



Speech by

Andrew Powell

MEMBER FOR GLASS HOUSE

Hansard Thursday, 11 March 2010

CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

Mr POWELL (Glass House—LNP) (12.22 pm): I rise to make a short contribution to the debate on the Civil Liability and Other Legislation Amendment Bill. As has been enunciated by a number of members on both sides of the chamber, there is much within this bill to be praised. I, too, applaud the amendment of the definition of ‘community organisation’ in section 38 of the Civil Liability Act. The amendment will ensure that a volunteer undertaking community work for a parents and citizens association is entitled to the protection from liability provided by section 39 of the same act. I know this will give a level of security and certainty to such volunteers and to school communities in general. P&C volunteers, alongside our schools’ principals and teachers, play such a critical role in the education and development of our children. Their contributions to fundraising and improving the amenity and equipping of our schools are priceless—one the state government would struggle to duplicate were they suddenly withdrawn—so this amendment makes sense.

I would like to turn now to the concerns raised by the Scrutiny of Legislation Committee in its *Legislation Alert*. The key concern surrounds the retrospective application of the legislation and also the delegation of legislative power. I note that the member for Brisbane Central in her speech went to some lengths to address both the concerns raised by the committee and the government’s justification specifically for the retrospective application of legislation. So rather than rehashing the issues and the responses raised by the member for Brisbane Central, let me turn my attention to what I consider to be the more serious question of regard for fundamental legislative principles—the delegation of legislative power.

The committee draws the parliament’s attention to clauses 8, 12, 13, 32 and 48 and also to clauses 14, 35 and 46. I suggest, based on the government’s proposed amendments which have been circulated, we should also add clause 6 to the mix. Each of these clauses delegates legislative power. The first cluster of clauses do so to prescribe by regulation monetary amounts currently prescribed in the relevant acts. They do so by amending the Civil Liability Act to allow the threshold for entitlement to damages for loss of consortium or loss of servitium to be prescribed by regulation. Currently, the threshold for assessment of general damages is set at \$30,000 or more.

They also delegate legislative power by allowing the amounts used for the calculation of general damages currently provided in section 62 of the Civil Liability Act to be prescribed by regulation, and also by allowing the threshold amount beyond which the court must inform parties of a proposed award to be set by regulation. Furthermore, it amends section 32 of the Motor Accident Insurance Act to allow monetary limits to be prescribed by regulation and the schedule, or dictionary, of the Personal Injuries Proceedings Act to allow monetary limits to be prescribed by regulation.

The second cluster of clauses—that is, 14, 34 and 36—goes on to insert new sections in the Civil Liability Act, the Motor Accident Insurance Act and the Personal Injuries Proceedings Act to provide a mechanism by which annual indexation of prescribed amounts occurs by regulation. I believe it is worth putting on the record some of the committee’s comments on this delegation of legislative power. I refer to the *Legislation Alert*, which states—

First, the committee notes a number of matters regarding the scope of the power to be delegated to the Governor in Council to prescribe the annual indexed amount. In each of the relevant sections, subclause (8) states that the section 'does not limit the power of the Governor in Council to amend the amount prescribed under a regulation for a limit'.

It continues—

Second, it is noted that each new section would allow amendments to regulations to have retrospective effect. In each new provision, subclause (6) would state:

A regulation notified in the gazette after 1 July in a year and specifying a date that is before the date it is notified as the date from which the amount prescribed as the limit is to apply has effect from the specified date.

The explanatory notes do not identify any retrospective effect on rights and liberties of individuals. I will acknowledge that the Attorney-General has addressed this in his response to the committee, which states—

In relation to clauses 14, 35 and 46 of the Bill, I note that the Committee has identified that the explanatory notes do not identify any retrospective effect on rights and liberties of individuals. However, given the expectation that indexation will occur on 1 July each year and that it will be in accordance with a specific formula outlined in the legislation, I note that any retrospective operation would be very limited. For example, there could be retrospective operation where there is a short delay in obtaining the figure for average weekly earnings from the Australian Bureau of Statistics. Given the long tail nature of personal injury claims, a short delay such as this would not adversely affect claimants or defendants.

I thank the minister for responding to this concern in his correspondence.

Finally, the amendments proposed by the government also delegate legislative power in clause 6 to do with the definition of 'community organisations'. As we just heard, that is to counteract some of the concerns raised by others around definitions of P&F associations and so on. I must admit that this considerable delegation of legislative power worries me. I therefore would appreciate it if the Attorney-General, in his summing-up, could give some further explanation regarding the way in which regulation will be used to set monetary amounts and thresholds and modify definitions. With those comments, I commend the bill to the House.