



Speech by

LEX BELL, MP

MEMBER FOR SURFERS PARADISE

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CIVIL LIABILITY BILL

Mr BELL (Surfers Paradise—Ind) (11.44 a.m.): When we were debating an earlier but similar bill in this House I said to the Attorney-General that further changes would clearly be necessary. He nodded and said that, yes, further changes were contemplated. I am very pleased to read the content of this bill. I note that the Attorney-General said in his second reading speech that this bill was intended to be a circuit breaker—I think I would use the term 'shake-up'—in the entire law of tort in this state. I think it is something that most reasonable people in Queensland would applaud.

I note that in general terms the Plaintiff Lawyers Association is quite determined in its opposition to anything which might change the law of tort as it stands. On the other side, the insurance companies feel that there should be much more radical change than is contemplated. Perhaps, like a good matrimonial argument, the truth lies in the middle. On this perhaps the Queensland Law Society Inc. is the voice of reason. I know that the Leader of the Opposition has had written into *Hansard* the content of the letter circulated to all honourable members by the Law Society. I urge the Attorney-General to reread the submission from the Queensland Law Society and give just a little more consideration to the points the society is now raising.

From my reading of the bill and the explanatory notes, I gave the legislation a big tick and a big cross. The big tick was the inclusion of the provision that action by an alleged wrongdoer subsequent to harm or action to remove a risk in the future would not constitute an admission of liability. That is very important indeed. It is something that has been deficient in prior times. It is something the Attorney-General and I briefly discussed on one occasion. I am very pleased to see that in the bill. I was, however, rather saddened and dismayed to see that, although there is a provision reinstating the position of highway authorities as it previously obtained relating to nonfeasance and misfeasance, that provision is to expire in 2005.

Mr Welford interjected.

Mr BELL: I am very happy that the Attorney-General has said that. I do not believe that it is sufficient for a highway authority to be given time to look at its roads and footpaths, because conditions change daily. It is just not possible for a council or a highway authority to inspect every footpath and every road within its jurisdiction every single day. I am very happy that perhaps something further is contemplated there. I will delete my cross and replace it with a question mark for the moment.

The honourable member for Southport said that he thought this bill would clarify the position of tort in this state. I do not often disagree with the honourable member for Southport—we are really quite good friends—but I think it probably will not actually clarify the law in this state. As the Attorney-General has said in his speech, this is not an attempt at complete codification and in fact it is only a modification of the common law, which will continue unabated except to the extent that it is changed by this bill. That is true. There are certain areas that are specifically excluded, for example work related claims and tobacco and dust related diseases.

Of course, the bill can only go so far in applying to the Commonwealth. The bill says that it will apply to the state and Commonwealth so far as it is possible to do so. There might be considerable limitation on its application to the Commonwealth unless the Commonwealth brings in supportive legislation. I do see that in the future students of the law will have to learn about the content of this bill, but there will be another line of jurisprudence which relates to the Commonwealth and which relates to the other areas that are specifically excluded from the operation of this bill.

I cannot see any help for it, but it is certainly something which I draw to the attention of the House. I think, too, we will see that in the future lawyers will look very carefully at potential claims to see whether they can frame a claim in contract rather than in the law of torts. When I was studying torts, it was said that it does not really matter whether a claim is framed in contract or tort. From now on, I think there will be a very great distinction and the consequences will be quite major.

All in all, I compliment the Attorney-General on what he has done and also those involved in the preparation of the Ipp report. I think what has been presented is a very valiant and a very thoughtful attempt to address the problems which beset us in the law of tort at this moment in time. It is not possible to foresee everything in the future. I think this is the best attempt that can be made. We will still have to sit back and see what happens, and doubtless there will be future finetuning necessary as well.