Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 18 October 2001

LAW REFORM (CONTRIBUTORY NEGLIGENCE) AMENDMENT BILL

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (12.05 p.m.), in reply: I thank members for their contributions to the debate on this bill, and I thank opposition members in particular for their support for the bill. It is, in many respects, a bill of a machinery nature to restore the law which had previously existed prior to the High Court case of Astley and which I think all of us would regard as eminently sensible, that is, that the rules in relation to contributory negligence and the apportionment of damages should apply in disputes in relation to contract and disputes in relation to negligence on the same basis. That is really all this does. And in that respect I think it is a fair principle to apply in the law so that there is consistent application of it.

The member for Toowoomba North gave a quite detailed analysis of the history of the law in relation to this matter, particularly the background to the Astley case itself and a subsequent Queensland interpretation by the Court of Appeal in the case of Wylie. I thank the member for Toowoomba North for putting on the record of the House some of that information which more fully explains, I think, for the record the background to the policy decision leading to this legislation.

As members have said, what we are doing here is in line with other jurisdictions around Australia. This matter was on the agenda of the Standing Committee of Attorneys-General at which a decision was made by all state attorneys to take this step to restore the law as it was previously applied until a technicality was identified by the High Court. And that, of course, is the step we are now taking.

The member for Bulimba reinforced the importance of protecting workers in the workplace and ensuring that fairness applies in the assessment of their injuries and liability and claims for damages. That sentiment is certainly reflected in the drafting of the bill to ensure that any person who has a proceeding commenced in the court currently—before this bill takes effect—will not have any effect of this bill deny them their claim under and in accordance with the Astley situation. So to the extent that there is a short hiatus between the original law and what we are restoring it to, anyone who may have accrued rights during that interregnum and has brought action to enforce those rights will be able to enforce them accordingly. So in that respect there is no retrospective action.

The only element of retrospectivity relates to a wrong affecting an injury under WorkCover sustained before 1 July. In other words, the provisions in force before the commencement of this amendment will still apply to any injury under WorkCover that occurred before 1 July. Any injuries after that date will be subject to the apportionment principles in this amending bill.

1 July was chosen for two reasons. Firstly, that was when I announced, after cabinet's approval, that this change would be made. So although it is technically retrospective, everyone has had notice that this restored legal position would operate from 1 July and they had notice on 1 July. So no-one's rights are adversely affected in that regard for injuries sustained subsequent to 1 July. Secondly, amendments made later in this place in respect of the WorkCover Act, as the shadow spokesperson mentioned, will clarify that from 1 July the apportionment provisions of that act no longer apply. That will ensure, as I indicated earlier to the member for Southern Downs, that by removing the apportionment provisions of the WorkCover act almost simultaneously with the introduction of these provisions, there will be no overlap and no inconsistency between them. I thank members for their contributions in that regard and commend the bill to the House.