

CIVIL LIABILITY (GOOD SAMARITAN) AMENDMENT BILL 2007

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the Civil Liability (Good Samaritan) Amendment Bill 2007 (the Bill).

Policy Objectives of the Legislation

The objective of the Bill is to afford legal protection to persons in our community who assist “persons in distress”, provided that such aid or assistance is given in emergency circumstances, and that any act done or omitted is done so in good faith and without reckless disregard.

Reasons for the Bill

Currently in Queensland, legal protection is only extended in very limited circumstances to specified persons assisting in emergency situations.

To illustrate, the *Civil Liability Act 2003 (Qld)* (“the CLA”) in sections 26 and 27 only offers legal protection to entities performing duties to enhance public safety or to persons performing duties for entities to enhance public safety. The entities attracting such protection are prescribed in Schedules 1 and 2 of the *Civil Liability Regulation 2003 (Qld)*. For such protection to be afforded, it is also necessary that aid or assistance be given in the course of performing duties to enhance public safety and that it be given in circumstances of emergency, in good faith and without reckless disregard.

Part 5 of the *Law Reform Act 1995 (Qld)* extends legal protection to medical practitioners, nurses or other persons prescribed under regulation in respect of acts done or omitted in the course of rendering medical care, aid or assistance to an injured person in circumstances of emergency. Such aid or assistance must, however, be given at or near the scene of the emergency or while the injured person is being transported from the scene to a hospital or other medical care facility. The act or omission must also be done in good faith and without gross negligence. Further, the services performed must have been done so without fee or reward or expectation of fee or reward.

Unlike jurisdictions, such as Victoria and Western Australia, no legal protection is afforded in Queensland legislation to other persons who, without fee or reward, or the expectation of such, assist persons in emergency situations. Such persons have frequently been referred to as “Good Samaritans”. While this term is not specifically used in the operational provisions of the Bill, it is the intention of this legislation that protection will extend to persons such as passers-by or those who witness an accident and offer well intended assistance without actual or contemplated financial reward.

Although there has been no successful litigation against Good Samaritans in Queensland to date, the threat of litigation nevertheless persists. The community deserves the legislative certainty that if they reasonably assist persons in distress, they will be legally protected.

NOTES ON PROVISIONS

PART 1 – PRELIMINARY

Short title

Clause 1 provides that the short title of the Act will be the *Civil Liability (Good Samaritan) Amendment Act 2007*.

PART 2 – AMENDMENT OF THE *CIVIL LIABILITY ACT 2003 (QLD)*

Act Amended

Clause 2 provides that this part of the Bill amends the *Civil Liability Act 2003 (Qld)* ('the CLA').

Amendment of ch 2, pt 1, div 7 hdg

Clause 3 amends the chapter 2, part 1, division 7 heading, inserting after 'safety', 'and assisting persons in distress'.

Insertion of new s 27A

Clause 4 inserts s 27A into chapter 2, part 1, division 7. This new provision inserts into the CLA legal protection for persons who assist persons in distress. Subsection (1) provides that civil liability will not attach to persons in relation to an act done or omitted to be done in the course of rendering first aid or other aid or assistance to a person in distress. Subsections s 27(1)(a) and (b) qualify this legal protection by requiring that such aid or assistance must be provided in circumstances of emergency and that the act done or omitted must have been in good faith and without reckless disregard for the safety of the person in distress or someone else.

Subsection (2) provides that subsection (1) does not limit or affect section 26 CLA or Part 5, *Law Reform Act 1995 (Qld)*.
