Speech by

Miss FIONA SIMPSON

MEMBER FOR MAROOCHYDORE

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CIVIL LIABILITY BILL

Miss SIMPSON (Maroochydore—NPA) (12.34 p.m.): I believe members on both sides of the chamber are keen to see further legislative reform in the area of civil liability. Indeed, this has been an issue at the forefront of the National Party opposition's agenda and our private member's bill, questions and position statement, such as the six-point plan released on 7 January 2002, have been well noted on the parliamentary record over the past couple of years.

The problems of communities shutting down many areas of traditional fundraising and activities, from street fetes to events which draw tourists, are well documented, as insurance premiums have become hundreds and thousands of dollars too expensive. The impact on the delivery of health services has been significant, just as it has been in the tourism industry, with ecotourism and events tourism being particularly hard hit. I support appropriate reforms to civil liability. It is something that I have been calling for, though I believe also that a balance between the public good and individual rights is essential.

State government responsibility does not finish with this bill, as it is not only the insurance companies that need to be more accountable. There remain important issues for government, professionals and community organisations. I acknowledge that there needs to be appropriate prudential regulation and controlled scrutiny at the federal level. But there remain issues for state governments, professionals and communities in terms of how to pursue the lifting of standards of care and improving the quality of services. As the system of litigation is reformed, as it must be, the state government must drive the agenda for greater openness, accountability and quality in its own services as well as in the professional and community arena. Tighter legal controls as to how or when claims are brought forward should not be an excuse for a lack of commitment to improve quality and accountability.

I believe the assumed risk provisions of this bill are good, although it was unfortunate that when the Leader of the Opposition, Lawrence Springborg, introduced them into parliament last year ALP members voted them down on 28 November because it was not their idea. What a pity it is that when the National Party opposition takes the initiative to propose positive policies and introduce them to the parliament there is never bipartisan support from the Labor government. I commend the Leader of the Opposition for a number of initiatives which he has been the first to propose and table in the parliament and which have been subsequently mirrored later by the state government.

Assumed risk provisions ensure that where people undertake obvious and inherently risky activities the provider of that activity would not be liable for that injury to that person—unless, of course, there was blatant negligence. This addresses issues in basic everyday areas of life. Horse riding is a recreation that some of us have grown up with. However, for those who wish to learn how to ride a horse or go on a trail ride the insurance issue has made this extremely problematic. Other areas such as ecotourism and activities in our great outdoors have been hard hit, with premium bills sometimes trebling. These operators face difficulty in getting insurance even though they might never have made a claim. A surfing school on the Gold Coast faced a huge increase in its insurance premiums. Many adventure tourism operators could not even find out what their insurance premium would be sometimes a day before they had to take out cover, which was an extremely unfair and manipulative way of jamming people into a corner where they had to accept a higher premium or a premium only for a short term.

The Leader of the Opposition, the member for Southern Downs, indicated in his speech on the second reading on Tuesday that we are supporting this legislation, which in the main addresses points we have previously raised. We still have questions in regard to some drafting provisions and their impact, which we will be raising in the debate. Since the contribution by the member for Southern Downs we saw some 14 pages of amendments, some quite substantive, being circulated in the parliament. Some of these amendments were still being drafted during the second reading speeches of members yesterday.

I have concerns about receiving such substantive amendments and the lack of appropriate time in which to scrutinise them. But I would certainly welcome the Attorney-General's explanation as to their significance, given the short period in which to view them. This bill provides stronger protection for professionals, particularly medical practitioners, where their actions are in keeping with widely accepted professional opinion. Obviously, there needs to be some important checks and balances on this protection. It becomes even more important for health facilities to be involved in publicly publishing indicators that indicate their track record in regard to adverse outcomes as well as other quality indicators. This needs to happen not just on a global basis but also on a district by district basis with meaningful analysis and accompanying community consultation.

I call on the state Labor government to reform the way in which it handles such health information. This is an important issue in terms of pushing for greater quality and it is an extremely important part of having a valid process of informed consent. It is not only about health practitioners advising the patient about the relative risks they face with procedures in regard to their particular clinical situation; people have a right to know the track record of a particular hospital with regard to, say, infection control. I believe that these sorts of issues can be dealt with intelligently if people are given the information. There should not be a closed shop. There should not be secrecy. I think that we have seen from the actions of other jurisdictions—I know that the Victorian government has been moving down this path to provide more information—that people have a right to know and should not be kept in the dark. That is part of having a real and valid informed consent process that involves not only the health professional but also the health facility, which is part and parcel of delivering that service.

