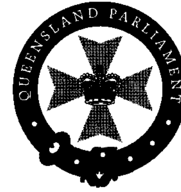

Speech by

RACHEL NOLAN

MEMBER FOR IPSWICH

Hansard 19 June 2002

PERSONAL INJURIES PROCEEDINGS BILL

Ms NOLAN (Ipswich—ALP) (8.52 p.m.): In the last year a number of Ipswich community organisations have seen serious hikes in the premiums they are expected to pay for public liability insurance. Some, like Willowbank Raceway, have seen these hikes coming for years. Others, like the Ipswich Art in Bark Association and Project Recreation, have been seriously thrown by big hikes virtually overnight. Let us be clear. There are two main reasons for these hikes. First, there has been a big increase in public liability payouts awarded by juries in New South Wales courts. In that state there have been ridiculous awards, such as the millions awarded by a jury to a man who broke his neck at Bondi Beach. The problem is that, when insurance companies set premiums for particular activities, they do not distinguish between states, so these stupid payouts in New South Wales have pushed up premiums for everybody. Secondly, the collapse of HIH late last year has put the cat among the pigeons in the insurance industry. Before its collapse, HIH was undercutting the market, offering unsustainable premiums and keeping the market very low. The federal government failed devastatingly in its regulatory duty to ensure insurance companies are sustainable, and the collapse has put an end to any competitive pressure in the market. Since the collapse, insurance companies have used the uncertain environment to pump up premiums, abandon risky enterprises they do not want and make a killing on the rest. The ACCC should be down on these insurance companies like a tonne of bricks.

There is a belief that people's propensity to sue and the kind of payouts successful litigants get are out of control in Queensland. This is simply not the case. While there has been an increase in the number of people suing for reasonably small injuries—and I will get to how we are dealing with that—it is simply not true to say that we are seeing numerous big payouts for personal injury resulting from negligence in Queensland. So the Queensland legal system did not cause the public liability problem, but we are acting pre-emptively to stop our legal system from contributing to the problem in the future. What are we doing? Firstly, the Queensland government is setting up a joint insurance scheme so that community organisations and events can band together and put out all their insurance needs as a single contract. This will give them some market power. So far, nearly 5,000 community organisations are involved. Right now, what power in the market do a handful of people like the Ipswich Art in Bark Association have if a billion dollar company like AMP tells them they can pay thousands of dollars for insurance or they cannot have it at all? They have no market power—none. Through the government's joint buying scheme, these little organisations will band together and have some power in the market. Together, their insurance will be something which, from the insurance companies' perspective, is worth bidding for. This is classic aggregation of demand, and it will work. In view of the time, I seek leave to incorporate the rest of my speech in *Hansard*.

Leave granted.

Secondly, the State Government is protecting good samaritans who come to the aid of others from being sued. So if a lifesaver for instance actually injures someone while trying to rescue them, their good intentions will be taken into account. They will only be considered liable for injuries caused if they are found to have acted with reckless disregard for the rescuees' safety.

Thirdly, the Government is limiting the size of large claims. As I made clear earlier, Queensland, unlike New South Wales, does not have a record of awarding large payouts to people injured through negligence. There have only been a handful of million dollar plus payouts in Queensland courts. It's not happening now and we do not want it to happen in the future.

This Bill caps claims for economic loss to three times average weekly earnings.

What does that mean?

Damages awards have five main components—economic loss, general damages for pain and suffering, medical and rehabilitation costs, provision for services to the injured person and exemplary damages.

If the person injured or killed through negligence has a huge income, say, they're a soft drink executive or something like that—then the amount claimed for loss of income can run to tens of millions of dollars.

The community should not be footing the bill for these obscene amounts of lost wages and with this move, we won't be.

With this Bill, the State Government is putting an end to jury trials for personal injury. This will go a long way to reducing the risk of courts awarding big, stupid payouts to litigants. Jury trials are longer and more expensive to run and in New South Wales juries have been awarding millions of dollars to people for whom they feel sorry almost regardless of the negligence issues. By outlawing jury trials Queensland will ensure consistency in judgements and protect against crazy payouts motivated by sympathy.

Some Ipswich organisations like the Ipswich Show Society and Willowbank Raceway have expressed real concern to me that relatively small claims—$5, 10 or even $50,000 are being made for injuries like a broken leg in the car park. These claims are often made by serial litigants who have found that they can get a few thousand dollars through a no win no fee lawyer. They are payments for things that really can't be fixed through money, they are clogging up the courts though they are often eventually settled out of court and they are pushing up premiums for everybody.

The legal costs of defending these claims are so high that some insurance companies are now just paying out the small claims rather than fighting them because it's simply quicker and easier.

We are banning 'no win no fee' advertising and a good thing that is too. For months a huge tacky sign at the Ipswich Fiveways encouraged Ipswich people to "Add Income to Injury." The message behind it was unethical and importantly, it was misleading. The community needs to be aware that if you take out legal action even on a no win no fee basis and you lose, you could well end up paying the other side's costs. There is no such thing as no win no fee and no risk.

This legislation means that no legal costs will be payable for claims under $30,000 and a maximum of $2,500 will be payable if the claim is for $30,000 to $50,000.

