill. I want to talk about some of the provisions in the bill that have been changed since the Ipp report was released.

The Ipp report recommended a way of formulating the legislative test for the standard of care that was different from the draft bill. Like the draft bill, however, the aim of those recommendations was essentially to ensure that the courts do not find nearly every risk foreseeable. The new provisions in the bill are a sensible change that will meet the community's reasonable expectations. The bill also contains a new approach to protecting against liability for obvious risks. The Government is acutely aware of the community's concern that the courts do not require people to accept personal responsibility for the obvious risks they choose to take. The Ipp report recommended a multilayered scheme for giving greater protection to defendants in cases where the risks are obvious. The draft New South Wales bill took a more direct approach—but the aim of increasing personal responsibility is the same under both.

The bill now adopts the Ipp report's approach, which is likely to be considered fairer for children and disabled people. However, as promised by the Government, immunity will still be provided for particularly dangerous sports—and risk warnings and waivers will be effective. Strengthening risk warnings should be particularly helpful for organisers of important community events. The bill also now picks up the Ipp report's recommendation to codify the common law rules for when a plaintiff is contributorily negligent. This should ensure that a plaintiff's own responsibility for his or her injuries is not underestimated by the courts. The final bill also contains an amendment to the peer-acceptance defence for professionals. The Ipp report recommended that a court be given power to override peer professional opinion where it considers the opinion is irrational. This is an important protection for consumers, and the bill has been amended to reflect this exception.

The final bill also contains new provisions based on the Ipp recommendations on limitation periods. The Ipp report recommends that personal injury actions should not be brought more than three years after the date of discoverability. This new time period will not run against children and disabled people provided they have a capable parent or guardian to look after their interests. There will be an additional exception under the New South Wales bill for children whose parents irrationally fail to bring a claim on their behalf. The new provisions should provide more certainty and help to limit applications for extension of time. The Ipp report also recommended codifying the rules about when a person can claim damages for pure mental harm, as well as mental harm that is consequential on a physical injury. The bill picks up these recommendations, which reflect recent important High Court decisions in this area.

Our bill will also prevent certain personal injury claims being made under the Fair Trading Act. As noted in the Ipp report, these types of actions were not intended to be an alternative to an ordinary negligence claim for personal injury. They were designed for economic and other losses associated with conduct in trade. As honourable members can see, the New South Wales Government is continuing to work co-operatively at the national level. It is, however, also continuing to take the lead on this issue. The community rightly expects the Government not to sit back and wait for others to do so. This bill will help to restore the place of personal responsibility under our law and will preserve the community's access to those activities that define the Australian way of life. I commend the bill to the House.

Ms SEATON (Southern Highlands) [11.29 p.m.]: Sadly this bill is too late for many groups in my community and elsewhere, particularly fundraising groups, to find insurance coverage that will enable them to continue performing their important community and volunteer work. I am puzzled that it has taken the Government so long to see the light of day; the Coalition produced an extensive and comprehensive discussion paper on all these issues in the early part of this year. Almost all the recommendations of that Coalition discussion paper on public liability have found their way into this bill. The Government has had this material for months, yet it has only now introduced this bill—following the demise of many community organisations and activities.

A good deal of work has been done also by Justice Ipp and his colleagues under the exceptional leadership of the Federal Government and Helen Coonan. It was so important that a comprehensive nationwide approach was taken to public liability insurance coverage. Many of the provisions of the bill are almost word-for-word the recommendations of the Ipp report. The Government has not had to do a great deal of work in this

regard. It has had the research done for it; and it has had the benefit of the recommendations of the Coalition and the Ipp report and the leadership of Helen Coonan at the Federal level. In many ways, all the Government has had to do is to join the dots.

The bill is largely unchanged from its first draft. One difference, however, is the definition of, and exclusion provisions relating to, risks. The original bill placed a strong emphasis on the provision of, and need to provide, risk warnings—an emphasis that was clearly going to be impractical in many ways. For instance, theoretically, the bill required a risk warning or sign to be displayed every five metres along a beach. I am pleased that a more rational approach has been taken in this bill by the exclusion of so-called "obvious risk" and the provision of risk warnings.

Key features of the bill include the establishment of general principles in which harm cannot be claimed unless the person claimed against knew or ought to have known of a risk, or where a reasonable person would have taken precautions. The bill establishes elements by which harm can be determined in relation to cause and scope. There will be no duty of care to warn an obvious risk, regardless of how unlikely it is, and no liability will arise from the effect of an inherent risk in this bill. The bill does not require that a person be warned of an obvious risk—however, in some instances a professional person may be required to give such a warning. I imagine that that would mean, for example, a medical professional warning somebody of the potential consequences of a particular procedure. Risk warnings are not necessary when the risk involved is obvious. In such cases the onus of proof always falls on the plaintiff.