We know that there are issues of medical errors and there has been a lot of criticism of the degree of medical errors within our system. However, we also know that we have a high level of quality service provision and some outstanding health professionals. But once again, if we are to see those errors reduced and appropriate scrutiny and a push for quality, people should have a right to that information. The provision of information should be part and parcel of reforms in the insurance area, whether it relates to personal injury or alleged medical negligence. These are some of the other reforms that go hand in hand with the push for reform of the whole litigation process.

There is also an issue with regard to good mediation processes. The Health Rights Commission has an ability to seek independent medical advice. It has an ability to be involved in the mediation process and to give people some assurance or otherwise up front when they make a complaint about the quality of service provision. I am most concerned that we still do not see evidence that there has been a significant increase in funding to this complaints body. The Health Rights Commission has sought to reform its processes and how it handles complaints. Once again, the Health Rights Commission is part of the other system that we need to be looking at as part and parcel of this push for reform. In the most recently published report of the Health Rights Commission, which was the 2001-02 document, it noted that a total of 809 written complaints were received during that year. As at 1 July 2001, there was also a backlog of 225 written complaints awaiting allocation. Of course, no information was given as to the length of time that those 225 complaints have been backlogged. I am calling on the government to look at the resourcing of the Health Rights Commission to ensure that people have access to this appropriate grievance mechanism. This issue relates not only to people knowing whether there has been an incident relating to negligence; it gives people the assurance that someone is listening and is willing to open up and provide information. The Health Rights Commission is a very important part of the process. We are yet to see funding for the Health Rights Commission addressed, and I urge the government to do that.

The state Labor government has also further restricted freedom of information in regard to the quality committees within the hospitals. I have been critical of that, because once again, if we are to pursue quality, these committees should not operate behind closed doors, maybe giving a report every three years. That is not an adequate process if we are really to bring about a change and a leap forward in the quality of the services that are provided. We do not get quality with a lack of accountability.

I also want to make some comments in relation to the provisions of the bill that relate to medical practitioners having protection if their treatment is in keeping with widely accepted professional opinion. I strongly support that, although I want to ask the Attorney-General some questions about it, because some issues need to be taken into account. Obviously, in terms of the centrally located colleges and the people who determine what is good medical practice, there is some dissent, particularly with rural

health practitioners—those who have sought to have accredited rural health courses and continuing medical education. The dissent as such may not specifically be on the table in terms of the provisions of this bill, but it relates to how people are recognised for their skills and the differences in determining what is appropriate medical practice, given the geographical location and sometimes the other health professionals who are involved in delivering those services. If we are going to introduce this legislation, the whole system also must take into account rural practice and appropriate accreditation. The views of Sydney based or urban colleges are not the only views that should be taken into account; the views of our rural practitioners really should receive recognition so that we can ensure that appropriate, quality services are provided, taking into account rural conditions.

I refer to the Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill, which was passed by the federal government on 26 March 2002 and which changed the medical indemnity framework. The current unregulated discretionary nature of the medical indemnity has been replaced with a more secure prudentially regulated industry with medical indemnity provided on a legally enforceable contractual basis. I know that this legislation is welcomed, because there were some significant problems in regard to how medical indemnity has been provided to health professionals in this country. This legislation will be administered by the Australian Prudential Regulation Authority—APRA. It is intended to deliver increased certainty for medical practitioners and their patients that legitimate claims will ultimately be met. As we know, there has been a lot of criticism about the discretionary nature of the contracts. Perhaps members opposite have forgotten my criticism about the discretionary nature of those contracts. I am certainly extremely critical of the discretionary nature of Queensland Health's indemnity for its own health professionals.

The new laws will provide this protection by requiring medical indemnity providers to adhere to the same standards as general insurers and by requiring that medical indemnity cover is offered as a legally binding contract rather than as a discretionary promise. These laws that provide the new prudential framework will take effect on 1 July 2003. Medical defence organisations are working to meet that deadline. There will also be transitional arrangements for medical indemnity providers for up to five years to meet minimum prudential capital requirements.

