



Speech by

**Mrs D. PRATT**

**MEMBER FOR NANANGO**

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Hansard 3 April 2003

#### **CIVIL LIABILITY BILL**

**Mrs PRATT** (Nanango—Ind) (12.05 p.m.): I rise to address the House on the Civil Liability Bill 2003. I, along with every member of this House, have at some time brought concerns to the House regarding liability insurance. All of us must agree with the minister that something needed to be done to stop escalating insurance premiums. Also, there existed a need for the reform of the law of negligence and damages awards for personal injuries under law. The Attorney-General, although not the first to do so, has hit the problem on the head with his statement that 'they ensure all parties involved, including an injured person, must take personal responsibility for their own conduct and safety'.

The payouts awarded in the past to an injured party regardless of their contributory actions and the collapse of insurance bodies have resulted in ever-escalating premiums which are becoming totally unaffordable and are seeing the decimation of a lot of functions activities, whether voluntary or other.

The jury situation has been exploited by legal representatives. They have played very heavily on juries' emotions, which have seen exorbitant amounts awarded to the injured party, regardless of their conduct, whether legal or otherwise, at the time of their injury. I support very strongly any move to stop these cases being conducted before juries because, as I have stated before, very questionable payouts have been awarded.

I must thank the Attorney-General for taking part of what I asked for in my home invasion protection bill, which the Attorney-General strenuously fought to ensure was not only defeated but also ridiculed in the process. Obviously the entire Occupants (Home Invasion) Protection Bill was not unacceptable to this government after all. The minister stated in his second reading speech that the bill modifies the general law regarding breach of duty of care owed by one person to another. It is interesting that the minister states that a person will not breach duty of care to another unless the risk of personal injury was foreseeable. The bill will apply to all cases of negligent conduct, whether it results in personal injury, property damage or economic loss, except in three instances—if it is covered within a WorkCover scheme, if it is the result of exposure to tobacco smoke or it is dust related.

In a ministerial statement on 13 March it was said that the law states that a plaintiff must show that, but for their negligence, he or she would not have suffered the loss. This is the basic test of causation in the common law of negligence and is to be codified in the Civil Liability Bill being pursued by this government. It appears that we are both on the same train of thought when it comes to making people responsible for their negligent acts.

The Civil Liability Bill's statement that the bill removes the right of people to claim damages if they are injured whilst committing an indictable offence is another important point from my home invasion protection bill. Further, if a person is intoxicated at the time of the incident—and, I presume, when someone is hurt breaking and entering or during a home invasion—the bill creates the presumption that the person has contributed to their injury, unless that person can prove otherwise. The Attorney-General went on to say that it is irrelevant whether the intoxication is caused by alcohol, prescription drugs or illegal drugs. I must say that that sounds pretty familiar to me also.

My electorate of Nanango—in fact, all rural and regional areas—has been hard hit by the loss of many community events as a result of the outlandish costs of liability insurance. Each speaker here today has outlined the effects on their communities. I will be no different. We have seen our Red Cross affected by having difficulty getting hall liability insurance. It is not the only non-profit group that could not get its hall covered—not because it has ever made a claim but because the hall was of timber

construction. The Yarraman Over Fifties Club, who had adopted a section of the highway near Yarraman to ensure it remained clean, can no longer find insurance, and the group has been forced to stop that community based activity. A letter sent to me by the organisation states—

On behalf of the Yarraman Over Fifties Club Inc, it is with deep regret that I find the need to write in regard to the cancellation of our program 'Adopt- a- Road' be it temporary or otherwise through lack of Insurance cover.

Where will it end, is this the death- knell of all volunteers in Australia? Remember how proud our country was at the Sydney Olympics, where does this leave Meals-on-Wheels, Driver-reviver, Pink Ladies in Hospitals, School Tuck-Shops, SES Rural Fire Brigade, just to name a few, there are so many areas where we rely on our Volunteers.

The whole business of Insurance is ludicrous; we are being priced out of existence, many Voluntary clubs have no hope of meeting the high cost of Insurance and dare not function without it. We have become a society that sue at the drop of a hat and are no longer responsible for our own actions.

