



Speech by

**Andrew Cripps**

**MEMBER FOR HINCHINBROOK**

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## **CIVIL LIABILITY AND OTHER LEGISLATION AMENDMENT BILL**

**Mr CRIPPS** (Hinchinbrook—LNP) (11.56 am): I rise to make a contribution to the debate on the Civil Liability and Other Legislation Amendment Bill. The bill proposes to amend a number of acts, among them the Civil Liability Act. The stated purpose of the amendment to the Civil Liability Act is to rebase and facilitate the future indexation of monetary amounts in the act, including the legal costs threshold and the caps on general damages. In particular, the bill proposes to reinstate damages for the loss of a claimant's capacity to provide gratuitous domestic services.

The matter that I want to canvass today relates to the proposal contained in the bill to partially reinstate damages for the loss of an injured person's capacity to provide gratuitous domestic services. The explanatory notes accompanying the bill outline the fact that a decision of the High Court of Australia in 2005 held that damages for loss of capacity to provide gratuitous domestic services are not part of the common law of Australia. The explanatory notes accompanying the bill suggest that this amendment will provide for a circumstance where damages may be awarded for loss of an injured parent's capacity to care for a disabled child. As the shadow minister for disability services, that is obviously something that is of interest to me.

Under the new provision, it is proposed that damages for loss of an injured person's capacity to provide gratuitous domestic services may be awarded by a court only if the injured person died because of the injuries suffered or general damages for the injured person are assessed at the amount provided for in section 58 of the act; the recipient was a member of the injured person's household when the relevant injury happened; before the relevant injury happened the injured person provided the services in question to the recipient; the recipient was or will be incapable of performing the services personally because of their age, or physical, or mental incapacity; but for the injury, the injured person would have provided the services for at least six hours per week for at least a period of six months; and the need for the services is reasonable in the circumstances.

So the explanatory notes accompanying the bill state that the relevant time to assess whether the recipient was a member of the injured person's household and whether the injured person previously provided the services to the recipient is when the relevant injury happened. If the symptoms of the injury are not immediately apparent, the relevant injury is taken to have happened when the nature and extent of the injury was known. For example, if the injury relates to an incapacitation due to exposure to asbestos, the relevant time to assess whether the recipient was a member of the injured person's household is at the time of diagnosis and not at the time of exposure to the asbestos. The purpose of the requirement that the recipient was not or will not be capable of performing the services themselves is to ensure that the services that the injured person has lost the capacity to provide are necessary to the recipient for their basic welfare.

By way of example, an adult child with no particular disabilities or incapacities would be capable of cooking their own meals and doing their own washing and cleaning notwithstanding that prior to the injury the injured parent performed these tasks for them. The purpose of the time requirements in the new

provision in this bill is to ensure that these types of damages are only awarded if the recipient has an ongoing need for these significant services.

However, the bill also proposes to allow a court to disregard certain periods of time when the recipient would not have been in the care of the injured person when determining whether their services would have been provided to the recipient for at least six hours a week for a period of at least six months. In addition, the bill proposes to make special provision for unborn children of the injured person.

The bill does not propose to provide a definition for domestic services. The particular domestic services that might be reasonable in a claim will depend on the circumstances of the case. The bill takes reasonable steps to avoid situations whereby an injured person may attempt to claim twice for the same loss by addressing potential overlaps between several sections of the amended act. This may occur if an injured person seeks damages or compensation on a number of grounds, including damages for gratuitous services provided to the injured person, rehabilitation services paid by an insurer and damages recovered by the recipient as part of a dependency claim or loss of consortium action.

The bill also sets out a number of factors a court may take into account when deciding the value of any gratuitous services that the injured person has lost the capacity to provide. The court will be required to take account of the claimant's capacity to provide the services before the relevant injury happened and to make an allowance for the normal vagaries and uncertainties of life. As the explanatory notes outline, for example, an injured person who at the time the relevant injury happened was already suffering from the early stages of, for example, Parkinson's disease, might reasonably be expected to have a declining capacity to provide the services. A court will be given an opportunity to award damages for those years that an injured person would have provided the services but for the shortening of their life by the injury. Those years are sometimes referred to during legal proceedings as lost years.

As members can see, the proposed changes in this bill are significant. Insofar as these changes provide an opportunity for a safety net to be put in place for the ongoing care of people with disabilities in Queensland, this is a welcome development. Given that people with disabilities are amongst the most vulnerable in our community, it is important that the threat to them of losing support services that they are currently relying upon as a result of a service provider incurring an injury is minimised. These gratuitous domestic services are in many cases the cornerstone of support to people with disabilities. In many cases, although not exclusively, parents caring for their children with a disability bear a great deal of the cost of care and support to those individuals which reduces what would otherwise result in an increased demand for additional services provided by the government. The government would be keenly aware of that and would know that that would be the case.

