



Speech by

**JAN JARRATT**

**MEMBER FOR WHITSUNDAY**

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**CIVIL LIABILITY BILL**

**Ms JARRATT** (Whitsunday—ALP) (3.16 p.m.): I rise today in support of the Civil Liability Bill 2003. This bill seeks to complement and extend legislative reforms that this government has already introduced in response to the burgeoning insurance crisis that threatens the very definition of community based activity. I am sure that each one of us has a story to tell about the difficulties faced by community groups in our electorates that either have been forced to pay enormously increased public liability insurance premiums or have not been able to find anyone to cover them at all. I have heard many of those stories today.

In my electorate, the Proserpine Chamber of Commerce was forced to cancel last year's show ball due to premium hikes associated with the sale of alcohol. The Habana and District Progress Association, despite cancelling its market days and bush dance, is still faced with an enormous increase in its premium. At one stage it looked doubtful that it would be successful in its search for an insurer at all. In the end it had little choice but to accept the only offer it was able to secure. These are just two examples that illustrate the growing difficulties and frustrations faced by community groups in the area of liability insurance.

Perhaps even more worrying, though, is the prediction that rural and regional Australia may soon be devoid of obstetricians as a result of the problems inherent in getting and affording medical indemnity insurance. Problems already exist in many areas where demand is not high enough to warrant a full-time obstetrician to service the local hospital, and GPs are not prepared to take the risk of facing huge indemnity payouts when things do not go right.

Women in Bowen have faced this dilemma for several years now. I had a call from a constituent recently who was required to travel to Townsville, some two hours drive away, to have her baby. The problem was that she has two other young children in her care and could not simply set up home in Townsville to await the birth of her third child. She had to hope that when the time came she would get to Townsville both intact and in time.

While it would be great to think that we could return to the good old days, I do not really believe that that is possible. What we can do, and what this bill does, is provide a legislative environment that balances the rights and responsibilities of individuals, the legal fraternity and insurance companies so that confidence and commonsense is restored in relation to personal injury damages and medical indemnity awards.

The two previous bills debated in this House, the Personal Injuries Proceedings Bill 2002 and the Personal Injuries Proceedings Amendment Bill, put in place a range of measures designed to reduce the costs of legal proceedings, place restrictions on lawyer advertising, cap and restrict some components of damages awards and establish a mechanism to encourage the early resolution of claims. The details of changes introduced in these bills were designed to act as a break to the spiralling cost of insurance premiums by tightening control over personal injuries damages claims.

The Civil Liability Bill 2003 represents a second phase of legislative reform. This bill addresses issues surrounding the laws of negligence and is largely based on the recommendations arising from the national review of negligence, commonly known as the Ipp report. When I talk to people in my electorate about the mounting cost of liability insurance, there is a common view that too often courts award damages to individuals who have been injured while acting in an irresponsible manner, or worse still were injured while partaking in a criminal act. I do not know what the actual statistics tell us about these cases, but they are certainly the ones that make the headlines, and I understand people's

frustration at paying the price through their increased premiums for the failure of others to act responsibly or to accept that most activities entail some risk for which we must each be responsible.

One way that this bill addresses this issue is by clarifying various concepts pertaining to duty of care and the assumption of risk. The bill allows that a person will not breach a duty of care to another unless the risk of personal injury was foreseeable, not insignificant and in the circumstances a reasonable person in the person's position would have taken precautions to protect that other person.

In addition, clause 15 of the bill provides that no proactive duty exists to warn of an obvious risk, except in specified circumstances. This is a commonsense approach that calls on each of us to take responsibility for our own safety where the risk of harm resulting from an action or activity is obvious. As an example, if my holiday units are built near a rocky foreshore, I, as the owner, would not need to erect a sign or give verbal warning to the lessee of the dangers of walking on slippery rocks. The danger is obvious, and the risks inherent in this activity are the responsibility of the person undertaking the activity, unless that person has specifically requested information pertaining to the risk.

I am also very pleased to note that this bill addresses the issue of liability for personal damages owed to a person who suffers injury while intoxicated. It establishes that, if an injured person was intoxicated at the time of the injury, the person was contributorily negligent providing that intoxication was a factor in the occurrence of the injury and it was a self-induced condition. Where contributory negligence is established, courts are required to reduce any damages assessed by a minimum of 25 per cent and even more if the person was at the wheel of a vehicle at the time of the injury.

One further aspect of the bill that I want to direct my attention to is that related to injuries incurred to persons while in the process of committing an indictable offence. In such an instance, a person would not incur civil liability unless the court is satisfied that in the circumstances of the case such action would operate harshly and unjustly. What I interpret this to mean is that if, for example, a person is injured in the act of performing a robbery they would not in most circumstances be eligible to claim damages. This is a commonsense approach that I believe will be welcomed by the vast majority of members of the public.

There are many aspects of this bill that I have not touched on today, including the issue of proportionate liability, liability affecting public and other authorities and volunteers, the method of assessment for personal injury and the matter of structured settlements. Nevertheless, I want to put on record my total support for the intent and content of the Civil Liability Bill 2003. The clear message in this legislation is that it is time each and every one of us started to take responsibility for our actions, to think before we act.

We need to be part of a culture change that reverses the litigious mentality that many argue is swiftly taking hold in this country. It is my sincere hope that this bill will herald a reduction in public liability premiums so that, having established a sound risk management regime, community groups can once again access insurance at reasonable and affordable levels. The failure of insurance groups to react positively to the changes introduced by this government will surely be to the detriment of our whole society as we will continue to see community groups struggle and at times fail to meet the costs involved in survival, and that would be an enormous shame.

I welcome the opposition's support of this bill and place on record my thanks and my constituents' thanks to the Attorney-General and his staff. I commend the bill to the House.