



Speech by

Hon. K. LINGARD

MEMBER FOR BEAUDESERT

Hansard 30 May 2001

TRAVELLER ACCOMMODATION PROVIDERS (LIABILITY) BILL

Hon. K. R. LINGARD (Beaudesert—NPA) (10.09 p.m.): I apologise for the absence of the member for Maroochydore, who has taken ill. I will replace the member for Maroochydore, and I ask the minister to be kind.

The opposition will be supporting the Traveller Accommodation Providers (Liability) Bill 2001. It has broad support from the industry, which has been consulted and has in fact called for this legislation to remedy what has been described as the currently draconian regime.

The bill provides a mechanism to restrict the no-fault property loss or damage liability of accommodation providers to an amount no greater than \$250 where the accommodation provider displays a set notice. In fact, this bill will partly restore some of the protections for accommodation providers which were removed with the repeal of the 1912 Liquor Act at the commencement of the 1992 Liquor Act. With the advent of the 1992 Liquor Act, the omission of the previous section 92 meant that accommodation providers became strictly liable under common law to an unrestricted amount for the theft or damage of a client's property according to the ancient innkeepers doctrine, regardless of whether the accommodation provider was negligent or not.

The 1992 omission was unfortunate as it turned the clock back 130 years on a very reasonable principle which first was law in Queensland under the Innkeepers' Protection Act. In contrast to Queensland's situation since 1992, in other states and territories, with the exception of South Australia, the strict liability of an innkeeper is already limited to nil or a nominal sum subject to the innkeeper displaying the statutory notice where required. In those jurisdictions, as is proposed in this bill, there is no amount limiting the innkeeper's liability for loss to property where there has been default, neglect or wilful acts perpetrated.

The concept of an innkeeper's liability, which we are limiting here today, goes back 1,500 years to the Romans and was carried into English common law in recognition that travel could be dangerous and some robbers worked in tandem with innkeepers to take advantage of guests and their property. The earliest case law making an innkeeper liable for the guests' stolen property despite the innkeeper's claims of innocence goes back to 1368. However, England and most countries which inherited common law had amended these principles of innkeeper's liability by statute by the end of the 19th century. It was Queensland that went backwards by changing these provisions by omission in 1992. As is mentioned by Trevor Atherton in his December 1996 article for the *Australian Business Law Review*, the tables have completely turned since Roman times and medieval England, with innkeepers now needing protection from imprudent and fraudulent guests.

This bill does have the support of industry, although there are sections of industry, particular the backpackers sector, which have expressed concern about the \$250 limit being too high. Given that the \$250 limit can be applied over consecutive days, adding up to far in excess of this initial threshold and given that some accommodation providers in the budget market do not reap a particularly high return per room, this can still be a significant liability, particularly as the guest does not have to prove that neglect, default or wilful acts caused the loss. I understand, however, that this is better than the current legal position, which is potentially unlimited liability and not the \$250 cap per day proposed here.

Another concern—also quite a valid one—which has been expressed to me is the nature of the notice that has to be displayed in order to gain the benefit of this limitation of strict liability. The notice in

this bill could, in fact, backfire by advertising that the guest can claim up to \$250 off the accommodation provider even if the provider is blameless for the loss. The notice in section 15 of this bill reads—

The Traveller Accommodation Providers (Liability) Act 2001 changes the common law about innkeeper's liability.

Under the Act, an accommodation provider may be liable to make good any loss of a guest's property in certain circumstances even though the loss is not caused by the fault of the accommodation provider, or the provider's agent.

The strict liability of the accommodation provider under the Act—

applies only to a guest of the accommodation provider on a day when an accommodation unit is provided for the use of the guest

is limited to \$250 for each accommodation unit provided for the use of the guest on the day, unless the guest's property was placed in safe custody facilities—

and so on. This notice is considerably different from the one which previously had to be displayed to limit liability of accommodation providers or innkeepers under the law in Queensland before 1992.

In my reading of the 1912 Liquor Act, the notice which an innkeeper displayed to restrict their liability was in fact section 92. The section, which was also the notice, read—

No licensed victualler shall be liable to make good to any guest or lodger any loss of or injury to goods or property brought to his licensed premises, except in the following cases, that is to say—

- (a) If such goods or property have been stolen, lost, or injured through the wilful act, default or neglect of such licensed victualler or any servant or person in his employ; or
- (b) If such goods or property have been deposited with him expressly for safe custody.

I understand that the law prior to 1992 did not allow guests to claim money from the innkeeper where the innkeeper was not at fault. That was a fairer law than what we are currently debating. It is immoral for someone to claim money from someone where that party was not at fault. However, I do grant that on balance this bill is better than the status quo, which provides no limitation and, thus, does not allow a reasonable accommodation provider who is taking all due care to limit their risk. I do note that the minister has given a commitment to review the \$250 amount in this bill, and I welcome that.

The Scrutiny of Legislation Committee raised some concerns with regard to the definition of 'accommodation unit'. I understand that the minister's proposed amendment, which has been tabled, seeks to address its concerns in relation to trains possibly being captured by the law. The amendment seeks to more clearly exclude train travel where people are accommodated. The opposition supports the bill.
