



Speech by

Jann Stuckey

MEMBER FOR CURRUMBIN

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CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL

Mrs STUCKEY (Currumbin—LNP) (5.10 pm): I rise to address the Civil Liability and Other Legislation Amendment Bill 2009 introduced into parliament by the honourable the Attorney-General and Minister for Industrial Relations on Wednesday, 7 October 2009. The purpose of this bill, as we have heard, is to make amendments to the current civil liability and personal injury regime in Queensland.

The 2003 Civil Liability Act was introduced in response to the rapid escalation of insurance premiums, more commonly referred to at that time as the insurance crisis. This act was the second stage of reforms implemented. The first stage was the introduction of the Personal Injuries Proceedings Act and was designed to provide a common-sense approach to negligence and personal injury damages awards. These reforms sought to make injured parties in a negligent law suit more personally responsible for their own conduct and safety. This act did not apply to negligent conduct resulting in personal injuries relating to dust related disease.

The Civil Liability Act 2003 also changed the method of assessment of damages for personal injuries. It reduced awards of damages for personal injuries and provided a new method for assessing general damages in personal injuries cases. Courts were subsequently required to assess an injury and allocate a value on a scale between zero and 100 to that injury. Once the court had assessed the scale value of the injury, the act provided a simple mathematical calculation of the general damages that would be awarded for that injury.

The current bill's objective is to improve the civil liability and personal injury regime in Queensland while also maintaining the affordability and availability of insurance. Many of the amendments are said to be in direct response to stakeholder feedback. Consultation on this bill is noted as being undertaken with Queensland and Australian law societies, insurance bodies and companies in Queensland. However, as mentioned by the honourable member for Southern Downs, we would like to hear from the Attorney whether broader consultation with community groups was undertaken.

The focus of my contribution today will be the abolition of the statutory limitation period for dust related personal injury claims. Firstly I will briefly address the re-basing and facilitation of 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 along with aspects of the Civil Liability Act 2003 relating to gratuitous domestic services.

With regard to the amendments in relation to the index of monetary amounts, prior to 2002 non-profit organisations and community groups faced the issue of escalating costs for obtaining public liability insurance to the point where the costs for insurance were so high that a number of these groups had no option but to disband. The public liability crisis facing community organisations in 2002 and 2003 is one I remember well as I was president of a local community association based in Coolangatta that had only incorporated a couple of years before. I am pleased to say that we have survived.

The LNP supported the introduction of the Civil Liability Act 2003 because it introduced a capped civil liability regime to reduce the costs of obtaining insurance and thereby enabled small community groups to obtain necessary public liability insurance as it was more affordable for them. The government

proposes to increase the cap so that it is calculated yearly on 1 July supposedly based on the rising costs of living expenses and average income. As was outlined by the LNP spokesperson and honourable member for Southern Downs, the opposition does hold concerns that this may have a harmful effect on the ability of some community groups to insure and therefore their ability to provide services. Every member of this House understands the value of community groups in their electorates. Most run on a shoestring budget and are totally dependent on the goodwill of committee members who put in a mountain of hours. I acknowledge the vital work that they do and the benefits that they bring to our respective regions. Sporting clubs, 60 and Better, U3A, Lions, Rotary, the Currumbin Happy Group and Meals on Wheels, to name a few, bring immense comfort to so many.

There is no doubt that basic costs are rising: food, electricity, water, car registration, to name a few. These costs are also borne by struggling community groups that deserve some reassurance from this government that they will be able to survive these forthcoming fee rises. It is disappointing that the Bligh government decided in this particular case to put the increased cap into the Civil Liability Regulation rather than the act itself which will see amounts determined in a regulatory rather than a statutory manner. This could be viewed as a tactical move by this government to avoid the full scrutiny of its actions. But as usual this arrogant government will just press ahead as it pleases.

As already mentioned, amendments in this bill affect other acts. These acts will be regulated using the same formula proposed in the Civil Liability and Other Legislation Amendment Bill—that is, removing the fixed cap and allowing it to be adjusted in line with cost increases. The result will see the maximum damages available for personal injury increase from the current \$250,000 up to \$294,000. Examples of multiple personal injuries that could result in the maximum payout include total sight and hearing impairment, extreme brain damage and quadriplegia.

In relation to the amendments to the current definition of 'community organisation' found in the 2003 act, the definition of 'community organisation' will expand to include volunteers who perform community work for parents and citizens associations. This is a welcome move as P&Cs do important work for our schools and for our communities and deserve the recognition and protection that this bill, if passed, will bring.

