Speech by

Dr LESLEY CLARK

MEMBER FOR BARRON RIVER

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CIVIL LIABILITY BILL

Dr LESLEY CLARK (Barron River—ALP) (3.37 p.m.): It is with great pleasure that I rise to speak in support of the Civil Liability Bill 2003, because the reforms to negligence law contained in this bill will make a significant contribution to addressing the public liability insurance crisis that has affected almost every facet of community and business life in Queensland, certainly in my electorate.

I have received representations from a wide range of individuals and organisations, including those in Machans Beach, Edge Hill, Redlynch, Aeroglen and Kuranda, where organisations manage community facilities, such as halls. They are all concerned about the increases in public liability insurance, which in most cases has more than doubled, putting enormous strain on their limited financial resources. Organisations such as these obviously want to spend money raised by their hard work on projects to benefit the community, not to pay insurance bills.

There is no doubt that community life in Queensland has suffered as a result of rising insurance premiums, with many events cancelled because of prohibitive insurance costs, as members in this debate have noted. The major annual fundraising event of the Cairns and Far North Environment Centre, EnviroFiesta, is under threat this year because of the insurance premiums. They will be approximately $6,000—the same amount the event raises in normal years. Just yesterday the Julatten district sporting club contacted me devastated because it cannot get any public liability insurance cover for its official opening this Saturday.

The Cairns Peace Picnic, staged at Munro Martin Park just a few weeks ago, had to raise $2,000 to cover public liability insurance required by the Cairns City Council. I, along with many others, was happy to contribute to help cover this cost, but as organiser Alistair Harris said about this impost, 'I would never have thought that insurance would become an obstacle to Australians expressing their thoughts in a democratic way.'

Community organisations have not been the only ones to suffer from escalating public liability insurance premiums. Professionals in fields like engineering and architecture, medical specialists, and adventure tourism operators have contacted me, and the economic consequences are extremely serious for these injuries. In June 2002 the Queensland government introduced the first stage of law reforms designed to rein in burgeoning insurance costs and provide more affordable premiums.

The Personal Injuries Proceedings Act 2002 contains a range of measures including restrictions on legal advertising, bans on jury trials, caps on economic loss and pre-court procedures designed to avoid lengthy court battles and delays. Following the ministerial meeting of Treasury and finance ministers on 30 May 2002, Commonwealth, states and territory governments jointly agreed to appoint a panel of eminent persons to examine and review the law of negligence, including its interaction with the Trade Practices Act 1974.

The panel was chaired by the Honourable Justice David Ipp of the Supreme Court of New South Wales, and in October last year the panel delivered the Review of the Law of Negligence Final Report, referred to as the Ipp report. The Ipp report contains 61 recommendations that address the panel's terms of reference, including aspects of negligence generally—that is, foreseeability, standard of care, causation and remoteness of damage, contributory negligence, assumption of risk, non-delegable

duties and vicarious liability—mental harm, liability of public authorities, proportionate liability and damages.

In November last year all state ministers agreed to introduce nationally consistent legislation to implement the key recommendations of the Ipp report, and in December 2002 a consultation draft of the Civil Liability Bill 2002 was tabled in Parliament. Public submissions upon that draft have been received and considered and shaped the bill now before the House.

This bill implements relevant recommendations of the Ipp report, subject to pertinent submissions, and includes provisions modelled on the New South Wales Civil Liability Amendment (Personal Responsibility) Act 2002, which was the first legislation of any Australian jurisdiction that implemented the recommendations contained in the Ipp report.

The reforms introduced in this bill—the second stage of our reforms—provide a commonsense approach to negligence and in my mind reconnect the law with reality. These reforms ensure that all parties involved, including an injured person, must take personal responsibility for their own conduct and safety. This is the key to achieving the fundamental changes needed in negligence law.

The bill will apply to all cases of negligent conduct, whether it results in personal injury, property damage or economic loss, except for personal injuries that are within the WorkCover Queensland scheme or caused by exposure to tobacco smoke or tobacco products or a dust related disease. The bill modifies the general law regarding breach of the duty of care owed by one person to another.

The test for duty of care is a restatement of the common law principles identified by Justice Ipp, using language considered by His Honour as being appropriate for that purpose. The test, as set out in clause 9, indicates 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 would have taken precautions to protect that other person. Finally, we have a commonsense approach to this vexed issue expressed in language we can all understand.

The reforms in the bill that follow from these principles and other recommendations in the Ipp report include a $250,000 cap on general damages; better protection for local councils against actions stemming from their policies or resource allocation; more protection for professionals, such as doctors, architects and engineers; limits on the time period for doctors to be notified of potential claims; removal of the need for warnings of obvious risks; no liability for injuries arising from obvious risks in the case of dangerous recreational activities; no liability in cases where the injured person was engaged in criminal activity which contributed to the risk of injury; restricted claims where a person's intoxication contributed to their personal injury; and a change in the standard of care for professional groups, including doctors, to protect against liability for acts performed in accordance with a respected body of professional opinion.

