Speech by

Miss FIONA SIMPSON

MEMBER FOR MAROOCHYDORE

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PERSONAL INJURIES PROCEEDINGS AMENDMENT BILL

Miss SIMPSON (Maroochydore—NPA) (3.24 p.m.): I rise to support the Personal Injuries Proceedings Amendment Bill. We do not lightly consider bills which provide for retrospectivity, particularly where they may potentially curtail someone's rights, but I support this as being necessary because of the greater community benefit and given that the previous bill really did not severely curtail individual rights in this regard.

There are still far tougher issues to be tackled in regard to tort law reform. As *Hansard* reveals, the opposition's criticisms of the legislation passed recently did not so much go to what the legislation did but to what it did not address. There remain many other issues which need to be tackled in proper tort law reform.

We have mentioned the statute of limitations, which continues to be an issue of great significance. New South Wales has moved to provide indemnity cover for public and private doctors in order to provide security for those who have had adverse events at childbirth. However, as the law currently stands, Queensland still effectively has a statute of limitations of 21 years for children. For the benefit of the Health Minister, who denies this, this means that after a person has reached the age of 18 they have a further three years in which to take action, giving a total of 21 years after childbirth.

An adverse event occurring at birth may or may not be the result of medical negligence. Where it does involve medical negligence there does need to be fair recourse through the legal system. The question is whether a maximum of 21 years disadvantages not only the child but also the system as a whole because of the difficulty in actualising a potential liability for an insurance scheme. Twenty-one years is an extraordinarily long time and it raises issues. As has been said by doctors, by groups advocating for those affected and by the wider community, the fairest solution in this regard would be to take those children out of the insurance and litigation systems and provide them with another scheme. I know that this is being looked at at the federal level. I believe it is essential because those children need that assistance.

It is flawed to say that the courts alone will do that, because not all children who suffer impairment do so as a result of medical negligence. In New South Wales, a $40 million payment was made in relation to one child where they were able to deem that there had been medical negligence. Yet another child may suffer from a disability as significant and profound but no medical negligence is provable in court and that child does not have the opportunity to gain some form of ongoing support for them, their family and potential future carers. There needs to be a fairer system than relying on the courts. I will certainly continue to raise this issue.

The whole issue of women's childbirth options is vital. In this day and age there are fewer options available for women as a result of the system of litigation and work force issues being exacerbated severely by the difficulty of people in accessing affordable and suitable insurance cover. I talk to women who face gaps of a couple of thousand dollars per birth because the insurance their practitioner has to pay has gone up by so much. I talk to women who would once have been able to have their babies delivered in a local public hospital and who now find that they have to travel hours away to other communities and stay with family or friends—or alone—to wait for the birth.

This is because the work force has been severely affected by the difficulties with indemnity insurance. During the debate on the previous bill, we heard a lot of talk from government members about how wonderful it was and how it was going to fix the problem. Unfortunately, during that debate a small number of government members wanted to enter into a doctor bashing exercise rather than acknowledge that fewer and fewer people are training in critical areas of need such as obstetrics. We are even losing people from midwifery, let alone the medical specialties.

In 1998, 22 people wanted to train as obstetricians. This year, I understand that only about eight want to train as obstetricians. Who is going to be delivering the babies of the future? Are we also going to see an increasing propensity for defensive medicine—where the level of intervention is over the top, not necessary for childbirth? These issues have been raised with me. In other words, because of the size of some of the payouts resulting from litigation, people are more likely to have a caesarean when they would prefer to have a natural childbirth. This is happening now. It has not been stopped by the legislation that we have seen to date.

These are complex issues and the answer could be found in the way in which the work force is supported. But the litigation indemnity issue continues to be a major problem. I acknowledge that the issue relates not only to tort law reform but also to the monitoring of insurance companies at the federal level. We must acknowledge that indemnity and tort law issues still have not been resolved adequately.

During the debate on the original legislation, I heard what the government was going to do for rural doctors and how wonderful it was. The Health Minister said that she had fixed that problem. Certainly she was claiming that throughout the state. I have some figures that were collected this month by the Rural Doctors Association of Queensland. Forty-seven per cent of rural doctors in Queensland now no longer perform medical procedures. The survey also revealed that 17 per cent of doctors stopped doing operations by choice and 26 per cent stopped because they did not trust Queensland Health and the discretionary aspects of its medical indemnity insurance cover. Only 20 per cent of the respondents had taken up or were considering the Queensland Health insurance offer and 62 per cent of respondents said that their town was experiencing difficulties relating to the adequate provision of procedural services.

There is a fundamental lack of communication between Queensland Health and rural doctors. As a result, rural and regional areas are really suffering. Hospital lists are spiralling out of control. We are seeing people withdraw services, but we are also seeing people in a number of rural and regional towns doing hard yakka to provide services as active members of those communities. There are others who are getting towards retirement age and who are retiring earlier. The issue of being able to attract people to those areas is a hurdle that has become so much greater than what it was. Once again, the legislation that we have seen before the House to date certainly has not resolved that issue.

Recently in this House I raised the issue of discretionary cover. At that time there were quite a lot of loud interjections trying to shout me down. We have a problem with Queensland Health's discretionary indemnity cover. I raise this issue in this debate because, once again, this is a fundamental issue that has not been resolved. I acknowledge that this issue is in the hands of the Attorney-General's colleague the Health Minister. Queensland Health operates under the government's insurance scheme. Queensland Health provides what it calls a discretionary cover for doctors. The problem with that cover is that Queensland Health has a discretion as to whether or not it covers people if it determines that they have not practised with due diligence—whatever that is.

