



Speech by

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CIVIL LIABILITY (DUST DISEASES) AND OTHER LEGISLATION AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (11.55 am): I am very pleased to rise to speak to the Civil Liability (Dust Diseases) and Other Legislation Amendment Bill. I would like to join my opposition colleagues in lending support for this bill. Essentially, the bill makes a number of amendments to the Civil Liability Act to clarify a number of issues that have arisen or are likely to arise in the current litigation environment. Firstly, the bill allows awards of general damages to be made after a plaintiff has passed away. Secondly, this bill makes clear a significant determination in the bringing of a claim, and that is whether or not the knowledge of the nature and the extent of a personal injury constitutes a material fact of a decisive nature. This is important when the court considers whether a claim can be brought outside of a certain period of time specified in other legislation.

Another issue that is clarified in this legislation is the issue of limits to awards of damages, which was brought to the fore in the 2004 case of *Doughty v Cassidy*. Members may be aware of this case. I will refer to it later. This case relates to an incident that occurred at the races on Ipswich Cup day in 2000. Gary Doughty, a Gold Coast premiership-winning jockey, was brought down in a fall, which ended his career. At the time of the hearing of his case it was said that the court may have been restricting claims of damages further than this parliament intended when the Civil Liability Act was enacted. This legislation confirms that that was indeed the case and further specifies the relevant section of the act.

I am very pleased to see that this bill allows for a person's estate to continue a claim after that person has died. It is vitally important for the families of plaintiffs who die when a claim is in its middle or even concluding stages to have the claim come to a conclusion to ensure financial restitution and security and also to provide closure to what would have been an ordeal to that point. It is very true that in a great number of these cases relating to dust disease the decline in a person's health is rapid. Although the legal system works as efficiently as it can most of the time, there are a number of instances where diagnosis and rapid decline into death is so fast that a proceeding cannot be completed while the plaintiff is still alive.

Under the current law, if a plaintiff were to die before a proceeding has concluded, that would greatly affect that claim. In fact, under the current system, if a plaintiff were to die before the claim is concluded, the action would cease to continue. As a result, the estate of that plaintiff would not benefit. After the ordeal of proceeding through all the legal stages, mixed with the unenviable position of having to watch a loved one rapidly decline in health and ultimately pass away, the prospect of a plaintiff's family not receiving anything for the actions seems almost too hard to bear. This legislation rectifies that anomaly and provides those families with greater peace of mind.

The legislation also clarifies issues regarding the admission of the point in time at which knowledge of the nature and extent of a personal injury was assumed. The issue that has faced many cases is whether this is a material fact of a decisive nature for the purposes of extending a limitation period for a claim. This is indeed a very important issue, as with any issue regarding the period of time between the first signs of symptoms of an illness and the beginning of a claim.

It is always a very difficult issue to gauge, and I must commend former attorneys-general for a series of new acts in Queensland that have helped clarify the problems in this area. In particular, the Personal Injuries Proceedings Act 2002 went a long way to ensuring that all claims take a specified path and that they are done in a manner that is efficient yet fair to both the plaintiff and the defendant. There is always the concern, though, that with any of these cases the plaintiff may develop further ailments legitimately as a result of an accident after the case has gone past a certain stage or that their existing injuries have become worse after an amount has been submitted or an order made. On the flip side, if one allows all sorts of time limits for litigation, defendants are unduly advantaged and the courts will be faced with the difficult task of wading through events that occurred many years ago. The wording of the Personal Injuries Proceedings Act, though, is very good in the way that it is not a certain time after the incident has occurred but after the symptoms arise. This is particularly significant for dust related diseases as the symptoms can come about decades after the contamination.

Finally, and coming back to the point I referred to earlier, the bill clears up the intention of the Civil Liability Act 2003 so far as it relates to limiting the amount of damages for economic loss in a personal injury claim. The case that brought about this change was *Doughty v Cassidy*. On 1 July 2000 there was a race fall. The plaintiff, Mr Doughty, was a professional jockey. He was in the Eyeliner Stakes. He was then aged 45. He had been riding successfully for about 25 years and on that day his career ended when he was injured in a fall in a race at Bundamba. Another jockey in that race was the defendant. I think it was Larry Cassidy, from whom Mr Doughty claimed damages for negligence.

The defendant's liability to the plaintiff was admitted and the remaining issues of concern were the assessment of damages. There was no controversy as to the injuries suffered and the defendant accepted that those injuries ended Mr Doughty's career as a jockey. The principal contest was as to the value of Mr Doughty's lost earning capacity. He had recently signed a contract to ride in Macau. So the court in this case decided to assess that value of the contract in coming to its decision on damages. The issue to be discussed, therefore, with regard to the economic loss argument was Mr Doughty's riding contract in Macau, as I just said, and determinations of that would determine the size of the award of damages for the loss of that riding contract as a result of his career being prematurely finished.

Even though in the lead judgment Justice McMurdo went at length into the interpretation of many sections—in particular, section 51—of the Personal Injuries Proceedings Act and even into the second reading speech, the court, in the eyes of the parliament, went further than the legislature originally intended. In the spirit of clarification and precision, I am glad that future cases will have a more clear set of rules with regard to the assessment of economic loss. With those considerations in mind, I commend this bill to the House.