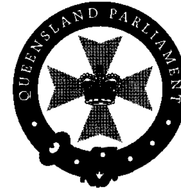

Speech by

RACHEL NOLAN

MEMBER FOR IPSWICH

Hansard 2 April 2003

CIVIL LIABILITY BILL

Ms NOLAN (Ipswich—ALP) (5.28 p.m.): I rise to indicate my strong support for the second round of public liability reforms brought to this House by the Attorney-General. I want to begin by going over some of the background to these issues. I have been a member of parliament for a couple of years now, and that period has pretty much coincided with the emergence of a huge blow-out in insurance premiums paid for public liability and professional indemnity insurance. Hardest hit have been the community organisations that run on a shoestring, have always been regarded as extremely low risk and provide the services and fellowship that we regard as the essence of our sense of community. In Ipswich, organisations that have seen these ridiculous insurance blow-outs have included the Ipswich Hospice, which used to run popular fundraising fetes, Willowbank Raceway, the show society, the two volunteer historic railways, Swanbank and Pioneer, and even the Ipswich Lapidary Association.

The premium blow-outs have occurred for a number of reasons. There has been the development of a more litigious culture and a blow-out in personal injury payments, particularly in New South Wales; the collapse of HIH and the doctors' insurer UMP, leading to an end of competitive price pressure in the general insurance and medical insurance industries; and negative investment returns and an upsurge in the cost of reinsurance since the September 11 attacks have combined to make the margins tighter for insurance companies. Of these three factors, the public debate has tended to focus on the one that has been perhaps the easiest to get our heads around—that is, the development of a more litigious culture and the big headline payouts. This is only one of the factors that is a state government responsibility. The Beattie government has taken substantial steps to tighten up our litigation environment. The changes we have made basically make it harder to sue, let alone get a big payout for frivolous claims, and have cut a lot of the legal costs out of the litigation process. The changes we have made have, at many turns, been opposed by the lawyers who make money out of people's misfortune, but they have been well received as smart reforms that reflect community expectations in the broader community.

I do not want to detail all of the elements of the first stage of reform—I did that in a speech to parliament last year—but I will outline some of the key points of the legislation we are debating today. This bill deals specifically with doctors' concerns about medical negligence by establishing that a doctor cannot be sued if the treatment they applied was in accordance with an opinion widely held by a significant number of respected practitioners in the field—that is, if medical practice has been shown to be harmful now but was widely accepted at the time, the doctor cannot be sued. While this might seem to be commonsense, doctors did not necessarily have such a protection in the past and the reform satisfies their request.

The bill also provides that it is not incumbent on the responsible party, be it a council or other landowner or whatever, to warn of obvious risk—that is, one does not have to put a sign saying 'Don't jump' at the top of a cliff. Similarly, the Ipp panel that advised all Australian governments on these matters found that the people who participate in recreational activities often do so voluntarily and wholly or predominantly for their own enjoyment and hence that a provider of recreational services is not liable for personal injury or death suffered by a voluntary participant in a recreational activity as a result of the materialisation of an obvious risk. What that means is that if a person goes to a surfing school and they get dumped badly by a wave it is not the surfing school's fault. Again, this is a commonsense amendment that a number of people in the Ipswich community have suggested to me over the past few months.

The bill exempts volunteers performing community work for a community organisation from liability for injuries caused by negligence provided they acted in good faith. It also codifies the standard of care in assessing negligence, determining reasonable foreseeability, causation and contributory negligence. There are other measures in the bill which relate specifically to professional indemnity and which restrict the quantum of damages paid, but I will not go into all of them here. Other members have already done that and the Attorney-General went into a great deal of detail in his second reading speech. The real point I want to make is that with this round of reforms the Beattie government has seriously tightened up the laws of negligence in Queensland. While it was not the case that we were getting big headline-grabbing payouts in Queensland in the same way New South Wales was, this bill means that only legitimate claimants will get payouts now and there is not the same capacity for the big, stupid sums.

This bill puts the ball firmly in the insurance companies' court. Once it is enacted, they can no longer argue that these little community groups have to pay big premiums because they are a big financial risk. They will no longer be able to rip people off and say it is the fault of the community, the lawyers or the government. We will all be watching the insurance companies to see if their insurance premiums start coming down and we will be watching the federal government, which is responsible for price monitoring through the ACCC and for regulation of the insurance industry through APRA, to see if it is serious about regulating this industry. So far the federal government has done nothing but duck and dive on this issue. It has hidden from the fact that the HIH collapse was a failure of federal regulation and has hidden from the fact that it is only the ACCC which can ensure there is competition in the insurance industry. It has hidden and said that these are matters for the states' legal systems. As of today, the state has done its bit. We have cleaned out our own house and I am calling for the federal government and the insurance industry to do the same.

In finishing, there is just one other point I want to make, and that is this: for these reforms to work it is incumbent on all of us to take responsibility for our own actions. We cannot be the kind of people who go along to a community organisation and ooh and ah about the terrible insurance premium they have to pay but then see big dollars in some minor injury that we incur. It is up to us to make this work, and it is up to us to do that by taking responsibility for our own actions. I commend the bill to the House.