There needs to be a higher standard. There needs to be a standard where there has to be at least proven criminal negligence in the court for Queensland Health not to cover doctors. The Health Minister gets cover, except if she has been criminally negligent, and she is taken to court on such matters. Why should other professionals not have that same level of cover? As somebody said to me, why should doctors work for Queensland Health for $85 an hour when they have two or three staff in their specialist offices doing their work while they are working in the public system? Why should doctors work for Queensland Health for that rate when they know that they do not have proper indemnity cover while they are working in the public health system, which means that they could potentially lose their house?

Ultimately, people can say, 'It is the doctors' fault,' but that is just silly. This problem is affecting all areas of Queensland. However, in this case, the problem is the indemnity cover that the government provides for its own workers. That problem can be easily fixed. However, until the government does that, we will continue to lose people from specialty areas throughout rural and regional Queensland. It is hard enough getting those specialists to those areas without having them lost unnecessarily because of the blatant inaction of this Health Minister, her stubbornness to address an issue, and her denial that there is a problem. She is just putting her head in the sand, and the people who are suffering are those who are left on waiting lists while hospitals are treating only people on the emergency waiting list and the category 1 surgery waiting list. As a result, in some of these hospitals people are finding that their surgery is being continually cancelled.

I raised the issue of the statute of limitations still being a stumbling block. Certainly, the issues are broader than that. My colleague the shadow Attorney-General has mentioned the issue of general damages and the issue of possible capping. We have to remember that unless the legislature is constantly vigilant and unless the parliament keeps an eye on this situation and seeks to update regularly and refine how it responds to the problem, this is not the only time that this is going to happen. The overseas experience is that when governments have legislated in this area, they have had to come back—sometimes it might be in 10 years or 15 years—to amend it. But there is a need to be constantly vigilant because people find ways around the system.

Ultimately, we need a system that works for the community, a system that balances the individual's rights with the community's access to services. The courts do not provide access to services in the community. Governments have a fundamental responsibility to the people to ensure that those services continue to be available. They cannot simply say that it is not their fault if people withdraw their services due to problems with the tort law system. A lack of access leads to adverse outcomes, whether that be a lack of doctors, people being unable to receive timely medical equipment, or a community that loses an event.

I want to address some of the tourism aspects of this issue. We are still to see the details of the scheme that the government has promised to get up and running on 1 September. I am concerned that the details of the establishment of this scheme have been a bit scant. Community groups are hanging on with bridging insurance cover until 1 September because of the government's promise. I certainly hope that we see that promise fulfilled, because a lot of people are holding on by their fingernails. In the meantime, we have seen community events fall over.

There needs to be a greater flexibility with the regional tourism assistance that is provided. This year, the Golden Shears event, which is a wonderful event that is held out at Longreach, fell over because of the insurance problem. How do we run an event and build a tourism industry unless we have continuity? How can people book ahead—sometimes 12 months ahead—and then a month or two out from the event find out that it is not on and then be given the security that if they come back next year, it is going to happen? I certainly hope that it does happen, but this is the problem that we are continuing to face. The issue has not gone away. The legislation that was introduced on the last occasion and this legislation does not address the problem of events falling over and it still does not address the problem that people have not been able to access appropriate insurance cover.

We are going to see this situation exacerbated in the ecotourism area. New Zealand is a wonderful tourist destination. I think we have some fantastic tourist destinations here, but New Zealand is really going to threaten Queensland's tourism market position by being able to offer a fantastic ecotourism experience. That country has dealt with its legal indemnity cover in a very different way. New Zealand does not face the issues that we are facing currently with events falling over and community groups winding back their access to services and as a result not providing basic community help.

I know that the Attorney-General has given a commitment in regard to potential national reform of the law of negligence. But this is something that we do not want to linger too long. People have waited long enough. A lot of people are holding out for that 1 September scheme. I hope that they will not be disappointed when they see what is delivered. As I said, some people have made temporary arrangements until that time. In the meantime, I think that there needs to be greater flexibility in terms of support.

For example, other states have provided immediate assistance to their tourism industries when they had problems covering their insurance premiums. We did not see that happen in Queensland. We saw pretend rescue packages of $10 million for the tourism industry after the September 11 disaster. Only about five per cent of that was ever actually taken up. The Tourism Minister said that that was because people got over it awfully quickly. That was a very poor analysis. One does not have to dig very deep to find out that there are still a lot of other unresolved issues—the medical indemnity situation being one that she has failed to acknowledge. The government needs to be flexible in the provision of its funding assistance, particularly for events and for service providers who are part of that wonderful experience which makes Queensland such a great tourism destination.

In closing, I reiterate that the medical indemnity issue in this state is just the tip of the iceberg. I have heard only one doctor-bashing exercise from a member in the last hour, but I think it is time to get over it. This is not about one profession being pitted against another; it is about looking at the community benefits and realising that there are unique, qualified people throughout this vast state—which is far bigger than Brisbane alone. In order to do that, we need to listen to their concerns and we need to listen to the communities who want and support those services in their local areas. Until we see proper tort law reform and until things are done at a federal level to address the insurance industry and how it is monitored and managed, these problems will continue to escalate.