



Speech by

ANDREW McNAMARA

MEMBER FOR HERVEY BAY

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VOLUNTARY ASSUMPTION OF RISK BILL

Mr McNAMARA (Hervey Bay—ALP) (10.09 p.m.): I rise to oppose the Voluntary Assumption of Risk Bill 2002. Like every member of this place, I am well and truly alive to the continuing difficulties which so many of our community groups face in the seemingly unending battle to obtain affordable public liability insurance. No-one here denies that we are facing an unparalleled threat to the fabric of our community—our volunteer clubs and associations. Like many people in this place, I have looked to the government's group liability insurance scheme but its effectiveness has been undermined by the actions of Suncorp Metway in the terms, conditions, premiums and policies which have been offered. Many organisations have received acceptable policies and premiums, but many have not. While many community groups have found the group liability scheme to be viable and affordable, in my view too many activities have been unreasonably classified as high risk. Regrettably, some of the policies offered have been rendered virtually worthless because of the imposition of exclusion clauses.

Some of those clauses go to the heart of the activity for which risk cover is required; no-one is denying that. By way of example, let me tell the House about an incident in my electorate. A policy was recently offered to the Burrum Heads Progress Association by Suncorp Metway.

The association runs an annual charity raft race day on the Burrum River. As anyone who has ever seen the Burrum River can tell you, this is not a whitewater rafting event. The Burrum River barely flows and the greatest risk to participants is from sunburn, not drowning. Nevertheless, the event was rated as high risk despite a nil claims history and Suncorp Metway duly offered a policy for the next year which featured a premium jump from \$800 to \$1,500. But that was not the real problem. The problem was in the policy detail, which included two rather significant exclusions. The first was that it excluded all injuries arising from raft racing and the second was that it excluded injuries incurred by volunteers. Given that this is a raft race run by volunteers, members can see the obvious difficulties and the inadequacy of the policy offered.

I would ask the member for Southern Downs, who has brought this bill before the House, to trust me when I say that I agree that more needs to be done to address the public liability issue. It is a matter which I have raised with the Premier and the Treasurer and they, too, are well aware that the group liability insurance scheme has not provided a complete solution due to the unaffordability of some premiums, to the cover being offered being assessed as high risk and to the unreasonable exclusions which are now starting to appear. But this bill is not the solution to that problem.

The doctrine of volenti is an important one and still exists at law but is limited to injuries which occur where there is no negligence contributing to the injury. Accordingly, for example, a boxer who suffers a serious injury such as a broken jaw when punched in the face by an opponent has no claim in negligence because there is none, nor does he have a criminal action for assault nor an action for damages for breach of contract. He has consented to the dangerous activity and takes the risk of the injury which he receives. The doctrine of volenti acknowledges that he chose to do something which, even if performed perfectly, can result in injury and so no claim arises.

But this bill as a response to the problem of damages payouts for negligence trying to draw on the doctrine of *volenti* misunderstands and misapplies the concept. People can voluntarily accept risk, but that is very different to legislatively being forced to accept negligence, and that is what this bill does. If someone takes the job, for example, of being the person on the spinning wheel at whose outline the knife thrower throws knives, then there is at common law a voluntary assumption of the risk that the knife thrower might miss and the person could get skewered. But if the assistant who sets up the equipment puts the wheel 30 centimetres too far back or too close and the knife thrower does not check the distance and there is an injury caused by the timing being out, then a claim for damages in negligence will arise, and quite properly, regardless of any waiver that has been signed.

Waivers of liability should not and do not allow people to be permanently injured by others in their negligence without recompense. This bill sets a standard for negligence as reckless disregard. It is far too high a standard. It will result in tragic and unfair results. The mere signing of a waiver form should not allow children and other innocent people to be injured by the failure of others to take care. If the honourable member says that that is not the case, then what is the point of this bill? The purpose of this legislation—the purpose of any legislation—has to be to change the law as it currently stands. It must extend the law or restrict the law. It has to be the opposition's intention to allow people who are injured by the negligence of others to not be compensated, or else what is the point of this bill? That is not the answer to public liability problems. That is not the answer to the insurance crisis which we all acknowledge exists.

Premiums for community groups must be made affordable. There are only two possible ways to do that. Neither of them is easy, but both of them do not involve unacceptable loss of rights and the unfairness inherent in that to injured innocent people. They are for either the Commonwealth to legislate for caps on premiums pursuant to its power under the corporations power of the Constitution, which I accept is clearly a very politically difficult way to go, or for the state government to re-enter the insurance market as an insurer, and of course I am very aware that that is a financially very difficult way to go. Nevertheless, they are the only two ways forward in order to address the public liability insurance crisis. This bill is not a way forward. Accordingly, I cannot support it.