



Speech by

Fiona Simpson

MEMBER FOR MAROOCHYDORE

Hansard Wednesday, 24 November 2004

TRANSPORT INFRASTRUCTURE AMENDMENT BILL

Miss SIMPSON (Maroochydore—NPA) (2.57 p.m.): Mr Deputy Speaker—

Mr Johnson: Where's the minister?

Miss SIMPSON: I note that the minister and his staff are not here in the parliament.

Ms Spence: They will be here.

Miss SIMPSON: This is extremely important legislation and it has extraordinary powers.

Ms Spence: Don't you worry about that; they'll be here.

Miss SIMPSON: Is the minister coming to participate in this debate?

Ms Spence: You do your speech. They'll be here.

Miss SIMPSON: Well, there are serious issues.

Ms Spence: You carry on.

Miss SIMPSON: Quite frankly, this is important legislation, and I note that the minister is not here and there are some questions—

Government members interjected.

Mr DEPUTY SPEAKER (Mr Fraser): Order! The House will come to order and the member will continue with her contribution.

Miss SIMPSON: It is a miracle that an accident—

Ms Spence interjected.

Mr DEPUTY SPEAKER: Order! Minister! I call the member for Maroochydore, and she will be heard in silence.

Miss SIMPSON: Thank you, Mr Deputy Speaker. I note the arrogance of members of this House when we are being asked to pass legislation with extraordinary powers which are more about protecting the backsides of union heavyweights and protecting this government. We need clear assurances from the minister about these powers, because they are extraordinary powers of indemnification from criminal and civil action that this House is being asked to pass. That is why I wanted the minister to be present in the parliament: to provide those assurances and to listen to the questions which I will be asking in my speech on the second reading stage and following up on when considering the bill. So I do note with disappointment that the minister is not here in the House with his staff.

A miracle happened when we had this train derailment in Queensland, and we are all grateful that no-one was killed. We are all grateful that no-one was killed in this terrible train derailment which occurred recently near Bundaberg.

The opposition wants to acknowledge the excellent and fine work that was done by emergency services staff and volunteers to help those who went through this horrific event. The legislation that is

being rushed through the parliament this week is allegedly about safety and providing investigators with the powers to investigate and indemnify those who provide information where they are compelled to provide that information.

The issues that I will be raising are serious issues. This parliament is being asked to indemnify people from civil and criminal liability for information that they provide to rail safety officers in the course of their investigation if they are compelled to do so. We need assurances in regard to this because people have been through a terrible crash and, potentially, there are future incidents where we do not want this to be a get-out-of-jail card to enable government to escape its legal responsibilities for compensation. There must be assurances from this government that parallel investigations will not be impinged upon and will not be affected by the way that investigations proceed when documents are procured under compulsion by rail safety officers and, potentially, those same documents are not available for the parallel investigations that are being conducted by the police.

These are serious issues and they need serious assurances from the government. We have questions about the way the legislation is drafted in that regard. It is ironic that this government—which has a lot of Labor lawyers—talked about the need to protect people's rights to be able to access compensation. Sometimes it has to be done through the civil courts. The legislation that is before the House potentially raises those issues about making it harder for people to access documents which it may be necessary for them to access in the course of seeking compensation for injury or potentially death that has occurred as a result of negligence on the part of a state entity, in this case. Those are the assurances that we will be seeking.

There are some other extraordinary provisions within this bill. For example, it does not apply to other forms of transport. It does not apply to the bus and coach industry. It excludes them from these extraordinary indemnity provisions that this House is being asked to pass. The government will say, 'Oh, this is just mirroring federal legislation,' but it goes much further than the federal legislation does. This legislation also contains indemnities that relate to the CEO, the chief executive officer. I will be seeking the minister's advice as to why the CEO is also exempt from being called on to provide evidence in civil or other court jurisdictions. That is of concern to the opposition. I note that the minister is present. Why are there two different sets of rules? If it is really such a safety issue where frank and open inquiries are needed—actually, frank and closed inquiries, which is a contradiction in terms—why is it being applied to one mode of travel but not to these others? That in itself is a contradiction.

