Speech by

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CIVIL LIABILITY BILL

Ms MALE (Glass House—ALP) (3.45 p.m.): I rise in support of the Civil Liability Bill 2003 because it is sensible, balanced legislation. All members in this House have been watching insurance premiums in this country rise at an alarming rate. This government has responded quickly to do our part in reforming the law and has been a leader amongst other states. In June 2002 we introduced the Personal Injuries Proceedings Act, the first stage of the reforms to the law of negligence, and now we have the second stage, which should reduce the pressure on insurance premiums in the area of public liability and medical indemnity.

At the outset, I would like to thank the Attorney-General for the information his office has supplied regarding this important issue and commend him for consulting widely on the issue. The Attorney-General tabled a draft consultation copy of this bill in December last year so that interested parties could have ample time to make submissions on the proposed changes to civil liability laws. Indeed, a number of constituents contacted my office, and I made sure they got a copy of that consultation draft very quickly so they could have their say.

To the Attorney-General's credit, he has had to endure some irrational and spurious lobbying from some groups—in particular, the AMAQ—but has always maintained the difficult balancing act between the rights of plaintiffs and defendants. If the Attorney-General had bowed to the AMAQ's pressure, the rights of medical negligence victims would have been severely eroded. The AMAQ is there to lobby for the benefit of its members, and I do not begrudge its right to fight hard for what is best for its members, but some of its proposals were over the top and quite untenable. For instance, if we had limited the commencement point to the date of the incident rather than when it was discovered, it would have encouraged some unscrupulous doctors to hide the negligence as long as possible and perhaps avoid responsibility altogether.

The AMAQ also wants to make any changes to civil liability retrospective. Legislators are always reluctant to make laws retrospective for the simple reason that it is often unfair and denies the rights of some individuals. This would have certainly been the case if these changes we are proposing to civil liability laws were made retrospective. The AMAQ has tried to ramp the issue up as a major crisis for doctors in Queensland, saying that if the legislation was not made retrospective a lot of doctors would be forced out of business and retired doctors would face exorbitant claims against them.

While claims of medical negligence have shown a worrying trend to rise in Queensland, the situation is nowhere near as bad in New South Wales and other states and certainly not anywhere near as bad as the AMAQ has claimed. We simply are not having the same huge payouts associated with medical negligence that have been occurring in other states, mainly because our system is different to start with and is not based on injury awarded payouts.

The fact that the Queensland situation is different from the other states has allowed the Attorney-General to consult widely, draft sensible, balanced legislation and not be rushed into a knee-jerk response which would have had to be amended significantly at a later date. Over this period of consultation, the state National Party opposition has largely been silent and has contributed very little, if anything, to the debate. I know some people consider that at times I have been overly critical of the National Party, but I think this is one example where the opposition has clearly dropped the ball and has let the people of Queensland down again. Apart from an initial flurry of activity when UMP collapsed last year, the state opposition has largely steered clear of civil liability and medical indemnity, and this is

surprising because the future of many businesses—and most of them small businesses—depends on our getting the formula right for civil liability.

The medical liability part of this legislation has caught most of the headlines on the issue, and a lot of time and effort has been expended in getting the balance right. In the bill there is a very practical requirement that, where a child is injured as a result of medical negligence, then the parents of that child must give notice of the intended claim within six years of knowing the injury has occurred. This requirement overcomes myriad problems and potential problems. It provides a safeguard for doctors who fear action taken decades after an event, and it requires parents of child patients and all patients to ensure action is taken as soon as possible. Action can still be taken by parents outside the six-year period, but not without risk because a court could decide that either the claim could not proceed or that the parent is unable to claim for any medical expenses or cost of care until that time.

These changes will provide more certainty than the current system and avoid the situation where claimants, or more particularly their lawyers, will delay lodging claims. The bill also provides certainty through enlarging the concept of structured settlements, whereby all parties are advised of the ability of a court to make awards or orders for damages in matters worth more than $100,000 that allow a defendant to provide damages other than by way of a lump sum payment. This allows defendants the ability to pay damages awards in part payments and reduces the risk of bankruptcy but also ensures the plaintiff is not disadvantaged.