I am pleased that for some recreational activity groups in my electorate, including riding schools and ecotourism groups with whom I have been working, no liability will exist with regard to harm from obvious dangers, recreational activity or recreational activity that was the subject of a risk warning. Thanks to the Federal Government and Helen Coonan, at last waivers have been given some legitimacy and contracts may exclude liability. Professional liability is also covered in the bill. There will be limits to such liability if a professional is found to have acted in a manner acceptable to his or her peers. Contributory negligence can be determined by a court to be 100 per cent of a claim, and so totally discounted.

I am pleased that the bill makes provision for and encourages structured settlements. I note also the provisions under which nervous shock or mental harm claims may be made. Proportionate liability has also been introduced, and that is a welcome move in many respects. I also note that public authorities, including hospitals and local government authorities such as Sydney Water, will be afforded considerable protection from claims. People who are injured as a result of acts of their own volition while intoxicated will, generally speaking, be precluded from making a claim. The bill contains provisions which limit the capacity for claims by criminals who are injured in the course of committing serious criminal offences.

I am pleased with the good Samaritan provisions—particularly with regard to those who act in a private or volunteer capacity such as lifesavers—which afford protection from acts that are undertaken in good faith. Of course no such protection is afforded if such people act in a deliberate or criminal fashion or if they are intoxicated or do not exercise reasonable care. This is a much-needed provision. Good Samaritans and volunteers must have protection from events that might arise from their acts of good faith in our community. The limitation periods set out in the bill have been lifted from the recommendations of the Ipp report. I note also the provisions relating to the circumstances under which children may make claims upon reaching majority.

A number of concerns have been expressed by the New South Wales Volunteer Rescue Association [VRA]. The honourable member for Oxley and shadow Minister for Emergency Services, and the honourable member for Vacluse and the Opposition spokesperson for insurance regulation, have canvassed this matter in some detail. A number of volunteer rescue association groups in my electorate do extremely valuable work not just in the provision of rescue and emergency services but also in a range of other activities. I would be concerned if their needs were not acknowledged by the Government and addressed in some way. I am disappointed that despite a good deal of consultation with, and representation from, the VRA, those needs are not reflected in this bill. I will be listening very carefully to the Minister's reply for any reference to these matters of concern as expressed by the VRA.

Importantly, the bill does not set out any accountability requirements for insurers. We have heard nothing from the Premier that will guarantee lower premiums or greater accessibility to affordable insurance premiums. Recently, the Bowral Chamber of Commerce wanted to set up a Christmas tree in the Bowral shopping centre as a point of communal activity over Christmas, particularly for people trying to regroup after the Bali bombings. The local chamber of commerce thought it would be worthwhile to provide a place in Bowral where people could meet in the Christmas period and conduct community activities.

However, the council could not, under its insurance coverage, allow the chamber of commerce to set up the tree, and the chamber of commerce had difficulty finding an insurance premium that it could afford. I am pleased to say that after several discussions and negotiations between the council and the chamber the problem has been overcome, but at some cost to the chamber. These problems were experienced merely because we wanted to erect a Christmas tree in our local shopping centre before Christmas. As I have said on another occasion, the great trolley race at Bowral was cancelled about two years ago. It was an event conducted by the Kollege of Kulture and Knowledge for Kids and organised largely by Councillor Nick Campbell Jones and his team to raise money for children with disabilities.

Some general practitioners and other doctors in my electorate have been struggling to afford and to get access to insurance, even those who have never had a claim made against them. I am concerned that the provisions in this bill will not make such groups any more insurable; a perfect claims history cannot be improved upon. The Opposition wants to know whether community groups in areas such as my electorate will be able to share in the benefits of this legislation and whether we will see it flow through to all those responsible organisations in the form of affordable and more accessible premiums. We have never yet heard the Premier give any guarantees that there will be lower premiums and greater availability of insurance. That will be the test of this legislation: more affordable and more accessible insurance and a return to life as we knew it two or three years ago.

