Speech by

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PERSONAL INJURIES PROCEEDINGS BILL

Miss SIMPSON (Maroochydore—NPA) (4.01 p.m.): After listening to some government backbenchers, it is clear why it has taken so long for this bill to reach the Queensland parliament. According to some of the Labor MPs I have just heard talking, the current situation is not the state's responsibility, it is everybody else's fault—ranging from the insurance companies to the federal government and the doctors. Thus the minimalist approach of the legislation before the state parliament, which reflects the lobbying by Labor lawyers, many of whom sit on the benches opposite. However, tort law reform is the responsibility of the state government. Yes, prudential regulation of insurance is a federal matter. It is an issue to be jointly addressed, but one on which if the Queensland government had moved any slower rigor mortis would have set in. Premier Beattie is eating Bob Carr's dust on this issue.

I wish to make a very clear statement at the outset: the opposition is supporting the legislation in order to get some of the positive provisions through, few as they are, because there is an urgency about these matters. The National Party has been at the forefront of calling for tort law reform, from last year's estimates to our launch of a six-point plan at the start of this year. Provisions proposed included structured settlements, curtailing no win, no fee advertising, capping and a range of other measures. Some of these provisions have been included in the government's bill, which was introduced into the House only yesterday. However, the government, tardy as it is in getting this bill before the parliament, has failed to use that time to tackle the tough issues in these proposed changes. We recognise the urgency of the law changes and thus have agreed to the government's request to suspend standing orders to introduce and pass this legislation in under two days in the midst of state budget week, rather than the alternative of passing this bill in the normal course, which would have seen it probably being passed at the end of July. However, we are foreshadowing that we will be pursuing further changes to the legislation unless the government comes back into the House in a timely way and acts.

I will outline some of the failures of this bill as well as what New South Wales has done. The Queensland public deserves better than the service being given by the Beattie government on medical indemnity insurance. Today's bill is too little too late. The bill and the government's guarantees in regard to its indemnity cover for health workers needs to go further. The government has failed to fulfil its promises to address the statute of limitations, particularly in regard to obstetricians, who can be sued for adverse outcomes resulting at the births of their patients for up to 21 years. That is an extraordinarily long period and it is very difficult to calculate the risks in such cases. The state government has failed to deal with the tail end of tort law reform, and great uncertainty remains over how Queensland Health applies discretionary indemnity cover to its own workers.

The Health Minister, Wendy Edmond, has been running for cover and is rarely seen confronting any health issue without Premier Beattie holding her hand. The problem is that the Beattie government ministers are all singing from the same deceptive hymn sheet. Mrs Edmond, Mr Welford and Mr Beattie are misleading the public by claiming that public patients in public hospitals are fully indemnified. The fact is that doctors are not fully indemnified. Queensland Health provides only discretionary cover, which means that if a doctor does not follow due diligence as determined by the department the department can refuse to insure the doctor in question. This is a considerable problem, which is proven by figures released from United Medical Protection revealing that 628 public and private doctors in Queensland have had claims made against them in the past two years. In 2001, 171 new civil claims were made against Queensland doctors. Queensland Health did not cover 29 public doctors in 2001-02, according

to these figures. Of these, six were civil claims, one was an unlitigated claim and 22 were other claims. In the private sector there were 336 civil claims, 42 unlitigated claims and 221 other claims. Doctors are justifiably worried about insurance cover as well as Queensland Health's so-called discretionary cover in the public system. It is obvious from these figures that there is a shortfall between what cover Queensland Health provides and what cover UMP has provided. The fact that so many public doctors still maintain private insurance is testament enough to their concern about the quality and the practical extent of the department's protection.

In a letter to doctors, Mr Beattie and Mrs Edmond claimed that the state government cover was the same as private medical defence funds, and yet doctors are not fully covered by Queensland Health. Recent reports show that both the Health Minister and the Attorney-General are trying to ride roughshod over the doctors. I have heard quite a bit of doctor bashing in the chamber this afternoon: the Attorney-General, Mr Welford, in his attempt to gag the AMAQ, and Health Minister Edmond's claim that doctors were scaremongering about the future of the Queensland health system because of the Beattie government's inaction.

The proposals today are only lightweight reforms that will help but certainly will not solve the problem. I am not saying that Queensland Health should cover doctors for criminal acts. But doctors and visiting medical officers and their patients need to know that if something goes wrong, which can and does happen, they are covered. Premier Beattie is doing as little as he can in this area in order to keep his Labor lawyer mates on side. The reality is that if he continues to ignore the extent of these issues more doctors will close their doors. The Queensland Health system cannot sustain this. Already we are seeing the signs, with bulk-billing likely to become obsolete if doctors' insurance premiums continue to skyrocket, making it non-viable. It is ironic that a Labor Premier is aiding the demise of bulk-billing in Queensland.