The cost of legal proceedings will be reduced through this legislation in a number of ways—

- We will require the mandatory early notification of claims following an injury or the appearance of symptoms
- It will be mandatory to make offers of settlement and participate in settlement conferences before court
- Parties will be required to exchange information including medical reports early in the piece to avoid lengthy legal processes

I want to turn now to tort law reform, that is the process of trying to redefine negligence so that the really outrageous cases where a person suffers serious harm through some other idiot's reckless disregard for their safety do get up in courts while the stupid ones like the drunk who dived off a fence into a shallow canal at the Gold Coast don't.

We need to start by acknowledging that actually doing this is really hard. Hundreds of years of case law means that the system of interpretation and precedent is pretty well developed. You can't just redefine negligence because every case of negligence is a little bit different. It is clear though that changes need to be made. We cannot have a situation where the community continues to pay to compensate people for injuries caused largely by their own stupidity.

Tort law reform has to be consistent across Australia and the state is participating in a process where a group of experts are looking at

- changing the law of reasonable foreseability of harm
- options to throw out extreme and unrealistic claims
- options for waivers for dangerous activities, and
- reducing the time limits during which claims can be made on behalf of children

That process is ongoing. The Government expects to introduce further legislation arising from it in September.

The $64,000 question is can we be sure that the cost of insurance for the community group will go down? The answer I am sad to say is not entirely. As a State Government we cannot stop the insurance companies from ripping people off. I can stand here and say to Ipswich people though that we are doing everything in our power and that while it won't happen in the next ten minutes, it really should bring your premiums back down.

Before finishing, I want to make it clear that Ipswich doctors must stop scaring their patients.

I want to premise this by making it abundantly clear that Ipswich has some very good and ethical doctors—people like Dr Shera who still bulk bills and Dr Ng who I spoke to at length about these issues yesterday. These people care about their patients and they are ethical enough not to involve their patients in issues which relate to how much money they earn.

This morning, however, my electorate officer took a call from an old lady who was almost in tears with worry. She has been going to the same medical clinic for thirty years but when she went there yesterday, her doctor, in whom she trusts, told her that he might well not be able to work after the 30th of June and that if she was worried about that she should contact her local member.

I have had dozens of these kinds of calls.

This is gutter politics, it is unethical use of doctors' trusted position in the community and in peoples' lives and it is manipulation of the vulnerable of the worst kind.

I understand that Ipswich doctors are genuinely and rightly worried about medical indemnity insurance. Around 80% of them were insured by United Medical Protection (UMP), who went broke a couple of months ago. This has left them needing to get new coverage in the future and with a serious worry about the tail—that is what happens if someone comes forward with a claim for an injury that happened say, last year when the doctor was insured by UMP, but they don't come forward for a few years, long after UMP is gone.

This is a serious worry but it's one that the doctors and the Federal Government need to sort out.

The medical profession needs to start by taking some responsibility. UMP was run by doctors for doctors. It had a board of doctors and those in the know in the medical profession had been aware for years that the premiums of around $3,000 a year that GPs were paying were simply too low to cover the risk.

I believe that the issue of the tail will be sorted out through negotiations between the doctors and the federal government. In the meantime, UMP doctors are covered by the federal government's extended guarantee and there are a number of other insurance companies out there falling over themselves to take these doctors on. There was a full page ad in the Courier Mail from one of them last week.

The bottom line is that there is absolutely no reason why doctors should not go to work after July 1.

The AMA are loudly calling on the State Government to follow New South Wales' lead and cap general damages at $350,000. This might make for a great TV line but it is completely unnecessary. General damages make up only one component of damages payouts and in Queensland, unlike NSW where juries award big general damages payouts, there has never been a general damages payout of more than about $200,000.

The AMA do have some legitimate issues. They want tort law reform, which I have already made clear is happening and they want the time limit during which families can sue for an injury to a child to be cut. At the moment, if an adult is injured they have three years to sue. If a child is injured, even during birth, they have until the age of 21 to make a claim.

The reason for that is that it would be very difficult for a court to judge how much that child's income earning capacity is going to be affected in the future if the child is only two or three. The downside though is that it's hard for doctors and insurance companies to judge the risk if it might not come forward for 21 years.

Having spoken to Dr Ng and thought about this issue, I agree with the doctors' claim that there should be a limit of seven years. This is one of the matters that is going through the tort law reform process.

So, if the tail is a federal issue, general damages is a furphy in Queensland and we are seriously looking at the third demand about tort law reform, what is these doctors' game?

These doctors are trying to have themselves put above the law. They are threatening to go on strike though they say "extended holiday" because they don't even have the honesty to use the word strike and they are doing it to put pressure on the government to make them pretty much impossible to sue. That is not on.

I absolutely agree that doctors should not be sued for actions which were common practice at the time and they should not be sued if they were not what most people would agree was negligent.

I can tell you though that if one of my constituents had the wrong leg cut off by a doctor who was drunk, they should be taking that doctor for every Lexus in the garage.

Doctors must be accountable for their actions.

Ipswich people should not let themselves be abused and misled by this manipulation and dishonesty by a small group of money grabbing doctors.

It is disgraceful for these doctors to play on old peoples' fears about their health as part of a strategy to ensure their future income. As a government we are dealing with their issues but we will not let ourselves be swayed by their gutter tactics.

This Bill is a huge step forward for community organisations struggling with crazy insurance premiums, for a community caught up in an unhealthy litigious culture and for doctors trying to get some certainty back in their industry. I commend the Bill to the House.