

## **SECOND READING SPEECH**

### **Civil Liability Amendment Bill 2013**

Mr Speaker, this Bill amends the *Civil Liability Act 2002* largely to address issues relating to damages.

At common law, damages are awarded on a “once and for all basis”, which means that once judgment is given and damages are awarded to a successful plaintiff, all claims by the plaintiff against the defendant in respect of that cause of action are finalised.

This makes sense in most instances, as damages will include a component for the estimated future losses and expenses of the plaintiff.

However, the “once and for all” principle can work an injustice in the case of a person suffering from an asbestos related disease, for example asbestosis, as that person may develop a quite separate and more serious illness at a later time, for example mesothelioma, attributable to the same asbestos injury.

A number of Australian jurisdictions have already made statutory changes to allow for “provisional” damages to be awarded in recognition of the fact that a person with an asbestos-related disease may develop a different, more serious, disease at a later date.

“Provisional” damages mean that a plaintiff’s initial claim, for example for asbestosis, can be settled without excluding the possibility of a further claim being made in the future if a different asbestos-related disease, such as mesothelioma or lung cancer is diagnosed.

This Bill amends the Act to allow a Court to award “provisional” damages in a dust diseases case and, if the person develops a different dust-related condition, further damages at a future date.

This amendment is limited to asbestos-related diseases as it is asbestos-related diseases that are known to sometimes manifest in the same person in two completely unrelated types.

This Bill also includes a provision in the Act to provide a statutory basis for an award of damages for the loss of the ability to care gratuitously for another.

Gratuitous care for another refers to the situation where the injured person had, prior to injury, voluntarily cared for another person, for example a child or elderly parent. As a result of the injury the person may not be able to provide that care and may need to pay someone else to provide it.

In 2005 the High Court found that there was no such head of damages at common law, and claims for this kind of damage could only be taken into account in an award for general damages.

Because of the High Court ruling no limit on the amount of damages that could be awarded under this category was included in the Act when it was extensively amended in that same year.

However, at least three states (Victoria, New South Wales and Queensland) have provisions in their equivalent Acts that provides a statutory basis for an award of this type of damages and also limits the amount that may be awarded.

The Government has decided to recognise that the loss of ability to gratuitously care for another is a significant loss that should be statutorily recognised.

The Bill also provides for statutory limitations on when the damages can be awarded and the amount of damages awardable will be capped.

Historically, the level of general damages, that is damages awarded to compensate for non-economic losses such as pain and suffering and loss of amenity of life, have been lower in Tasmania than in other jurisdictions.

The *Civil Liability Act 2002* provides in section 28 that in “determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings”.

It is unclear whether the Court, in determining the level of general damages that may be awarded, takes into account damages awarded in courts in other Australian jurisdictions.

In order to ensure that plaintiffs are appropriately compensated for non-economic losses, this Bill amends section 28 to clarify that awards of interstate courts may also be taken into account.

In addition to the amendments related to damages, the Bill also inserts a standard provision to clarify that the Act binds the Crown.

By an oversight this provision was omitted from the Act when it was first drafted.

I commend the Bill to the House.