I turn to another issue contained in this bill. I welcome the aspects of the bill that deal with people who are intoxicated. This bill seeks to limit the damages payable to someone who injures themselves as a result of being intoxicated. This principle is important. However, I would like to raise an issue with the Attorney-General that relates to the level of proof required to rebut the presumption of having contributed to the injury. I refer to a rather disturbing incident that happened on the Sunshine Coast regarding a complaint from a young woman whose drinks had been spiked. I was horrified that, in this case, the response from police—who normally are very good—was not appropriate and the protocols were not followed to ensure that she was encouraged to see a government medical officer and that the correct procedure for the collection of evidence was put in place. This young woman may have looked drunk, but she thought that she had been subjected to drink spiking. She was not sure.

Tragically, I believe that the incidence of drink spiking in this state and other parts of Australia goes underreported and is often misunderstood. This young woman was sent off to see a GP. There is an issue as to the quality of the evidence that comes from a doctor other than a government medical officer. Subsequently, the tests that were undertaken showed that this young woman had been subjected to benzodiazepine and ecstasy spiking of her drink. This girl does not know what happened as a consequence of that; there was a blackout period.

If someone is subject to drink spiking, given that this is an issue with our young women and men in this state, what level of evidence do they have to provide in order to rebut this presumption of guilt which may bring them into conflict with someone suing them for consequential injury? I put that on the table, because I find it a disturbing issue. We also need to ensure that licensed premises are still pursued through the licensing commission when involved in serving alcohol to people who are drunk. These laws before the House should not absolve them from their responsibility under the law. We need to ensure that, with the increase in the number of licensed premises in the state, there is an appropriate framework for implementation of those laws. That is something that certainly has been raised in my own area.

I refer to child birth. As members know, I have been critical of the Health Minister's lack of understanding in regard to the period of time someone such as an obstetrician or a gynaecologist is liable for action for an adverse event and of the impact that has consequently upon their insurance. Under the current law, an action could be commenced 21 years after the birth of the child because they had to reach the age 18, followed by the three-year statutory period. This was an issue over which the Health Minister kept on arguing. I do acknowledge that to a certain extent the laws before the House do seek to address this. It is a difficult issue because we acknowledge that there needs to be a balance where a child has suffered injury and that there needs to be appropriate balance that their rights have some protection in the law. The AMAQ has commended the Queensland government for introducing

the limitation period for children involved in medical negligence in this bill, though it wanted the period of time to be incident based rather than discovery based. I appreciate the difficulty in going this extra step.

As the minister noted, the act has a time requirement. Where a child is injured as a result of medical negligence, the parents of the child must give notice of the intended claim within six years of knowing the injury occurred. I ask the Attorney-General a question with regards to this. What happens if the parents have failed to act or have not understood the full impact of the injury? How does that mitigate against the child being able to take forward an action? In particular, what happens when the guardian is in fact the state? What happens if the child is in fact in the care of the state? Will there be mechanisms to ensure that the appropriate screening of their health is undertaken so that if they are aware that there is a problem they then have some notification provision for potential action? If the child is under the guardianship of the state, what happens if as a disabled young person they continue to rely upon the state to act in their interests and if the state fails in this? I would like to know what are the mechanisms to deal with this issue.

The proportionate liability issue has been a bit controversial. Generally, a proportionate liability regime has been accepted but there is criticism of the threshold. I certainly welcome the Attorney's comments in this regard. The Association of Consulting Engineers Australia has criticised the threshold as have some legal groups. The engineers oppose such a course because they believe that proportionate liability should apply from the first dollar. In their press release they say that a threshold defeats the purpose, that smaller claims will be treated as joint and several with every chance the defendant will be required to bear all of the liability and that more than 90 per cent of claims against engineers lie below the threshold, making the introduction of proportionate liability non-existent for most claims.

With regard to the government's community insurance scheme, obviously we hope that this will work. There have proven to be some significant problems with this. Despite having the same problems we have had in terms of general insurance provided by non-government organisations, New South Wales was able to come up with a scheme that provided substantially cheaper insurance products. Yet in some cases Queensland's community insurance program has delivered insurance premiums much more expensive than those of private providers. I urge a review of this that examines how the New South Wales scheme can do it cheaper than Queensland. We need to realise that there are other issues that need to be dealt with and that legal reform must be ongoing, because from overseas experience there is a need for continued monitoring to ensure that there is a fair balance between public issues and individual rights and addressing those other matters of access to information as an important part of informed consent.