The bill proposes to include under a new section 59A the cover of damages for loss of an injured parent's capacity to care for their disabled child. Every parent's nightmare is what will happen to their child if they are no longer able to care for them or, worse still, they die before they do. This is especially true with regard to parents of a child with a disability, the majority of whom are fiercely opposed to their child being placed into care no matter how good that care might be. Whilst the idea of being separated is abhorrent to many of these parents, this provision will hopefully lessen one facet of their distress. Furthermore, the Civil Liability and Other Legislation Amendment Bill seeks to 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. A definition for domestic services is not provided in this bill and it is proposed that these will be assessed on a case-by-case basis. This amendment also seeks to ensure that damages will not be available for minor injuries where general damages have been assessed at less than \$35,340. This particular amendment would result in necessary amendments to the Law Reform Act so that a de facto partner of an injured person will be able to claim damages for loss of earnings.

This bill also seeks to amend the Limitation of Actions Act 1974 to remove the statutory limitation on claims for dust related personal injury claims. With the passage of this bill a person suffering from a dust related condition will no longer need to apply to the court to extend the limitation period. It is also proposed by this bill to amend the Civil Liability Act 2003 to ensure damages can be awarded to persons suffering from dust related injuries who provide gratuitous domestic services. We know from the significant amount of media surrounding dust related illnesses that this amendment is indeed a good step forward and so very long overdue. Retrospectivity will be applied under specific circumstances as a number of these diseases were as a result of asbestos exposure during the 1950s, 1960s and 1970s. I fear there will be an even greater number in future years and amongst a younger population due to some sloppy practices that the government allowed to continue.

Prior to 1990 asbestos was used in Australia largely in the manufacture of building products, pipes, insulation materials and brake linings. Generally asbestos products in an undisturbed and stable state are relatively safe, but once disturbed without strict controls potential health problems can arise. The subsequent release of asbestos fibres if inhaled can give rise to a variety of dust related illnesses such as lung cancer, asbestos related pleural diseases and mesothelioma. Asbestos related diseases may take many years after exposure to manifest themselves. Mesothelioma is especially insidious. Even very slight exposure to asbestos may cause it, and while the disease may not manifest itself until 40 years or more after the exposure, when it does the course of the disease is most often short, very painful and fatal.

Particularly vulnerable to the ill effects of asbestos exposure are those people who have worked with cement sheeting, by either cutting or drilling it or causing the fibres to be released into the air in some way. In order to prevent further risks associated with exposure to asbestos materials, governments, former

asbestos manufacturers, sectors of the building and construction industry, health, safety and research agencies and the community all have a responsibility to engage in the development of effective prevention programs and expand awareness through education.

Children are far more susceptible than adults, which is why the presence of asbestos in schools should only be treated when employing maximum safety procedures. The issues of asbestos removal and the prevention of further deaths from exposure to this product are obviously important for government safety regulators, who ultimately have the responsibility to work to protect the public. Yet this government has not only failed previously to implement its own safety procedures for its QBuild staff and employees; it has also recklessly put the lives of thousands of Queensland children and teachers at risk. Now we have the Schools Asbestos Register, which finally has been released via the department of education website. It shows the scale of the problem. Refusal to reveal the contents of this register earlier indicates the government's reluctance to make public the extent of the problem. The majority of schools—eight to be precise—in the electorate of Currumbin are on the register of schools with confirmed, presumed or removed asbestos sites.

Despite promises to the people of Queensland in July 2006, when it introduced the asbestos management and control policy for government buildings, that this government was committed to ensuring that asbestos-containing material in government controlled buildings was to be managed and controlled to protect the health and wellbeing of workers, contractors and the community, we have seen several incidents of children in our schools being exposed to asbestos because this government has not kept its promises. The government should be leading the way, but it is not. It is paying lip-service and is allowing untrained workers to remove this deadly substance. Asbestos should be a top priority for the government, but it is turning a blind eye to corrupt practices that are resulting in stand-over tactics and untold numbers of people being contaminated with asbestos fibres.

What is the point of having legislation to protect workers and consumers when the minister and this Labor government do not heed their own safety procedures? When they are caught red-handed, they deny it and then resort to threats and defamation to get well-meaning citizens to shut their mouths or retract the truth. There is a very dark cloud indeed hanging over this industry that warrants a full CMC investigation. I ask the Attorney-General: what will happen to Asian workers who are brought here on short-term work visas called 457s? Do they get any protection from this legislation or, when the job is finished, are they sent back home contaminated and none the wiser?

I would like to acknowledge the government for bringing into the House this legislation, which is well intended. The LNP offers its support.