This bill, providing for compensation to be paid in certain circumstances where a person with a disability loses the support of someone providing gratuitous domestic services, will provide something of a limited buffer against increased demand for additional disability support services in Queensland. It is undoubtedly a limited buffer, but for those people with a disability who will be entitled to receive compensation in these circumstances it will be an important buffer against the threat of them being unexpectedly caught out in the event that someone providing gratuitous services can no longer do so.

Not everybody with a disability is lucky enough to be the grateful recipient of gratuitous domestic services. It has long been a concern that there is not an adequate provision of funding for disability support services, particularly for respite services for parents caring for disabled children. While it is true that the levels of dependence and demand on carers are acute during childhood they never really diminish and ageing carers in particular are in desperate need of options for ongoing care for their sons and daughters. While it is certainly a good thing that the role of parental carers is recognised in this provision, it would also be positive to see an improved government response through improved and expanded respite services for people in the circumstances that I have described.

I acknowledge that the Minister for Disability Services during her tenure has stated on a number of occasions that one of her priorities is supporting ageing carers faced with these types of issues. I welcome the focus that the minister has tried to bring to the issue of older carers and the demands that they face. However, I am sure that the minister would acknowledge that there is a very long way to go. The reason why there is a very long way to go is that the issue of older carers having a serious lack of support to assist them with the care of their children with disabilities has gone unaddressed for such a long time. Both sides of politics ought to accept their share of the blame for that neglect. In pursuing additional support for carers, the minister will certainly enjoy my support and cooperation in the future.

There is a history of bipartisanship in this parliament in relation to pursuing measures to support carers of people with disabilities. My predecessor as the shadow minister for disability services, the member for Burdekin, ought to be acknowledged because she sought to provide those people who care for people with disabilities with increased acknowledgement in this state by introducing a private member's bill, the Carers (Recognition) Bill, which was historically supported by the government at the time. That is a

lasting achievement of the member for Burdekin in the disability services portfolio of which she can be justifiably proud and is an example of genuine support for carers.

Of major importance is the ongoing need to provide services in communities across Queensland: urban, regional, rural and remote. This bill seeks to provide for a circumstance that, where a provider of a gratuitous domestic service is no longer able to provide that service to a dependant, such as a person with a disability, that compensation can be used to provide that dependant with ongoing care. The obvious question that follows from that scenario is where is that ongoing care going to be provided and who is going to provide it. The compensation will provide resources to pay for the support in the event that the care is no longer provided on a gratuitous basis. However, we must support and grow government and non-government disability service providers across Queensland for this purpose. In summary, I support and welcome the amendments relating to these changes to the Civil Liability Act.

I would like to speak briefly about the proposal in this bill to amend the definition of 'community organisation' in section 38 of the Civil Liability Act to 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 welcome and support this amendment in the strongest possible terms. I have more than 40 schools either located in my electorate or servicing communities in my electorate, being state, Catholic and independent primary and secondary schools. Parents and citizens associations and parents and friends associations are the heart and soul of many of these schools. I am certain that the same can be said for the schools in many of the electorates of many other honourable members. The efforts and contributions of the members of P&Cs and P&Fs in many cases ensure that the school has what it needs to function properly.

To be truthful, I was rather anxious when I first examined this bill that this issue was not already settled and accepted and that this amendment was necessary to clarify matters at all. P&Cs and P&Fs have been such an enduring part of the life of our schools that I would have thought that issues such as this would have been previously considered and addressed. That it has not is somewhat of a concern, but it is a very good thing that we are acting now to correct it.

I associate myself with the remarks made by the member for Toowoomba North in his contribution to the debate insofar as he made an inquiry to the Attorney-General about whether or not the bill would extend its protection to parents and friends associations in addition to parents and citizens associations. It was a question that I was going to raise in the House as part of the debate and I acknowledge that the member for Toowoomba North has shown an interest in that important matter.

**Mr Dick:** The amendments I have circulated will address that.

**Mr CRIPPS:** I thank the Attorney. I am grateful for that clarification. It is an important one. However, it should be noted by members of parents and citizens associations and parents and friends associations across Queensland that the explanatory notes accompanying the bill clarify the fact that a volunteer is not protected from personal liability if the liability is one that is required under statute to be insured against. The bill makes it clear that the protection from liability is excluded where the statutory requirement to insure applies to the volunteer in ordinary circumstances. For example, a P&C or a P&F volunteer would not be considered to be insured or protected from liability as a volunteer of a community organisation under the Civil Liability Act if they are involved in an accident or an incident involving an uninsured vehicle because the Motor Accident Insurance Act requires a person operating vehicles in ordinary circumstances to be insured, which is fair enough and I am sure all members would agree with that. In any event, this bill does provide enhanced protection to P&C members and, as we have heard from the Attorney, P&F members as well. I support the bill.