



Speech by

Miss FIONA SIMPSON

MEMBER FOR MAROOCHYDORE

Hansard 7 October 2003

TOURISM SERVICES BILL

Second Reading

Resumed from 27 May (see p. 2079).

Miss SIMPSON (Maroochydore—NPA) (5.00 p.m.): In rising to speak to this bill, I will state that in my university years, after my return from Japan as an exchange student, I had the pleasure of working as a Japanese speaking tour guide for inbound tourists on the Gold Coast. Suffice it to say that was many years ago and, although I did not personally witness the unsavoury business practices that this bill is seeking to address, I enjoyed my introduction to this important industry. It can be a wonderfully satisfying role to not just provide language interpretation for overseas visitors but also to interpret our culture and help visitors experience the best of Australia's natural and man-made tourist attractions—and, of course, to help them go shopping.

Tour guides and inbound tour operators are important players in the tourism industry in Queensland. Because they are often looking after people who cannot speak English, they can find themselves with considerable power over those non-English speaking individuals. I am sure many members have travelled overseas and, if not, I would urge them to consider how well they would function and be able to protect their rights in countries where there are significant cultural differences and they do not speak the language.

This bill seeks to crack down on rogue traders in the inbound tourism industry in Queensland—rogue traders who abuse that trust and the professional client relationship through issues such as controlled shopping, misrepresentations, overcharging for goods and services and unconscionable conduct. The National and Liberal opposition supports the objective of the bill and will monitor with interest its effectiveness in weeding out those who have acted in a way which undermines the tourism industry's pursuit of high standards for its visitors.

Concerns have been expressed from industry, particularly the legitimate operators, as to how the overall interests of the industry's good name could be protected without being overly onerous and prescriptive with a new layer of regulation. That is a challenge, because there are already many other pieces of legislation that legitimate businesses have to comply with. The issue of unscrupulous inbound operators has been an issue in a number of places in Queensland, particularly on the Gold Coast and in Cairns in north Queensland, where controlled shopping arrangements and other practices, even significant kickbacks to tour guides, have damaged the industry and those who are doing the right thing. In fact, the Tourism Minister and her government promised this legislation for several years, with their first promise to act as part of the 1998 election campaign following on from the work of the previous Tourism Minister, Bruce Davidson.

This bill undertakes not to register tour guides, although they will be prohibited from engaging in unconscionable conduct. I ask the minister whether the lack of registration of tour guides will be a potential loophole in the new law and how this issue was consulted on with industry. The focus of the legislation really is on registering inbound tour operators, whose clientele are predominantly coming from overseas. It will require inbound tour operators to be registered before conducting business in Queensland, though there will be exemptions for those inbound tour operators who also sell travel packages to the domestic tourism market and whose international sales account for less than 20 per cent of the total number of travel packages sold during a 12-month period. There are also provisions to

ensure that only suitable persons are registered as inbound tour operators. There are requirements that inbound tour operators, whether or not they are registered, adhere to a code of conduct, which will address issues such as minimum business conduct standards. I note that this is to complement the draft Tourism Export Code of Conduct, which is a voluntary industry based code. The legislation also seeks to ban unconscionable conduct by inbound tour operators, whether or not they are registered, and tour guides when providing services to tourists.

The explanatory notes to this bill mention the concerns of some businesses that the requirement on an inbound tour operator to register adds an additional cost to operate tourism businesses. However, I note that the minister has particularly drafted into the legislation that businesses already licensed under the Travel Agents Act 1988 or equivalent legislation in any Australian jurisdiction will not have to pay application and registration fees, and this is certainly welcome. However, I also ask the minister to advise how much the licences will cost for the other inbound tour operators who are not covered by the Travel Agents Act and what the envisaged roll-out of that licensing regime will be.

