Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Thursday, 11 March 2010

CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.30 pm), in reply: At the outset, I want to thank all honourable members for their contributions to the debate on the Civil Liability and Other Legislation Amendment Bill 2009, in particular those members of the government who have supported the bill. But I also want to acknowledge those members of the opposition who spoke, almost unanimously to a person, in support of the legislation. I want to thank them for their support.

I particularly acknowledge the contributions made by the member for Algester, the member for Yeerongpilly—not only in his role as a member of this place but also as the Parliamentary Secretary for Industrial Relations—and the members for Bulimba and Waterford, who all spoke about the very important role in our community that the Queensland Asbestos Related Disease Support Society plays in Queensland. I want to associate myself with their positive comments about the work that people such as Ray and Helen Colbert do. I also want to acknowledge their input and their contribution to this bill. Their work each and every day is in helping and supporting Queenslanders who suffer from some of the most insidious diseases that any individual could unfortunately be subjected to—diseases such as mesothelioma and asbestosis. I want to acknowledge their work and their support each and every day for Queenslanders who suffer from such illness, generally through no fault of their own.

This bill implements important changes to the civil liability and personal injury regime in Queensland. The measures contained in the bill have been drafted carefully to strike a fair balance between the rights of victims of negligence and the stability of the insurance market. Key initiatives in the bill include the removal of the statutory limitation period for dust related conditions, the partial reinstatement of Sullivan v Gordon damages for seriously injured Queenslanders, the indexation of caps on general damages and an amendment to ensure that loss of consortium is available to the de facto partner of an injured person.

At the outset, I would like to note that a number of the initiatives contained in this bill would be of particular importance to those persons in our community who are, most regrettably, suffering from a dust related condition. Firstly, the removal of the statutory limitation period for dust related conditions will mean that a person suffering from asbestosis, mesothelioma or another dust related condition will no longer need to make an application to the court to extend the limitation period. There is no doubt, in my view, that the removal of this hurdle will improve access to justice and reduce the stress and cost associated with pursuing a claim. Secondly, although as a general rule dust related conditions are excluded from the Civil Liability Act 2003, the amendment in this bill to partially reinstate Sullivan v Gordon damages has been drafted deliberately so as to capture a dust related condition that is not otherwise excluded from the act. That would include claims by a home handyman or other persons.

Although a person who has contracted a dust related condition as a result of their employment will not be entitled to Sullivan v Gordon damages, I can assure the House that there are already substantial statutory lump sums available to those people under the Workers' Compensation and Rehabilitation Act 2003. Furthermore, I have also given a commitment to the Queensland Asbestos Related Disease Support Society to consider how, if possible, workers with a dust related condition are compensated for gratuitous

services they provide in the context of the review of the WorkCover scheme which is currently underway. I thank again the members for Waterford and Bulimba for their work with the society and for their advocacy on behalf of the society.

I will turn now to the matters that were raised in the course of the debate. The member for Southern Downs, along with a number of other honourable members, raised concerns that the bill will return us to the days when small not-for-profit organisations were unable to access affordable public liability insurance. I assure all members of this House that the government remains committed to ensuring that community based not-for-profit organisations, sporting associations and parents and citizens associations can continue to access affordable public liability insurance. Although I acknowledge that a number of the amendments in this bill may impact on insurance premiums, actuarial advice obtained by the government in relation to parts of the bill, and indeed the insurance industry's own estimates, I am informed, indicate that any impact on premiums will be relatively small.

Those honourable members who have raised concerns about the impact of the bill on small not-for-profit organisations may also take some comfort from the fact that the insurance scheme established by this government in 2002 for not-for-profit organisations is still very active to this day. As part of the scheme, Aon Risk Services Australia Ltd is engaged by the government on a fee-for-service basis to assist not-for-profit organisations locate the most appropriate insurance options available across a range of underwriters in the general insurance market. I am advised that Aon has been very proactive in developing new insurance markets and service options for not-for-profit organisations, but I would say that the government will, of course, keep this matter under close and careful scrutiny. If there are any problems or any significant issues that develop, we will act.

It is important, as many members indicated, that we provide the right environment for community organisations to function effectively in the Queensland community so that they can support, and play a significant role in, local communities, big and small, right throughout the city of Brisbane out to the rural and regional parts of our state and so that they continue to operate and function effectively and not be overburdened by excessive insurance premiums. That is something that the government will keep under review and it is something that we are very committed to doing. Of course, it is our reforms that have stabilised the insurance market in Queensland to ensure that those community groups can continue to function. We have no intention of changing that policy and we will continue to support them the best way we can.

