



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 7 October 2009

CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.05 pm): I move—

That the bill be now read a second time.

The objective of the bill is to improve the civil liability and personal injury regime in Queensland, while at the same time maintaining the affordability and availability of insurance. Many of the amendments contained in the bill are in direct response to stakeholder feedback.

Firstly, the bill will re-base and facilitate the future indexation of monetary amounts in the Civil Liability Act 2003, the Motor Accident Insurance Act 1994 and the Personal Injuries Proceedings Act 2002, including the thresholds used to determine whether legal costs are recoverable and the caps on general damages. These amounts have not been indexed since introduction. The indexation of the caps on general damages will ensure that injured Queenslanders continue to receive compensation that is fair and that also reflects current standards of living.

The amendment to the Law Reform Act 1995 will ensure that a de facto partner of an injured person is able to claim damages for loss of consortium. The bill also amends the Personal Injuries Proceedings Act 2002 to streamline the process if parties agree to the urgent commencement of proceedings.

Other amendments to the Personal Injuries Proceedings Act 2002 will remove the requirement that parties must sign a certificate of readiness for trial prior to the compulsory conference. This amendment will address concerns raised by members of the legal profession about signing a certificate of readiness for trial prior to receipt of pleadings and the completion of discovery and interrogatories.

The bill also amends the Civil Liability Act 2003 to partially reinstate *Sullivan v Gordon* damages in Queensland for seriously injured persons. *Sullivan v Gordon* damages compensate an injured person for the loss of their capacity to provide gratuitous domestic services to others. This amendment responds to the decision of the High Court in *CSR Ltd v Eddy* which held that *Sullivan v Gordon* damages are not part of the common law of Australia. As part of its decision, the High Court said it should be a matter for parliament and not the courts to determine whether and in what circumstances *Sullivan v Gordon* damages should be awarded. I note that the proposed amendments will place strict limits on when a court may award damages under proposed section 59A of the Civil Liability Act 1993 for the loss of an injured person's capacity to provide gratuitous domestic services. In order to ensure that section 59A damages are focused on those claimants with the greatest need, the damages will not be available for minor injuries where general damages have been assessed at less than \$35,340.

Furthermore, the damages will not be available unless the recipient is a member of the injured person's household; the recipient was incapable of performing the services personally because of their age or physical or mental incapacity; but for the injury, the injured person would have provided the services for at least six hours per week for a period of six months; and the need for the services is reasonable in all the circumstances.

Other provisions in the bill guard against double recovery by addressing potential overlaps between section 59A damages and other damages, such as common law damages or damages awarded to the

recipient following a dependency claim. Proposed subsection 59B(2) has been inserted to specifically address the potential overlap between section 59A damages and damages for gratuitous services provided to the injured person, also known as Griffiths v Kerkemeyer damages.

The bill also amends the definition of 'community organisation' in section 38 of the Civil Liability Act 2003. This amendment will ensure that a volunteer undertaking community work for a parents and citizens association who otherwise meets the requirements of the division is entitled to the protection from liability provided by section 39 of the act.

Finally, the bill includes an amendment to abolish the statutory limitation period for dust related conditions. Dust related conditions are defined in the Civil Liability Act 2003 to include conditions such as asbestosis, mesothelioma and silicosis. While the dangers of asbestos are now well known, its harmful effects on individuals, families and society continue. The removal of the statutory limitation period for dust related conditions will mean that a person suffering from this kind of condition will no longer need to make an application to the court to extend the limitation period. The removal of this hurdle will deliver significant benefits to those suffering from a dust related condition by improving their access to justice and reducing the cost and stress associated with pursuing a claim. Given that many of the current cases of dust related disease arise from exposure during the 1950s, 1960s and 1970s when few, if any, adequate precautions were taken to protect workers and others, I am proposing that this amendment should have retrospective operation. I commend the bill to the House.