Another important issue that I would like answered in the minister's summary is the plans to review the effectiveness of the legislation and whether there will be some ongoing monitoring of the laws. Obviously these being very new laws, albeit with a lot of consultation and considerable time before coming into the House, some of these concepts and how they are applying to this industry really need to have some ongoing monitoring so that we can see whether, in fact, they achieve what we want them to achieve so that if there are any necessary amendments they are able to be done in a timely way.

I would like to particularly look at some of the clauses with regard to unconscionable conduct, particularly clause 35. I have some questions as to how the standard of proof will be pursued in regard to unconscionable conduct and what types of scenarios the minister would envisage being captured by this provision. I realise that there are some examples that are provided in this clause, but there are subclauses where it is not particularly clear as to what may potentially be captured. Given the potential for action and the fact that there is a reverse onus of proof upon the alleged perpetrators and those who own these businesses, I would certainly welcome some more advice as to the scope that the minister believes may potentially be captured.

For example, the explanatory notes on page 15 refer to the District Court having regard to—and this is also outlined in the legislation—

the extent to which the service provider unreasonably failed to tell the tourist about intended conduct of the service provider that might affect the interests of the tourist and any apparent risk to the tourist from that conduct.

This subclause does not really outline the specifics of the interests of the tourist and it is a fairly broad term. I believe there needs to be further explanation as to what potentially may be captured by this as the penalty may be quite significant. As I have mentioned, having reverse onus of proof provisions in the legislation puts a different light on the matter.

In the minister's speech about education there was reference to the promotion of these new laws. Certainly an issue that has been raised is how extensively that is going to be promoted. I would also appreciate the minister's advice as to what the roll-out of the education program—the public awareness campaign—will be in relation to these new laws. As there is obviously cross-border trade, I would also welcome advice as to how this is going to be advised to interstate businesses which currently operate in Queensland as well. I would appreciate the minister's advice as to the appeal rights of a potential offender's appeal against a conviction under the legislation.

Under the unconscionable conduct provisions of the legislation, it was interesting that there is no mention—and if I am incorrect I would welcome the minister's correction—of the maximum penalties for unconscionable conduct. I am interested to see how the regime of penalty is actually benchmarked if there are not some indicative penalties in the act. My background is not in law and it may be that on advice from the minister there is case law in other areas in regard to unconscionable conduct that provides some precedent which will inform the courts on this. But as this legislation, specific to inbound tourism operators, is new and as it is going to require education of inbound tourism operators who do want to do the right thing by tourists, I believe we need to have an idea as to the scope of how these matters will be determined potentially or how it is envisaged by the parliament they will be determined potentially and what the likely penalties are that we may see flowing from this particular legislation.

I would also seek the minister's advice as to how many departmental officers will be dedicated to the implementation of this work and what the budgetary allocation will be and the ongoing expected allocation. Obviously I have raised the issue of marketing the fact that this legislation is coming in, what the scope of the legislation is and how it impacts upon people, but I would be interested to know how that budgetary allocation applies to that marketing regime and also the issue of compliance. I would appreciate the minister's advice to the House specifically on the funding allocation and the estimated full-time equivalent officer level that is going to be made available for compliance. I understand that these officers may be performing duties under other fair trading acts or under other legislation of the House.

Obviously this is new legislation. It will have an impact on a significant industry and we need to understand how well resourced industry will be in having good education provided as well as appropriate compliance to ensure the effectiveness of this legislation. Finally, the minister may be able to advise what is the estimated revenue that may be raised as a result of the licensing fees that are being implemented through this bill.

I reiterate that we support the broad thrust of the legislation. Obviously we are extremely interested in the monitoring of the implementation. We want to see effective legislation that does not create problems for legitimate business owners who want to give a wonderful experience to overseas tourists, who want to be able to provide excellent services but who also want to know the legitimate parameters within which they can work under the law. Certainly we do want to see those who seek to abuse the trust of overseas visitors weeded out; we want to see them knocked out! The effectiveness of this legislation will be closely scrutinised towards that end. I welcome the minister's answers to some of those questions I have put in the House. I welcome the legislation.