This bill is open to interpretation and legal exploitation. It places a great deal of reliance on words such as "reasonable" and "exceptional". Those words will soon be tested by lawyers. It does not take much imagination to realise that in a short time a body of case law will be created around this bill and we will have the same bracket creep that we have had over the past couple of decades, which has led us to this position. I would be surprised if we did not find ourselves back here in a few years time trying yet again to limit the environment in which claims are made. I ask the Government to give its views on this issue. I am pleased that many of the Coalition's recommendations have been included in the bill. I look forward to hearing the Government's reply, particularly with regard to the problems identified by the Voluntary Rescue Association.

Mr KERR (Cronulla) [11.41 p.m.]: I listened with interest to the speech of the honourable member for Miranda. He cited authorities and made a very good case that this Government has been negligent on this issue in this State. Everyone could foresee the problems that have occurred. In fact, foreseeability was not even necessary, because the problems were actually happening. Community groups found that premiums were escalating and often they were unable to get insurance coverage for their particular events. The viability of businesses was affected by the insurmountable cost of premiums. Economic activity was stifled and community activity was, in some instances, coming to an end because people could not get insurance coverage or because premiums were prohibitive.

This has been the situation not for days, not for weeks, not for months, but for years. In fact, what is driving this bill is the level of insurance premiums. I would commend to all honourable members, particularly the honourable member for Miranda, to read the high-speed speech delivered tonight by the honourable member for Liverpool, in which he analysed the problems and said that the bill would not provide a solution. I point out that he is a member of the Government. I will be interested to hear whether any of the points he made are responded to by the Government in reply. As I said, the honourable member for Liverpool outlined the prospect of insurance premiums. I get the feeling that the Chief Justice has been deleted from the honourable member's Christmas card list.

Mr Debnam: From his address book.

Mr KERR: Probably from his address book too, although I suspect he has not used it for quite some time, perhaps since the freedom rides. No-one could say that the speech made by the honourable member for Liverpool was not well thought out by someone who, as he said himself, had more experience and knowledge of what this debate is all about than probably any other Government member who spoke. The honourable member for Miranda referred to surf clubs. We are in agreement about the contributions that surf clubs make to the shire and to the people who visit our beaches from outside the shire. The honourable member for Miranda should read also the speech of the honourable member for Oxley to learn what the Opposition will do for surf clubs and what this Government should have done. It was as a result of litigation involving the Eloura surf club some years ago that I made the offer of bipartisan support if surf clubs were exempted under what could be colloquially termed the "good Samaritan" defence.

The honourable member for Miranda also referred to nervous shock and said that any person not present at an accident would not be entitled to compensation. I ask the Government to address the issue of

emergency workers, including police officers and firemen, who are required to attend accidents after the event and rescue victims. Firemen and police officers, although not present at the time of accidents, suffer nervous shock particularly after attending a number of horrific incidents. Even the honourable member for Miranda acknowledged that this bill is complex. It is complexity that leads to uncertainty and litigation.

I draw attention to the provisions relating to alcohol. The honourable member for Wakehurst referred to a case in which arbitrarily—despite the fact that alcohol did not play a part in the incident—damages would be reduced by 25 per cent. The honourable member for Miranda said that in claims in which alcohol did not play a part, there would be no reduction. However, that would be the subject of litigation. How would one determine a nexus between alcohol and the incident that occurred? That issue would be resolved only by evidence in court. It would be of great benefit in such a case for the defendant to establish such a nexus and, equally, for the plaintiff to show that the incident would have occurred whether or not alcohol was involved.

Those are some of the issues that have been raised in this debate. All honourable members know that these problems have been with us for years, yet here we are debating this bill at about 11.50 p.m. That is absolutely crazy. In the few minutes I have remaining, I reiterate that not only was this problem foreseeable, it actually happened. The Government should have addressed the problem much earlier. The community should have been consulted, and people such as the honourable member for Liverpool could have offered advice to the Government about how to resolve the problem. This is a very complex piece of legislation. As many honourable members have said, including the honourable member for Liverpool and the honourable member for Coffs Harbour, there is no guarantee that premiums will be reduced. The premiums may well increase because of the complexity of this legislation. As the honourable member for Coffs Harbour would say, this Government may well be a fireman with a hose full of petrol.

Mr WHELAN (Strathfield—Parliamentary Secretary) [11.48 p.m.], in reply: On behalf of the Attorney General I thank all honourable members for their contributions. In particular, I thank the Opposition spokesperson, who raised many issues in his speech. I assure all honourable members who spoke in this debate, from the first member to the last, that the Attorney General will take note of all the issues raised by them and reply in detail when the bill is considered in the upper House. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

The House adjourned at 11.50 p.m.