The Beattie government's lack of timely action on the medical indemnity crisis is totally deplorable. I refer also to the minister's failure to address a promise guaranteeing a reduction in the statute of limitations for which obstetricians can be sued. Eight positions are available in obstetrics in Queensland in this coming year. According to the AMAQ, that is three below the state's minimum requirement. Bearing in mind that there were 26 doctors training in obstetrics in 1999 and 14 in 2000, this clearly shows that there has been a decline in doctors training in obstetrics in the past few years. This is very closely aligned with the growing indemnity problem. This problem was looming. It did not suddenly happen, though it certainly was brought to a critical point by events last year.

The New South Wales government has put through a number of amendment bills. There are some provisions that I will outline that have not been mentioned in detail today. I have heard a lot of criticism from members opposite. The package that the New South Wales government has put together goes far further than that we see from the Queensland government today in respect of carrying public and private doctors and their indemnity. But the New South Wales Health Care Liability Bill 2000 was amended to (1) protect medical practitioners, nurses and other health practitioners from any civil liability when voluntarily providing health care to injured persons in an emergency (2) impose certain limitations on recovery of damages for injury or death caused by health care providers in providing health care; and (3) make professional indemnity insurance compulsory for medical practitioners and regulate the manner in which insurers provide that insurance.

Subsequently, the bill was supposed to: (a) facilitate access to fair and sustainable compensation for persons who sustain severe injuries from the provision of health care; (b) keep the cost of medical indemnity premiums sustainable, in particular by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injury while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disability; (c) promote the reasonable distribution across the medical indemnity industry of the costs of compensation for persons who sustain severe injuries from the provision of health care; (d) facilitate the effective contribution of medical indemnity providers to risk management and quality improvement activities in the health care sector; and (e) enable the medical profession and the community to be better informed as to the costs of compensation for and development of trends in personal injury claims arising from the provision of health care. A number of the more specific details of the bill have been outlined by my colleagues previously.

Even then, the legislation should have been changed long before it was, and the New South Wales government has introduced new changes since. The only insurance in New South Wales for which doctors have to get cover is private work. The New South Wales state government will cover all claims against doctors in public hospitals and any claims over $1 million for any doctor, including private doctors. So the level of their indemnity insurance has gone much further than we have seen in Queensland. The New South Wales government has also agreed to cover the tail for incidents that have occurred in the last 20 years. Most New South Wales doctors are satisfied with the reforms, which is obviously not the case here. I have been disturbed as I have listened to the doctor bashing. People are forgetting that unless we provide certainty, particularly in a state as wide and vast as Queensland,

doctors will not practise and provide the services that the public needs. This is about providing services for the public. So these reforms are proactive, but unfortunately the Beattie government has not gone as far as we have seen in some other jurisdictions.

A number of things need to happen in the Queensland system. Medical practice in Australia is at a crossroads. Science is ever progressing, discovering better ways to heal and prevent illness. We have never had so much knowledge or better trained practitioners, and the rate of adverse outcomes is not increasing. Yet the system as we know it is on the verge of collapse, and Queensland has not been immune from this. In the last few weeks I have heard the state government say that the current medical legal situation is not a crisis. I cannot agree. I have also heard the state Attorney-General say that the public health system will cope if private doctors withdraw services. This is an absolute joke. It cannot cope. A few days later, we had the Health Minister contradicting him on the front page of the *Courier-Mail* complaining about private patients using the public system. But she did not want to take responsibility for the state government's tardy action in trying to drive tort law reform. It is clearly a state government responsibility to look at tort law reform. If it had been addressed more quickly, more doctors would have been maintained in private practice throughout Queensland.

I have already outlined to the House the fall-off in the number of trainees in obstetrics. That is stunning. Those are terrible figures that we see. To see such a fall-off in those training roles for specialists in our public system—and those people will either continue in the public system or go into the private sector—rings a very worrying warning bell. Medical indemnity has been closely linked to that trend. Those who have a long tail of potential claims of up to 21 years, such as obstetricians, are certainly not happy with what they have seen in this legislation. Other specialists and GPs hold similar concerns.

The Attorney-General and the Health Minister have a blind philosophical position—a very wrong and dangerous viewpoint—that the public and private health work forces can operate independently while not adversely affecting patient care. They cannot. The public and private health systems and their practitioners need a cooperative working relationship, because one cannot survive without the other.

