



Speech by

JOHN MICKEL, ^{MLA}
STATE MEMBER FOR LOGAN

Hansard 3 April 2003

CIVIL LIABILITY BILL

Mr MICKEL (Logan—ALP) (11.37 a.m.): The crisis in public liability insurance and related insurance areas, such as professional indemnity insurance, all date back to the worst case of corporate fraud and avarice, the collapse of HIH Insurance. At a time when public confidence in the private sector and major corporations and their executives and boards is at an all-time low, we need to consider how the governments and parliaments of Australia can most speedily and effectively restore that confidence. The measure before the House will assist that process. It will also restore commonsense and balance to the legal issues relating to negligence and liability. It follows on the measures the Queensland government and the Attorney-General introduced last year, such as the Personal Injuries Proceedings Act and the scheme to provide insurance coverage for community groups. None of these measures would have been necessary had the directors and executives of HIH Insurance behaved in a responsible legal way. The fact that they have behaved in a grossly corrupt, fraudulent and illegal way has caused the crisis in insurance across-the-board in Queensland and elsewhere in Australia.

As always happens, the real victims of this crisis are those least able to deal with it, and that includes dozens of organisations in my electorate and community—the Neighbourhood Watch groups that could not sing Christmas carols in the park; the sharp rise in premiums for groups like the Logan West Golden Years Club; a recent peace rally in Logan Central, which had to find thousands of dollars in insurance before it could engage in its part of the democratic process. The crisis has hit particularly hard the voluntary, charitable, church, community and sporting groups that our communities depend upon. It has also hit hard professional groups, including professional groups with exemplary records and which have not been the subject of extravagant claims for compensation or damages. Sadly, the professional groups hit hardest of all are vital in our community—groups such as occupational therapists, physiotherapists and medical specialists.

There are two issues at stake here. Firstly, there is the issue of corporate fraud and extravagance. Secondly, there is the issue of a culture that has resulted in an unsustainable number of claims for negligence and unjustifiable levels of compensation being awarded. The first issue, that of corporate behaviour, is one for the federal government, which has been found wanting in every possible way. It did not see the problems coming. That defies belief, given the magnitude of the HIH collapse. When the problem was revealed, its response was both tardy and wholly inadequate. On the other hand, the states, which have limited regulatory authority in regard to insurance, have worked together to minimise the fallout and to provide the maximum possible support and protection for those groups and individuals least able to manage the fallout themselves.

The Australian Prudential Regulatory Authority—APRA—failed in every way to protect policy holders and investors. But there was an even greater failure on the part of the would-be Prime Minister of Australia, the federal Treasurer, Peter Costello. When major problems in his portfolio arise, the Treasurer is always missing in action. He has left this major national issue and community issue to a junior minister, Senator Coonan. The *laissez faire* attitude of the Liberal Party right was on display in the handling of the HIH crisis. They care nothing about those who are damaged and have their careers and businesses ruined and nothing about the guilty parties.

The guilty parties in the HIH collapse are many, but the former head of HIH, Ray Williams, is surely foremost among them. This is the man who used to travel to London first class, book the adjoining seat at HIH's expense for his briefcase and then try to claim frequent flier points for the briefcase. His many other extravagances have been chronicled. It would suffice to say that they are

enough to make any decent person physically ill. Ray Williams continued with his gross abuse of the funds of policy holders and shareholders while HIH was going down the gurgler and even arranged for massive payouts to be made to his cronies just hours before HIH's final and total collapse. Rodney Adler, whose sale of FAI Insurance to HIH helped cause the final collapse, was given a \$4.3 million payout in 1998 from HIH and, after he sold FAI, was given a \$480,000 a year consultancy to HIH. The infamous Brad Cooper had his hand in the ever-diminishing HIH piggy bank right up to the very end. The behaviour of Williams, Adler, Cooper and others has wrecked the lives and the businesses of thousands of decent Australians and put at risk the professional careers of tens of thousands of professional men and women.

