Speech by

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TRAVELLER ACCOMMODATION PROVIDERS [LIABILITY] BILL

Mr SHINE (Toowoomba North—ALP) (10.26 p.m.): The Traveller Accommodation Providers (Liability) Bill seeks to rectify a glaring gap existing in Queensland with respect to the law relating to innkeepers or, in today's parlance, hoteliers and moteliers. At the moment Queenslanders are governed by the position at common law—that is, the law is determined by the courts or judge-made law. This position has applied since, as has been referred to, 1992 when the Liquor Act 1992 amended the relevant position previously applying as contained in section 93 of the Liquor Act 1912.

Section 93 of the 1912 act effectively adopted the relevant English legislative provision for responsibility of goods of lodgers. The section was in part read out by the member for Beaudesert. The second part of that section, however, states—

In the case of goods or property so deposited, a licensed victualler may, if he thinks fit, require as a condition to his liability that such goods or property be placed in a box or other receptacle fastened and sealed by the person depositing them.

Every licensed victualler shall keep a copy of this section always conspicuously exhibited on his licensed premises near the principal entrance thereof, and in default of doing so he shall not be entitled to the benefit thereof.

The effect of the Liquor Act 1912 was to provide some relief for the providers of accommodation from the harshness of the doctrine of strict liability, provided of course that a copy of section 93 was conspicuously displayed.

What was then and what is now the position at common law? Time does not permit any sort of proper and thorough examination. I would, however, recommend to the House the scholarly work referred to by the member for Beaudesert of Trevor and Trudie Atherton contained in chapter 13 of *Law Book Company's Information Services 1998*. The law—that is, the common law—dealing with innkeepers, like carriers, is derived from ancient Roman law which prescribed special rights and duties for those providing travellers with essential services, particularly shipowners, innkeepers and stable keepers.

In those ancient times travel was dangerous, and carriers and innkeepers were notorious for exploiting and robbing their customers. This was referred to by the member for Whitsunday. Those customers were particularly vulnerable, given the conditions of the time. Proof was difficult to get, particularly if innkeepers connived with pirates or highwaymen. The practical solution devised in Roman law was to impose strict duties and liabilities upon carriers and innkeepers. These Roman laws survived through the Dark Ages until they merged into medieval common law in one of the earliest recorded cases—this was referred to by the member for Beaudesert—in 1368, known as the innkeepers case. Pertinent parts of that case state—

... [C]ertain malefactors ... broke at night with force and arms, that is to say, with swords etc, into a room in which Thomas, on a journey to London ..., Was accommodated within such an inn ... at Huntingdon, and took and carried away the said Thomas's goods and chattels namely, one belt, a seal with a silver chain, one sword with buckler, linen and woollen cloths and one dagger to the value of four pounds, as well as nine pounds of the king's money ...

It goes on—

And [the innkeeper's stableman, says that he] ... provided Thomas and his servants with a room with adequate locks ... and that at that time they expressed themselves content with the said room ...

Notes on this case state—

Medieval travelling conditions had changed little from Roman times and the common law took the same practical approach to making travel safer:

remove the incentive to rob by making carriers and innkeepers strictly liable for traveller's property.

As the common law evolved, additions to the innkeepers liability appeared. For example, there arose the duty to receive, stable and feed a guest's horse and receive a carriage. The common law has followed development from the horse and buggy to the motor car, and the transition is set out in the 1954 English case of Gresham v. Lyon, in which it was stated—

> It is clear on authority that today the keeper of a 'common inn' is under obligation to provide accommodation not only for the guest himself, but for his motor car, as he was in the olden days obliged to provide accommodation for the traveller's gig and horse ...

However, it was not all against the innkeeper. For example, the innkeeper acquired the right to set rules of the house. For example, one sign in a local inn in Tudor times provided 'no more than five to sleep in one bed' and 'no boots to be worn in bed'.

Having regard to the strict liability doctrine applying under the common law, and hence currently in Queensland, reform as contained in the bill is undoubtedly warranted. For example, currently innkeepers are strictly liable for the theft, disappearance or damage of their guests' goods. The innkeeper stands in the position of an insurer of his or her guests' goods.

This position is of course subject to certain defences available being, firstly, the negligence of the guest himself or herself; secondly, that the guest retained the good in his or her exclusive possession; thirdly, that the goods were not infra hospitium, that is, within the bounds of the house; fourthly, an act of God; or, lastly, acts of enemies of the Queen. It must be pointed out, however, that in relation to the negligence of the guest defence the burden of proof still rests with the innkeeper.

This bill brings Queensland up to date with the rest of Australia and in doing so corrects the vacuum which arose in 1992 when resort to the common law was necessary, owing to the passage of the repealing legislation of that year. I commend the bill to the House.