The bill will further clarify the laws of negligence by codifying the test for determining negligence, and in particular providing that a person is only required to act to prevent a risk that is 'not insignificant'; codifying legal principles in determining whether the defendant caused the plaintiff's injury; codifying the test for determining contributory negligence and allowing damages to be reduced by 100 per cent; and disallowing pre-judgment interest on damages for non-economic loss.

I would like in my contribution this afternoon to focus on the provisions of division 4 of the bill, dangerous recreational activities, which covers activities engaged in for enjoyment, relaxation or leisure that involve a significant degree of risk of physical harm to a person. The bill ensures that a person will not be liable for injury to another as a result of an obvious risk in that activity and voluntary assumption of risk will also be able to be used as a defence in any damages case, whether or not the person suffering harm was aware of the risk.

This section of the bill is vitally important to the adventure tourism industry in far-north Queensland and should help to reduce insurance premiums in the future. At present the industry is facing horrendous costs. I will just give one example; that of Raging Thunder, a company that operates white water rafting on the Johnstone, Tully and Barron rivers, which looks to experience an increase in insurance premiums from $130,000 for $10 million cover to $225,000 for only $5 million cover. As of earlier this week, it was still negotiating with the only company in Australia that provides insurance to rafting companies for the extra cover needed.

The EPA should also get some relief from this section of the bill with respect to activities in national parks and other protected areas. In many cases, as members will be aware, walking tracks have been closed in some national parks for fear of people hurting themselves and then seeking damages from the EPA. I hope this legislation will lead to a review of the current policy of the EPA on public liability insurance, which is jeopardising the 2003 Cairns Eco Adventure Race, a three-day event that involves kayaking, mountain bike riding, hiking, rope work and navigation skills in natural settings

on the Atherton Tableland and attracts participants from all over the world and for which they need permits to traverse areas that are under the control of the EPA.

The EPA's requirement to have each individual participant have their own $10 million public risk insurance cover when traversing these protected areas seems to be impossible to meet. Following my intervention last year, this requirement was waived on a one-off basis only and negotiations are continuing with the EPA for this year's race. I thank Minister Wells for his support in this case and hope that it can be satisfactorily resolved.

Part 3 of the bill is also a very important one and covers liability of public authorities and volunteers. This bill makes it clear that for the first time volunteers working in 'good faith' for a community organisation will be protected against negligence actions when undertaking community work. However, I received correspondence just this week from Yvonne Pengilly, a trustee of the Redlynch Community Hall, pointing out that clause 38 of the bill defines 'community organisation' as either a corporation or an authority of the state, which would leave its committee of volunteers unprotected. In that case, the consequences of corporatisation that would afford them cover would result in the loss of control of its asset.

I have discussed this issue with the Attorney-General, who I am very pleased to say has recognised this problem and will address it when we discuss clause 38 in the committee stage. I would like to thank the Redlynch Community Hall trustees for bringing this important issue to my attention so that the trustees of community and charitable organisations in Queensland can also be covered by this legislation. I understand that the proposed amendment will extend the definition of 'community organisations' to cover trustees.

At the end of the day, the success of this legislation will be reflected in the lowering of public liability insurance premiums and the restoration of community life as we all knew it before the collapse of HIH. The joint communique following the ministerial meeting on public liability insurance held in Brisbane in November last year noted that the actuarial advice on the impact of the Ipp report's recommendations indicated that the package could reduce public liability insurance premiums by around 13.5 per cent. Significant reductions in medical indemnity insurance premiums of between 15 per cent and 18 per cent were also estimated for most jurisdictions. Sadly, that is hardly an amount that would give many people joy, and it is disappointing that it will reduce it by only that amount.

The reality is that, as we know, rather than a reduction this year, we have seen premiums increase again, as I understand it by some 25 per cent. In the absence of Commonwealth regulation of insurance prices, it is doubtful whether any savings will ever be passed on to consumers because it is going to be contingent on the decisions of the insurance industry.

In light of past practices, I for one have no faith in the industry to do the right thing nor in its regulatory body, APRA, to exercise the necessary controls as many members in this debate have said. I am afraid the faith that we do have in that industry is at an all-time low. If the federal government—because the federal government has such an important role to play in addition to APRA—really does care about the welfare of the sporting, recreational, community, cultural and professional bodies that are suffering under crippling insurance premiums, it will give the Australian Competition and Consumer Commission the power to bring the industry into line and make it pass on to consumers the savings that should flow from our extensive reforms. The ACCC was given this power after the GST was introduced and it is needed now so that professional sporting organisations, business and community groups have an independent umpire to call on if they continue to receive outrageous bills for premiums which are threatening our way of life. The Queensland government has played its part with respect to reform legislation which provides the framework we need for change. I commend this bill to the House and will, along with the community I represent, be watching the insurance industry for a responsible and timely response.