The Commonwealth's response has been to help the doctors, because a collapse in medical services would have resulted had it not done so. It has left the other professions and the not-for-profit sector to fend for themselves. Let me give this House an example of how the federal government favoured doctors over other medical professionals. Because the AMA is a first-class lobby group, the insurance interests of doctors were adopted totally by the federal government. We in this House saw them in action last year in a political campaign that they ran from doctors' surgeries. On listening to medical debates in this House, in my view attention is overly focused on doctors as if they are the only suppliers of health. It is this oversight that sees many small business physiotherapists left legally stranded because of the HIH collapse.

The Australian Physiotherapy Association asked its members to take out insurance through Aeon, who was insured, in turn, with HIH. Yesterday morning I spoke with a physiotherapist. She works 12 hours a day, six days a week and has done so for 10 years. She borrowed heavily to establish her business and each year paid her insurance premium. I understand that late last year she was served with an injury writ issued under direction by a no win, no pay law firm for an incident that occurred about five years ago. She relaxed, thinking that her insurance covered the situation only to discover that her insurance was with HIH and that she was out of time for the claims that HIH would recognise. She now finds herself in a position where she has been left legally stranded. She has rising legal costs that she must pay for herself. At the same time, the other elements of the medical profession—the doctors—can sit back because the federal government has totally underwritten their claims.

Given that the federal government had the regulatory responsibility and was asleep at the wheel, I believe that it has a moral responsibility to stop this physiotherapist and others like her from going bankrupt. I fear that many small business operators may be in the same position as this person and the full extent of business bankruptcy and exposure has not yet been uncovered as a result of the lax regulatory oversight of the insurance industry.

Fortunately, this state and other states have stepped in to ensure not-for-profit groups can have affordable insurance cover. I think that the government should be congratulated on at least making an honest attempt to face up to this problem. But this bill, through the commendable efforts of the Attorney-General, takes the support by this state an important step further. It reforms the law of civil liability for negligent acts and it will prevent this state going down the same slippery slope as the United States has gone in which compensation and other claims have reached greedy, unrealistic levels.

Whilst these reforms are necessary and would probably have happened even if HIH had not collapsed, it is deeply regrettable that thousands of Australians who have had their lives, savings, careers and businesses ruined have little or no redress. That is the federal government's problem and not one of this state's making. For years, the federal government has wanted to assume total control over corporate law, including insurance law. Now that it has that control, it should be doing more to provide redress for those decent, hardworking Australians who have been ruined or badly hurt by the HIH collapse and the fallout across the insurance industry.

I believe that the standing of corporate Australia will not be restored until the corporate crooks are brought to book for their crimes. I fail to differentiate between white collar corporate crime and other thieves. They should have their property confiscated and sold off to help the victims of their crimes. Why should white-collar corporate crooks be allowed to drive around Double Bay in a Mercedes or a Rolls Royce whilst small business victims are forced to sell the roof over their heads to clear their debt? Upper-class thieves should be treated no differently from other elements of the criminal class.

Our business and corporate sectors have collectively been damaged in the eyes of the community by the gross obscenity of a minority—a grubby, greedy minority. So I call on the federal government to give APRA more powers, more teeth, more funds and more resources to do its job. I also call on the federal Treasurer to stop passing the buck to lesser inadequate colleagues and to provide the kind of leadership that the community and every decent business person expects him to provide. The events that have made this very sound bill necessary are a blight on corporate Australia and on the Howard government.

The bill provides a more stable and secure future in the area of negligence and negligence indemnity cover for those businesses and professions that cannot do without it. I can only hope that the passage of this measure and complementary measures in other states will not dim the pressure to

bring those responsible for the HHH and related collapses to justice. Finally, as other members have done—other members who work with their community groups—I can only hope that, now that we have this legislation in place, the pressure will not lessen on the insurance companies to provide realistic and affordable insurance premium cover to the community groups who add the services, the vitality and the strength that we need to make sure that we have a vital community sector in this state, because as a nation and as a state we would be lost without those vital community groups—the nonprofit organisations who do so much to enrich our society.