



Speech by

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CIVIL LIABILITY (GOOD SAMARITAN) AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (8.12 pm): It is my pleasure also to rise to speak to the Civil Liability (Good Samaritan) Amendment Bill 2007. I commend the library on the research brief once again, as I have done already today. The library provided a research brief that was very extensive and it was fantastic to see. It took me back to some of my childhood religious memories and the parable of the good Samaritan, which I will not preach to members opposite about but it is one of my favourite biblical stories. Of course it is the story of a man who was bashed and robbed and left for dead. A priest walked past and ignored him and a Levite walked past but a Samaritan took care of him and dressed his wounds and that earned him the good Samaritan epithet.

I note that the honourable Attorney-General has already indicated that the government will not be supporting this legislation. I think one of the reasons he gave was that, as the Ipp report had mentioned, there had not been any cases of good Samaritans or people acting in this way—there had been no cases involving these people. But, for all the Ipp report noted that, every other jurisdiction in Australia apart from Tasmania and Queensland has actually come up with legislation, and that is all mentioned in the research brief and quite extensively as well. So South Australia, Victoria, New South Wales, the ACT, the Northern Territory and Western Australia have seen fit to introduce legislation planning for the future, allowing for some contingency plans.

The occasions of good Samaritans being prepared to help others can become rare. In the increasingly litigious society that we live in, the humanistic urge to help those in need has been somewhat subdued by fear of litigation. The situation is not made easier by the fact that in Australia citizens are under no duty to come to the aid of people in distress. So there is really no motivation beyond one's conscience to help another person in need. This position has been confirmed by the High Court in the case of the Sutherland Shire Council v. Heyman. The only cases which give rise to a duty to take positive action for the safety of another is when there is an established relationship between the defendant and the plaintiff.

As we have seen from court decisions over the years, the established categories of relationships include teachers to students, occupier to visitors and an employer to their employees. But tonight the honourable Leader of the Opposition is endeavouring to restore the incentive for would-be good Samaritans hindered by the prospect of indicting themselves in the process. The private member's bill introduced by my coalition colleague the member for Callide seeks to extend legal protection from civil liability to good Samaritans. The protective provisions in the current act exclude such persons from discharging legal liability.

The principal act that this bill seeks to amend is the Civil Liability Act 2003. This act was introduced at the height of the public liability crisis in Queensland and around the country. The burgeoning number of public liability and medical indemnity cases sparked an insurance affordability crisis that caused the closure of playgrounds, the cancellation of events and festivals, as well as the cancellation of some medical services because the cost of insurance premiums were beyond the reach of community organisations.

There is no doubt that the effect of public liability has hurt Queenslanders, particularly those living in regional areas. As the Queensland coalition shadow health minister, I am acutely aware of the problems

regional and rural women face with access to gynaecological and obstetric services. In the aftermath of the insurance crisis, mums-to-be west of the Great Dividing Range were hard pressed to find a doctor who would deliver their baby. Many were capable of delivering babies but the cost of insurance to indemnify them against litigation in the event of an accident was too much of a burden to most. On my recent visit to Mackay a long-serving general practitioner told me that the saddest day of his professional career was the day that he stopped delivering babies. Clearly, the civil liability crisis has had far-reaching effects on the lives of Queenslanders.

As a result of the crisis, a review of the law of negligence was carried out by New South Wales Justice David Ipp, which I referred to before. Many of his ensuing recommendations were codified in civil liability acts which were introduced around the country. The aim of the Civil Liability Act and the Personal Injuries Proceedings Act in Queensland is to reform the law of tort to limit the access to and the quantum of claims. These two acts effectively achieve this. They set out who can sue, who can be sued, what you can sue for, the time frame in which proceedings must commence and the size of damages claims. As a result, tort law in Queensland is a lot more constrained than it was five years ago.

The Civil Liability (Good Samaritan) Amendment Bill aims to amend a loophole in the current law which does not provide protection for people who are not entities performing duties to enhance public safety under section 26 of the legislation or volunteers under section 38. It expands the operation of the Civil Liability Act with respect to ordinary citizens in that the bill introduces a new section 27A which provides that civil liability will not attach to persons in relation to an act or omission in the course of rendering aid or assistance to a person in distress. For this provision to apply, a person would have to have acted in good faith and without reckless disregard for health and safety.

This bill represents a significant improvement to the current legislation. Since I became shadow health minister, I have been following with interest several cases, one most recently in Melbourne involving anaphylactic kids in schools. The Victorian parliament introduced a similar good Samaritan bill after the death of a four-year-old boy as a result of his EpiPen being maladministered. Indeed, in my inquiries I have heard from many parents whose child's school teacher will not administer the lifesaving automatic adrenaline injection device to a child for fear of prosecution. I am aware that in one of the provinces of Canada legislation has been moved, named after the girl who was involved, to afford the good Samaritan type protection that is offered in this bill.

The Australian Medical Association has supported moves by the Victorian government and the Queensland opposition to provide protection for people who administer medical care in the belief that it is a medical emergency. The anaphylaxis situation is a much more serious one in our schools than many people realise. It is something that may well come to the fore because teachers do not want to administer these things, and for the moment, as I understand it, the government is not prepared to include the cost of teaching teachers about administering these EpiPens. So, many parents are very concerned that if their child has an anaphylactic reaction teachers may not want to administer the EpiPens.

A recent article in the *Medical Journal of Australia* highlighted the importance of such protection for people administering such medical assistance where a sentinel event results. The study found that potentially deadly food allergies have increased dramatically between 1995 and 2006, particularly in young age groups. We do not want to see a situation where young kids are dying because people are too scared about what effect it might have on their own life. This bill is important because it restores a bit of faith in human nature and in the legal system. It assures Queenslanders that good people will not be hauled into court to face exorbitant damages claims as a result of what they could have done. If the government does not allow these changes to pass, we may well create a situation in Queensland where it is everyone for themselves because lending a hand—indeed, being the good Samaritan—does not pay. I congratulate the honourable member for Callide and commend the bill to the House.