The next matter that I would like to address relates to the amendments in the bill to allow monetary amounts in the Civil Liability Act 2002, the Motor Accident Insurance Act 1994 and the Personal Injuries Proceedings Act to be prescribed by regulation. I appreciate the concerns raised during the debate that these amendments may result in parliament having fewer opportunities to scrutinise changes to the monetary amounts, including changes to the caps on general damages. However, I consider that the bill as it is currently drafted provides a transparent and efficient mechanism—and a very important mechanism—for the annual indexation of monetary amounts. As was acknowledged by the member for Southern Downs, the bill will not result in the government having an unfettered discretion to change monetary amounts as and when it sees fit, and I appreciate his contribution in that regard. Rather, the bill includes a strict formula that I and future Attorneys-General must abide by when recommending changes to the monetary amounts to the Executive Council.

The method by which this annual indexation will occur is identical to the way in which the cap on non-economic loss in the Defamation Act 2005 has been indexed since 2006. The member for Gladstone raised concerns about the indexation being used to reduce the amounts of damages that can be awarded. As I have said, the bill sets out a strict formula that must be applied in determining the indexed amount each year. The bill also provides that if the application of the formula means that the amount will be same or less the Attorney-General need not make a determination.

I now turn to the next matter that I would like to address. The member for Southern Downs asked specifically what consultation had been undertaken in relation to the amendments. I would like to take this opportunity to put on the record my thanks to those stakeholders that made a submission to the bill. Those stakeholders include the Insurance Council of Australia, the Motor Accident Insurance Commission, the Queensland Law Society, the Bar Association of Queensland, the Australian Lawyers Alliance and the Queensland Asbestos Related Disease Support Society. It was through this consultation that the government was able to make an informed decision as to whether the bill adequately balances the rights of victims of negligence with the need to maintain the affordability and availability of insurance. Given that there are no amendments in this bill that will specifically affect the not-for-profit sector and that the premium increases resulting from the bill are expected to be small, the not-for-profit sector was not directly consulted on the bill.

The office of the State Actuary was able to provide actuarial advice on the impact on insurance premiums and the insurance companies themselves also provided input on the effects of any changes. Community organisations generally would not have the resources to provide information of this complexity.

We went to those individuals directly involved and impacted by these legislative amendments. Of course, many of those representative legal bodies represent lawyers who deal with and represent not-for-profit groups on a daily basis. We are confident that the mechanism is one that will protect and in a sense enhance not only the civil justice system in Queensland but also small not-for-profit organisations.

Finally, I would like to briefly acknowledge the comments made by the member for Lockyer in relation to personal injury arising from exposure to nanoparticles. As stated by the member for Lockyer, nanotechnology is an area where the science is by no means definitive. If nanotechnology related personal injury does become an issue in the future I can assure the House that the law of negligence remains intact and there is nothing in the Civil Liability Act 2003 which would prevent a person who has suffered this kind of personal injury from pursuing their claims. As science and technology advances there may be an impact. The general principles at common law of how a negligence action must be pursued will continue to apply as modified by statute. All employers know that they have a duty of care to their employees and that there could be in a workplace environment the possibility of a common law claim for negligence. That applies regardless of technology. Regardless of systems of work the principles of negligence will still apply. I thank the member for Lockyer for his contribution in an area that is one that is continuing to grow and stretch the boundaries of science and technology and how so many things will happen in the future through not only business but also consumer products and so on.

I also thank the member for Toowoomba North for his comments. The honourable member asked whether the amendments in relation to P&Cs also extend to parents and friends associations. Other members asked similar questions. I would note that there is no specific need to specifically include parents and friends associations per se as they can be incorporated under the Associations Incorporation Act 1981, thereby coming within the definition of a community organisation. This of course stands in contrast to the position of state school parents and citizens organisations as these groups are prohibited by statute from being incorporated under existing law. As such, a specific amendment as has been made that was required to ensure these groups were covered. That was a significant matter that needed to be achieved through this legislative measure. There was in a sense a potential gap in the law where volunteers working for parents and citizens organisations would not have been covered and those volunteers would not have been able to avail themselves of the protections under the Civil Liability Act so it was important that it be clarified. Any other community group, of course, is capable of availing themselves of those protections as required subject to them satisfying the requirements of the act, particularly incorporation.

It is important to note that under the amendment that I am proposing to move through the parliament in consideration in detail, any community not covered can apply to me as the Attorney-General to have that organisation declared to be an eligible organisation by regulation. That is another mechanism that can be used to cover any other groups that might not otherwise be covered by the legislation.