There is also the issue of the freedom of information laws. When members look at the section that is seeking to exempt information from access under FOI, they will find that we are not just talking about future investigations or what is going to be acquired in relation to this crash in subsequent weeks; we are also talking about information that has already been acquired. This in itself seems to be contradictory to the government's statement that this legislation is about providing the opportunity for witnesses to come forward in a frank way and know that their information is being provided in a restricted format.

Why are the FOI provisions being made retrospective? The proposed section states—

This section applies to any document obtained, received, or brought into existence, by a rail safety officer in relation to the derailment before the commencement of this section, whether or not the rail safety officer was carrying out an investigation at any relevant time.

Does this mean that, if warnings were given to government or to staff of Queensland Rail about safety issues, those matters would be captured by this clause and, therefore, be exempted under freedom of information?

Mr Lucas: Obviously not.

Miss SIMPSON: We are concerned about the wide scope of this exemption under freedom of information. It seems to go far beyond the stated intentions of the legislation and raises questions as to what other documents are out there and why these freedom of information provisions are being extended in this way.

As I said at the outset, we are thankful that nobody was killed in this accident, though we acknowledge that some people suffered terrible injuries. Often what happens after there has been an incident is that people will have it in their mind for some time, but those who have lived through the horrific experience will live with it for the rest of their lives. Unfortunately, despite the best efforts of medical science, help and rehabilitation, some people will bear the scars of this incident for a long time.

It is important to have a rail system where issues of quality and issues of safety can be fully investigated and fixed. It is equally important that we do not find ourselves in a situation where this parliament walks over the rights of people who may potentially seek to take legal action against government. Given the fact that government is the main provider of rail services in this state, why is it that we have the situation—supposedly in the name of public safety—where one entity has preferred status over all the others?

These are serious issues. These are issues that we will be pursuing further. The other matter that is of great concern is the indemnities for people if the evidence being taken by rail safety officers shows they

were drunk or under the influence of drugs. I raised this concern with departmental officers in the briefing. I will paraphrase what they told me. They said that, basically, that evidence can be gathered by the police. It is more likely that the police will take that evidence in the first instance. That evidence is still admissible in a criminal case in their parallel investigation with the police, so do not worry about it. I have to ask: if that is the case, why should there be an exemption in this act in relation to evidence about somebody who has been drunk or under the influence of drugs who may, through their negligence, have created an incident or danger? It does not make sense.

I am fundamentally concerned that any government can provide this level of indemnity if a rail safety officer did collect evidence that showed someone was drunk or under the influence of drugs. We had an extraordinary situation in another jurisdiction only a couple of years ago when the Health Minister stated in this parliament that the indemnity provisions for health workers should not cover them where they have been criminally negligent, and that if they were operating drunk they should not be covered by the state. We did not have an argument about that; if a person who is drunk operates on somebody, they should be subject to the full force of the law. We knew that there were people who were not being criminally negligent and who were finding that they could not get the appropriate cover from their employer to deal with circumstances, but the government was muddying the waters.

Now we have this contradiction where there actually is the potential for people who are criminally negligent to seek an exemption from their liability if that evidence is gathered by rail safety officers. That is just an extraordinary and I believe unacceptable indemnity for this legislation to extend. It just does not make sense. How can the public interest be served by indemnifying somebody from criminal negligence when they have been acting under the influence of alcohol or drugs?

Mr Lucas: They don't have immunity from action at all. If they have been under the influence of alcohol, then the police will prosecute them.

Miss SIMPSON: But why have a provision whereby, if the rail safety officers have collected this information, they are indemnified? Why should that person who has been drunk or under the influence of drugs be indemnified on the basis of that evidence? It does not make sense to specifically include that type of evidence in that type of investigation and then say, 'Well, no, just trust the police. They've got their own parallel investigation. If they get the evidence then they will pursue that.' It does not make sense that the minister would go to the trouble of outlining that exemption in relation to an investigation where the RSOs have collected that information.

There is a range of contradictions that we are being asked to accept as being in the public interest. We are seeking better explanations than what we have had from the government to date for what I have already described as extraordinary legislation which has been brought about because this government has been threatened with strike action. It has rushed into the parliament with this legislation and we are being asked to support it. We will certainly be seeking better assurances than we have had to date in regard to the application and making sure that parallel investigations do not lock up information where that information may potentially not be able to be sourced from other avenues because it may be the solitary piece of information that is available. We present these concerns to the minister and seek his explanation.