



Speech by

DESLEY BOYLE

MEMBER FOR CAIRNS

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CIVIL LIABILITY BILL

Ms BOYLE (Cairns—ALP) (11.54 a.m.): I am pleased indeed to support the Civil Liability Bill before the parliament. There are some comments that I would particularly like to make about the bill, but before I do so I must say that I was disappointed indeed by the tone of the previous speaker, the member for Keppel. I have frequently been a great admirer of the member for Keppel and his long and fine contribution to this parliament, but the slant of his presentation just now in attempting to claim credit for the National Party and to diminish the government's efforts in respect of this bill are quite unworthy and are unreflective of the true situation. The insurance crisis, as we know it, is not a political issue—not at all. All members of parliament, state and federal, around Australia have been working as hard as we can to come up with some solutions to a dreadful crisis, particularly in relation to organisations in the volunteers sphere.

National Party members of this parliament have contributed—in their own electorates, I am sure—through discussion in this parliament. Some have come up with some options for change, and there is no doubt that that would have been taken into account in the drafting of this bill. I recognise, too, the fine contribution of Independent members of this parliament. Of course, the government, with its large numbers, has also made its significant contribution. The credit for this bill goes far and wide—to the many people who spoke to us in our electorates about the problems they face and who offered suggestions. Credit goes, too, of course to the federal government in terms of the national review of negligence committee conducted by Justice Ipp and his advisers. They deserve some credit.

In fact, the hard work in preparing the Civil Liability Bill we are discussing today goes to the Attorney-General and his staff. They are the ones who have put together all our criticisms, concerns and best suggestions and with this third piece of legislation further entrenched some new ways of dealing with public liability matters that really should contribute to a changed insurance environment. There were many other members before me who detailed the provisions of the bill. There is no need for me to take the House's time doing that again. I recognise the importance of the protection of volunteers that is part of this bill.

The bill exempts volunteers performing community work for a community organisation from liability for injuries caused by negligence, provided they acted in good faith. The bill does not prevent an injured person recovering damages from the organisation which engaged the volunteer to perform the community work. That is fair and balanced and will be of considerable comfort to volunteers everywhere in terms of the very important activities and contributions they make in their communities. The Cairns urban area is approximately 130,000 in population. The rough estimate of people who volunteer regularly in one or more organisations is 15,000. Over 10 per cent of the population of Cairns is believed to be a volunteer routinely. I do know through my experience in this position that there are many people who volunteer not for one but a multiple of organisations. They keep our community going and provide a sense in the community that no paid worker can provide of really caring, of really being prepared to work hard to ensure day by day that the best services are provided.

I refer to the Cairns Base Hospital volunteers, the Meals on Wheels volunteers, very important people like the Cairns Youth Orchestra, led by Marje Duffy who believes so much in giving opportunities for children in music, the senior citizens organisations, Sandy Astill and the Queensland Cancer Fund, or the Relay for Life event in Cairns. I could go on for many hours and outline a number of events and the particular people involved in making Cairns a great community. I particularly welcome the provisions

in this bill that will go some considerable way to making it easier for organisations planning very important events to work in supporting causes in the Cairns and general far-north area.

There are some other elements of the bill that I also welcome from the Cairns point of view. The changes that are made in regard to duty of care are really important. A person will not breach a duty of care to another unless the risk of personal injury was foreseeable. This has relevance, of course, particularly for recreational activities where there may be some obvious risk. The provisions in the bill are in accord with the recommendations of the national lpp report. When the activity is a dangerous recreational activity, this bill ensures that a person will not be liable for injury to another as a result of an obvious risk in that activity.

Particularly in an area where adventure tourism is part of the set of activities that we offer for those who visit Cairns, not only from around Australia but also from around the world, this will be welcome news indeed. There are many who enjoy such pursuits as abseiling, white water rafting, bungee jumping and parasailing. Further, where there is an obvious element of risk this should be recognised and be the responsibility of those who wish to engage in those activities.

I also welcome the provisions in the bill that relate to limiting the protection provided to professionals, in particular medical practitioners. Professionals will not be liable for actions which are in accordance with practice widely accepted by peer professional opinion in the field. That is a sensible element of the bill and much welcome, not only by medical practitioners. In my former life as a psychologist my professional indemnity premiums were already weighty, and I have no doubt that for those now practising they are weightier still. For engineers, for architects and all who operate with their education and expertise over many years and within the common practice of their profession, this limiting element of the bill will indeed be welcome.

I welcome, too, that the bill removes the right of people to claim damages if they are injured whilst committing an indictable offence. That is important because if a person is intoxicated at the time of the incident the bill creates the presumption that the person has contributed to their injury unless that person can prove otherwise. This, of course, has been brought to our attention by a number of high profile cases elsewhere in Australia, where people who were drunk at the time have dared to attempt to shift the responsibility for actions that have resulted in their own injury. I welcome those changes.

The part of the bill that I find the most difficult, and in relation to which it is important for a person without legal training such as myself to take the advice of those more skilled in the law, goes to the changes in relation to the method of assessment of damages for personal injuries. The bill includes changes to the provisions containing a number of measures aimed at reducing awards of damages in personal injuries actions. In particular, the bill provides a new method for assessing general damages in personal injury cases.

While on the surface of it the provision for a scale from zero to 100 to rate the injury will make it easier within the legal procedures for the damages for that injury to be assessed, as a psychologist who worked in this field in years past I suppose I have a cautionary warning. That is, the particular injury, physically comparable while it might be with that of another person, may have a quite different impact for a particular individual. For example, the loss of the use of a thumb in a person of 23 who has established trade qualifications may be quite different in its impact to that of a person who is 66 and has recently retired from all work. We need always to be mindful that there will be some individual elements to the impacts of personal injury and that our justice system should not close the door on recognition of these impacts.

I am aware in this regard that the Law Society has some concerns about this area of the bill and whether or not it can be clearly understood by the courts and well implemented. I support its concerns though, I must say that, having mixed, through this position as a member of parliament, with lawyers fairly intensively over these last years, I do not know that there is anything in the law that is easy to interpret and agreed to by all. It will not be a surprise, therefore, if there are some provisions of this bill that will take some time before there is true clarification.

We as a government have done all we can reasonably do at this point towards reducing insurance premiums—towards reviewing the laws and pulling under control the out-of-control area of personal liability. We have worked towards making sure that individuals are quite properly responsible for their own actions, for making their own decisions and, when these decisions are faulty decisions, for having to bear some of the responsibility themselves. But the bottom line is that our efforts will not really bear fruit unless, indeed, the federal government pursues its powers to ensure that the insurance industry becomes itself responsible and that the management of insurance companies reaches new heights—much greater heights than have clearly been achieved before. I support the bill before the House.