The honourable member also asked why the abolition of the limitation period will not apply to people who have been previously unsuccessful in an application for extension of time. The essential principle in this regard is that a court's decision must be and must be seen to be final. A defendant who has successfully opposed an application by a person suffering from a dust related disease to extend the limitation period has a legitimate expectation that the claim will remain barred. In the interests of fairness and certainty, it would not be appropriate to introduce retrospective legislation that would effectively override a court's decision. If legislation were to operate in this manner it would have a significant adverse effect on defendants. This is because of the time and resources the defendants may have allocated to the original application and because defendants will have since arranged their business affairs on the basis that the injured person's claim is forever statute barred.

The amendments with respect to the loss of consortium are being made to ensure that there is equality before the law with respect to this head of damage. In Queensland a husband has a common law right to claim damages for loss of consortium. Loss of consortium includes loss of benefits such as comfort, society, assistance, companionship and support. While the Law Reform Act 1995 vests a statutory right in a wife to seek such damages, a de facto partner of an injured person is not currently able to seek compensation for loss of consortium. The bill will address this anomaly by amending the Law Reform Act 1995 to extend the right to claim damages for loss of consortium to a de facto partner of an injured person. This amendment is consistent with the Discrimination Law Amendment Act 2002. This act was introduced to ensure that de facto partners, regardless of their sexual orientation, have rights and obligations consistent with those of married spouses wherever possible. Ensuring that there is no discrimination against any group, particularly those groups who are in partnerships, regardless of their sexual orientation, is an issue that is very critical and important to this government. I spoke at length about that during the debate on the surrogacy bill this year. Overwhelmingly, Australians do not support discrimination against same-sex couples or other people in similar gendered relationships. The numbers are, in fact, very strongly supportive for anti-discrimination measures and this is one that we are pursuing in the parliament through this bill.

At this stage I am not convinced that a loss of consortium claim should be abolished in Queensland. In 2003 the government introduced a threshold test to ensure that loss of consortium is only available if

general damages for the injured person are assessed at $30,000 or more or the injured person died as a result of their injuries. This test has been effective in ensuring that loss of consortium is restricted to those in the greatest need. I believe the existing law in this area, together with the amendments being considered today, strike the right balance between the rights of victims of negligence and the stability of the insurance market.

I note that the member for Burnett commented on matters relating to dental issues at the Bundaberg Hospital. A very fundamental point that is before the nation at the moment is the fact that the federal opposition, including senators from the Liberal and National Party representing Queensland, are opposing and blocking the Rudd government's dental scheme, which would provide $52.8 million for dental care and 180,000 more appointments for Queenslanders. It is a scandal that the Senate is acting in such an obstructionist way. We know that this Senate that was elected in 2007—and continuing senators from earlier elections—is the most obstructionist Senate in 30 years in Australia. We all know what the Senate of 30 years ago did. That Senate perverted the Australian Constitution and brought down a democratically elected government for its own perverse political purposes and that is what we are seeing in the Senate today.

I am calling on the member for Burnett and all of those members opposite to ask Senator Boswell in particular and Senator Joyce—we know that Senator Joyce has spoken at length about how much he seeks to stand up for Queensland—to stand up for Queensland on this occasion. We note that, regrettably, notwithstanding his public comments since his election, Senator Joyce was very quickly rolled and appears of his own desire to support the federal opposition's proposal to interfere with wild rivers legislation in Queensland. One has to ask, after all of that bluster, all of that volume, all of that hot air from Senator Joyce: where was he standing up for Queensland and this parliament when that legislation was passed unanimously? Where was he then? Senator Joyce has been shown up for the political hypocrite that he is. He spoke long and hard on his election about how he would stand up for Queensland and our state. This morning on radio he did it again. He has now been captured by his colleagues in Canberra. He is a pale shadow of someone who would stand up for Queensland.

I would also ask the member for Burnett to speak to his party colleagues—Senator Boyce, Senator Brandis, Senator Ian Macdonald, Senator Mason and Senator Trood—and ask them to stop acting in what I think is a very cruel fashion for people who need dental care in this state and ask them to release that money so that it can flow through to Queenslanders.

In conclusion, I thank all honourable members for their contributions during this debate. There were very positive contributions made on both sides of the House. I acknowledge those contributions that were made in what is a very significant law reform measure. This is about making the law more accessible to Queenslanders. That is the Labor mission. It is always our mission when it comes to law reform to ensure that the system of justice in our state remains open and transparent but accessible to all Queenslanders. It is a mission that I take very seriously on a personal level as the Attorney-General.

I also thank the officers of my department who have been involved in drafting this legislation, in particular Belinda Myers and Imelda Bradley for their hard work on the bill, and I commend the bill to the parliament.