



Speech by

**Hon. R. WELFORD**

**MEMBER FOR EVERTON**

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Hansard 7 August 2001

**LAW REFORM (CONTRIBUTORY NEGLIGENCE) AMENDMENT BILL**

**Hon. R. J. WELFORD** (Everton—ALP) (Attorney-General and Minister for Justice) (12.39 p.m.): I move—

That the bill be now read a second time.

This bill contains amendments to the Law Reform Act 1995 to address the impact of the High Court's decision in *Astley v. Austrust Ltd.* The amendments are directed at division 3 of part 3 of the Law Reform Act, which deals with the apportionment of liability in cases of contributory negligence. In general terms, where a plaintiff has contributed to their own loss that part requires a court to reduce damages to such an extent as is just and equitable. All other things being equal, if a plaintiff is guilty of contributory negligence the damages they receive should be reduced proportionately. If you contributed 60 per cent to your loss, you should only be entitled to claim for the remaining 40 per cent of liability of the person against whom you claim.

Prior to the High Court's decision in *Astley v. Austrust*, the authoritative interpretation was that these provisions applied in cases of concurrent liability in tort and contract. The common law recognises that a person may owe a duty of care both in tort and in contract in a range of circumstances; for example, in the relationship between an employer and an employee. Similarly, a professional adviser will usually be found to be concurrently liable for negligence in tort and breach of contract.

In *Astley*, the High Court held that the equivalent provisions in the South Australian Wrongs Act were not applicable to actions in contract. That decision is now the authoritative interpretation of the Queensland provisions. The High Court's decision currently means that if a plaintiff can frame their claim solely in contract their own contributory negligence will not be a relevant consideration. Although the plaintiff may have been guilty of contributory negligence they will be entitled to recover 100 per cent of their loss, assuming they can prove their claim for the breach. That outcome is plainly unfair.

Whilst it might be thought the effect of this decision is limited to litigants, there is a wider negative impact. If higher damages are awarded against individuals, the result could be higher insurance premiums for all. The High Court acknowledged in its judgment that governments may wish to respond by amending the relevant legislation. The Standing Committee of Attorneys-General has received representations from a number of bodies calling for amendment. These include the Insurance Council of Australia, the Australian Medical Association and the Law Council of Australia. As a result, the Standing Committee of Attorneys-General instructed the Parliamentary Counsels' Committee to prepare model amendments in response to the High Court's decision.

The bill before the House is directed solely to remedying the impact of the decision in *Astley*. The bill inserts a new definition of 'wrong' to include a breach of contract that is concurrent with a duty of care in tort. The bill amends the apportionment provisions to clarify that a court should reduce a plaintiff's damages arising from a wrong if the plaintiff is guilty of contributory negligence.

The bill will apply to wrongs that occurred prior to the commencement of this bill. However, the new provisions will not apply where a court has given judgment in a matter or where the parties themselves have agreed to settle a matter. In addition, the new provisions will not apply to certain actions under the WorkCover Queensland Act 1996 or actions that have been commenced but not determined by a court. I commend the bill to the House.