The alarm bells that doctors have long been ringing, particularly in rural areas, are now resounding very clearly in the public consciousness. My colleagues have addressed some of the issues of general insurance concerns across the community. In my shadow portfolio of Health, I have chosen to mainly address the issue of medical indemnity. As many members would be aware, since 1990 the number of medical negligence claims has increased by 10 per cent per year. The cost of medical indemnity claims has risen by 15 per cent per year. According to UMP, the number of claims doubled from 2.3 per 100 members to 4.8 per 100 members between 1990 and 1995. Last year the figure was 9.4 per 100 members. Recent figures show also that Queensland is now outstripping New South Wales in the rate of increase in medical indemnity claims.

With the move by UMP, the state's largest medical insurer, into provisional liquidation, this has become a watershed crisis that affects rural and urban Australia in an unprecedented way but particularly hits hard those areas of this state where the premature retirement of a procedurally practising GP can mean that there are no other alternatives but to travel unacceptable distances for basic care. Without substantial legal reform and state and federal government assistance, doctors are pressured to change the way they practise. I do not believe that this legislation will fundamentally change that. But the changes that they are forced to make are not about the court driving improvements in quality. It is about people driving to change their liability. I do not need to explain that these two concepts are not mutually interchangeable.

Contrary to what plaintiff lawyers claim, the current litigious culture is destroying quality outcomes by removing good practitioners, because even lower-risk services can pose unacceptable legal risk, particularly in rural or regional areas where there is not such a high turnover of patients compared with some of the larger practices in city areas. The result of unfettered legal claims through the courts is already resulting in a lower quality of outcomes for Queensland medical consumers as doctors have understandably sought to limit their liability by not practising in areas of risk and, in many areas, not practising at all.

I welcome the announcement that the Health Minister has only just made in regard to rural doctors. That is welcome. We were on the front foot calling for continuity of coverage for visiting medical officers. I am pleased that the government has followed through with that call. There was a need to ensure that if specialists were performing procedures on public patients in public facilities, the consent which may occur in the private room was also part of the indemnity cover. However, there are still huge problems across Queensland that these measures do not address. The legal system is cannibalising quality health services by further destroying access. I want to address the answers and what should be the response of government. I have touched on some of these points. These issues are urgent and have been demanding state attention for some time. There needs to be reform of the medical indemnity system and how it is regulated, which is a task for the federal government. The federal government has announced a stopgap measure of underwriting UMP-AMIL until the end of the year,

covering notified claims as well as proposing a means to fund incurred but not reported liabilities—that is, the IBNR liabilities—where the insurers' reserves are inadequate. But this is not the total answer. I will be continuing to pursue this issue at the federal level, but some quite considerable measures have been taken in that area. Unless there is a fundamental change to tort law, which is a matter for individual states such as Queensland, the long-term viability of insurers is still questionable. While questions remain, certainty to practise is undermined. New South Wales has already gone far further in acting on this. Queensland has gone only about halfway with the legislation tabled yesterday.

I raise with the Attorney-General the issue of what actuarial advice he has received as to the effectiveness of this legislation in reducing insurance premiums. I know that others have called for actuarial advice. I think it is imperative that we know exactly on what basis the state government is acting. I understand that PricewaterhouseCoopers in New South Wales has made quite substantial claims about the New South Wales legislation and how it has the potential to substantially reduce premiums. Thus I ask the state government what advice it has. What actuarial advice has the government sought? Has it sought independent assessment of its belief that premiums in relation to indemnity, certainly in the medical area, should reduce? What actuarial advice has the government received in regard to other premiums in the community area?

The opposition will support the legislation due to the urgency of the need for tort law reform in the area of insurance premiums. However, I reiterate that we believe a number of other measures still need to be dealt with. There is still a huge crisis of confidence in the medical and wider health community throughout Queensland, given that the Queensland government still seems to be talking about protecting lawyers in the high end of the game and bashing doctors, certainly in some of the contributions from members opposite. I find that most disturbing.

I have travelled throughout Queensland and have talked to specialists and a range of doctors. They are most concerned. They are quite clear that this legislation does not go far enough, particularly in obstetric areas. There are whole communities in which sometimes thousands of babies are born—it is not only in the smaller communities—which will not be subject to any government backed indemnity plan. Some of those communities are facing losing all private obstetricians. Simply, that number of births cannot come into the public system without there being a substantial impact. A viable public and private medical work force has to be maintained. Unfortunately, it seems that this Health Minister does not understand that.

Time expired.