



Speech by

Mr D. BRISKEY

MEMBER FOR CLEVELAND

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PERSONAL INJURIES PROCEEDINGS BILL

Mr BRISKEY (Cleveland—ALP) (4.21 p.m.): I rise to speak in support of the Personal Injuries Proceedings Bill. I take the opportunity to congratulate the Attorney-General and Justice Minister and his departmental staff and own staff on the bill.

There is no doubt that Queensland is leading the way in tackling the problems associated with public liability insurance. As other members have expressed, spiralling insurance premiums, the collapse of HIH and the liquidation of medical insurer United Medical Protection have impacted on us all. The events of 11 September and the subsequent fallout were the single biggest blow to the insurance sector the world has ever seen. No-one has been quarantined from the calamity—no country, no government, no community organisation and no individual. The acute effect on the world has threatened the livelihood and functioning of our charities, our sporting groups and our local councils. Indeed, it threatens to affect our way of life.

Even before 11 September the rate of public liability claims had exploded. The collapse of medical insurer UMP added to the woes, raising uncertainty as to whether doctors were covered for medical indemnity. The biggest impact of UMP's liquidation has arguably been for Queensland and New South Wales doctors, the majority of whom were protected by UMP. This particular piece of legislation is all about making a concerted effort to tackle some of the public liability and medical indemnity issues head on. I know that the legislation will be particularly welcomed by not-for-profit and community groups within my own electorate of Cleveland. It will also be warmly welcomed by constituents who have suffered and continue to suffer from restricted access to medical specialists, such as obstetrics and gynaecology, and it will provide a level of certainty for the medical profession.

In terms of medical indemnity, the bottom line here is that from 1 July there will be no excuse for any doctor not to turn up to work. In terms of public liability insurance at state level, there is nothing this government can directly do to influence insurance premiums. That responsibility rests with the federal government, who must ensure that the Australian Competition and Consumer Commission is tasked with the job of monitoring the insurance industry to ensure that, once the states pass reforms in public liability, insurance companies come under pressure. The ACCC must ensure that the reforms that are pursued at state level are translated into the lower premiums we all want and need.

One of the key influences in setting premiums is the level of compensation awarded by courts. Certainly in Queensland we have not seen the kind of exorbitant payouts New South Wales has been faced with in the past, but this is certainly an area where we have jurisdiction. This legislation provides a framework that offers some certainty with regard to future liabilities and reduces the overall costs of claims, thereby reducing pressure on premiums. Other key initiatives contained in the bill seek to tackle the areas of public liability litigation, which can contribute to some of the exorbitant costs—initiatives such as allowing the respondent in the case earlier access to information relating to the case and injuries, which will allow them to make an early assessment of the claim. The bill also provides that the respondent must attempt to resolve a claim in the early stages of a case and therefore avoid a lengthy court process and excessive legal fees. Similarly, there is the opportunity for both the respondent and the claimant to agree on

the selection of independent specialists to provide liability reports. This will have a significant effect on the cost of a case. In some instances specialists are compensated with several hundred dollars each day they are required at court. These key sections of the bill and others will seek to stem what can only be described as the excessive costs which arise through duplicity of work, lack of communication, miscommunication and even mischievous legal practice.

The bill also places limitations on lawyer advertising, excludes punitive damages from insurance cover and caps the loss of earning capacity to three times the average weekly earnings. I particularly welcome the move to ban no win, no fee advertising. As members would be aware, New South Wales has opted to impose a ban on electronic advertising of personal injury services by lawyers. In Queensland we have been tougher than that. We are extending that to a total ban on no win, no fee advertising. We have all heard stories of ambulance-chasing lawyers turning up at the scene of accidents and advertising in hospital precincts. We have all seen that the advertising encourages people to take the option to litigate.

This kind of solicitation and advertising seeks to attract the most vulnerable in our community. The promise of financial windfall for what appears to be no outlay is no doubt an attractive offer to many people, but we have all heard the stories of devastation when a client loses a case which he or she believes was taken on a no win, no fee basis. The devastation ultimately comes when the claimant is faced with the respondent's legal costs, which can amount to thousands of dollars. In the past, personal injury lawyers have been only too happy to advertise their no win, no fee offer but have neglected to notify their potential clients of the excessive costs they face when a respondent seeks compensation for their own incurred costs in the event of a lost case.

Above all, this legislation is about commonsense. Unless we reform the system that faces crisis post 11 September there is a real danger that it will collapse. This bill seeks that reform and it seeks it in a fair and balanced way that is in the public interest. Critics of the legislation have alleged it takes away the right of a personal litigant. In reality, the legislation ensures that those with a legitimate claim will get a fair go and receive the compensation to which they are entitled. It also ensures that those who are not entitled to compensation do not tie up the court process.

As I mentioned, the provisions of the bill provide certainty to the medical community and ensure they can continue to offer and provide services to patients. Coupled with the federal government's rescue package, which underwrites medical indemnity claims until 31 December, these reforms should provide other insurers with the confidence to get into the medical indemnity market. I commend the bill to the House.