We have all seen the outrageous personal injury claims being made in the United States and it is obvious that some people here in Australia are following the trend towards becoming a more litigious society. To avoid the United States situation and provide a break on excessive claims, the bill provides for a number of practical changes. By providing a new method of assessing general damages in personal injury cases, this bill will avoid the United States examples. The new assessment method with its scale and appropriate guidelines is another sensible provision in this legislation. I am also pleased to see the changes to the legislation which remove the right of people to claim damages if they are injured whilst committing an indictable offence and allow the court discretion if it considers the result will be harsh and unjust.

Under the bill, any intoxicated person will be presumed to have contributed to their injury unless they can prove otherwise and, if not, any damages payment will be reduced by at least 25 per cent. This figure increases to 50 per cent if the incident involves a motor vehicle accident. It puts the onus back on people to take responsibility for their actions but also allows the courts some leeway when assessing individual cases. The same philosophy applies to dangerous recreational activities where people should be aware of the obvious risk inherent in the activity and take responsibility if they choose to participate. The obvious example is skydiving. Why people would choose to jump out of a perfectly good plane I will never know, but if they do and something happens that is through no fault of the business owner then the person who was involved in the activity has to take the responsibility. The onus is also on the person to ask questions about the activity they are going to do or an operation that they are about to undergo so that they can ascertain the risk for themselves. On the other hand, if a doctor or business owner fails to take the necessary steps to prevent injury that was foreseeable and take precautions then they are still liable.

The bill also provides specific protection for professionals but prevents professionals from closing ranks to protect individuals who have been negligent. Professionals are not liable for actions which are considered widely acceptable practice by their peers. However, the court has some discretion if it considers this peer professional opinion to be irrational or clearly outside the normal bounds of community expectation. The bill also maintains the view that cases of negligent conduct which involve a WorkCover Queensland scheme claim, exposure to tobacco smoke or tobacco products or a dust related disease should be kept separate from all other claims. Due to the complexities and specific nature of these types of claims, it is a sensible provision. I have used the word 'sensible' a number of times during this speech, and why not? This bill is a commonsense and practical approach to an issue which had the potential to cause serious problems in many facets of our lives.

I want to put on record my appreciation of the community groups in my electorate for continuing to serve their community and for their patience and investigative skills in some instances in obtaining insurance. I have been disappointed to see the number of community events that have been cancelled over the past year or so due to the groups' inability to either obtain public liability insurance at all or at least obtain an affordable public liability insurance policy. There have been outrageous premiums of $8,000 for a community fair. It really does show up the insurance companies as being greedy parasites who are feeding on the goodwill and the hard-earned money of community groups. One part of this bill that I am pleased to see relates to volunteers. There are so many great volunteers in my community doing work in Meals on Wheels, hall groups, P&C groups, sporting groups and in the general community. All members have them in their electorates and they do a fantastic job. This bill gives protection to the individual volunteers doing this community work. It recognises the valuable community service provided by these people.

We often discuss the fact that there is no way we could pay volunteers for all the great work they do in our communities, and nor would they want us to do so. It is people giving back to their own community. However, it should be noted that the bill does not exempt the community organisation from liability. It is about people doing the right thing when putting on fairs or community events such as looking out for any dangers and ensuring that those in the community are responsible for their own actions and take responsibility for what they do and not just look for escapes and outs. This bill counteracts all the foreseeable problems with civil liability and it provides the correct balance between the rights of plaintiffs and defendants and certainty in the legal system. It is now time for the insurance industry to respond positively to this legislation and start providing affordable insurance.

It is also time for the federal government to give the ACCC the powers it needs to investigate and prosecute the insurance industry if it does not start acting responsibly. We have all done our bit here in the state government. The community groups are out there doing their bit, so I really do call on the federal government to do its bit and help us deal with the insurance crisis. It is excellent and sensible legislation. I commend the Attorney and his department for all their hard work and the community for getting involved and supporting the government on this issue. I commend the bill to the House.