Our Club members are shattered on hearing the news. We looked forward to starting the day at daybreak, before the town has woken up at 5.30am. We have 2 hours of passive exercise Walking, which is just what us Oldies require and we pick up the litter and keep our town tidy at the same time.

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I hope that 'Saner heads prevail' and this is only temporary and we will soon be back on the Highway with our Orange Vests.

I hope they are, too. Hopefully this legislation will address her and other group's concerns. The Chapiungah Reserve, the Burrandowan race club, which I mentioned last night, pony and hack clubs, riding schools for disabled persons, mountain lake adventures and Manar Tourist Park all have had major difficulty in obtaining insurance or not being able to find any insurance at all. These are but a few who have never made claims that I am aware of, and yet the current suit mentality has caused them to re-evaluate their futures, if they have one at all. It would appear that if a person is trying to procure liability insurance for an event that contains the word 'animals', 'competition' or 'race' they might as well whistle *Dixie*. The odds are against a person being able to obtain any insurance at all or perhaps having to go overseas to try to procure some.

Then we have the community welfare groups, such as SES groups and sporting associations. Our local vintage machinery club, which exhibits one of the greatest working displays of antique tractors I have ever seen, failed to obtain liability insurance this year and its annual touring trip did not occur. Many of these events are one-offs or only held once a year. None of those organisations has indicated ever having made a claim. I know many councils within my electorate who have endeavoured to extend their cover to encompass many local events, but there is only so far that even they can stretch their resources. I believe many organisations owe to their councils alone their ability to hold events this year. I think all communities would thank them for that.

The only difference between city losses and rural community losses in this issue, because it is happening everywhere, is that communities on the coast are relatively close together and people can visit the next suburb or town if their own function has been lost. This is not so in many of the widespread communities which may hold only one major fundraising event per year, and the next community might be a very long way away.

The liability insurance fiasco has affected doctors to a huge extent, with many practitioners no longer choosing to undertake the care of patients in certain conditions at a time when the patient needs them most, and childbirth has become a major victim of this crisis. The premiums doctors have told me that were asked of them made it impossible in small communities to recoup their loss and, therefore, they took the only option open to them, and that was not to practise that particular avenue of medicine. As the Attorney-General says, this bill deals with a major concern of doctors. Doctors can be sued some 21 years after retirement, as is perhaps questionable, but I would like clarification on how the bill's retrospectivity affects claims of an injury to a child through medical negligence at a time which is now more than six years since that injury.

While talking about doctors, another sore point with rural and regional communities is their concern about the lack of doctors and medical facilities in general. I hope that by covering doctors and lowering premiums we may induce even more doctors to take up practice in the bush.

It is about time insurance companies started thinking about the community, because it is the communities who bear the brunt of these continual rip-offs of premiums set at an unreasonable rate, not just the financial aspect but also the loss of social benefits. I hope this legislation, as is suggested, brings down insurance premiums. The government's last attempt with Suncorp to solve the liability insurance for non-profit organisations was a dismal failure.

I notice in the explanatory notes accompanying the bill it states there is no guarantee that lowering of premiums will occur, with the discretion being left solely with the insurer as to whether or not they will pass on any savings to the consumer. I do not always have faith in insurance companies—actually, I do not have any faith as of late—that they will do what is best. Only time will tell if their community responsibility will be reflected in the premiums asked for.

People have to live in a rural and regional community for quite a time to appreciate the enormous impact the loss of any community event means, unlike in urban areas where there are more activities to choose from. However, if, as the Attorney-General says, the insurance industry responds positively to this legislation by acting honestly and accountably, then it is a positive step. In other words, let us hope the intent of this bill is realised while we still have some community events left and doctors left in rural and regional Queensland.

This bill contains ideas from all parties and Independents and reflects the entire Queensland population's concerns regarding this issue. So for me this bill reflects an all-of-parliament approach. Although the House did not accept the Occupants (Home Invasion) Protection Bill, it appears that at least some of the concepts of the bill were encompassed here. I can do nothing else but commend the bill to the House.