



Speech by

Fiona Simpson

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TRANSPORT INFRASTRUCTURE AND OTHER LEGISLATION AMENDMENT BILL

Miss SIMPSON (Maroochydore—NPA) (4.15 pm): The opposition will support the Transport Infrastructure and Other Legislation Amendment Bill, which on the whole is noncontroversial as much of it has been in the public domain for discussion. However, there are some finer points about which we have concern and about which I will be seeking the minister's clarification during the second reading debate and in the consideration in detail stage.

This bill mainly amends existing powers by transferring those powers that are contained in the regulations into the act. That creates no real change, but there are some exceptions. One of those exceptions is the issue of liability for people using aircraft or vessels entering ports, which has been raised as a matter of concern within the Scrutiny of Legislation Committee's report.

At this point I would like to acknowledge the briefing that I received from the department and the minister's staff and thank them for that. At that briefing I referred to the concern raised by the Scrutiny of Legislation Committee. Since then I have been told that the minister will move an amendment, but I want to talk about this issue further. The concern is that there is a clause within this legislation that is different from previous provisions relating to liability for damage to port facilities. It could impose quite a penalty upon people who would not realise that they could be caught up in the liability net.

The Scrutiny of Legislation Committee noted that proposed section 281(e), which is inserted by clause 11 of this bill, imposes upon a range of persons liability for damage caused to port facilities by ships or aircraft. The liability is not expressly qualified in any way and could be interpreted to impose a form of strict liability. The committee sought information from the minister as to whether that clause was intended to impose a strict liability and, if so, why that was thought to be appropriate.

To put it in layman's terms, the concern was that it could affect somebody who chartered an aircraft or a boat. They may not be in control of that boat or that aircraft but, under this legislation, they could receive a severe penalty for liability if there was an accident or damage caused to the port facility by that aircraft or boat. As I understand it, in this regard the minister will move an amendment that will relate to aircraft but not to boats. I will be seeking the minister's clarification as to why that amendment is limited to only one type of craft.

There is a concern that somebody could charter a fishing boat but not have control of the vessel. A lot of chartered fishing boats come with people who are licensed to be in charge of that craft. Their licence also requires them to be legally responsible for that craft. If a person was going out on a fishing trip on such a charter boat, that person would not expect to be subject to liability if the person operating that boat damaged the port facility in some way. That is the concern that I have with this legislation, because that event could occur, particularly in an area such as the Cairns port.

Mr Lucas: I'd hate to think if you charter a fishing vessel to go on a fishing trip you just stay within the port limits. It would be pretty boring.

Miss SIMPSON: At one point one might actually pass back through the port, Minister, because that is a fairly natural thing to do if one is traversing through the port's limits at the time the damage occurs. That is the concern that we still have: the potential for someone who has chartered a simple fishing boat expedition and finds out that they are up for a hefty part of the legal bill due to this legislation. That may not be what is intended by this legislation, but it is a foreseeable event. It would be unfortunate if the legislation has an unintended consequence and thereby damage the charter boat industry if people do not wish to charter boats when they find out that they may be up for liability if the captain causes damage rather than that liability resting with the person who is directly responsible. That still remains a concern, and we seek the minister's clarification because the amendment bill deals with that issue for aircraft but not for boats.

There are other provisions in this bill that amend the act in regard to maritime safety and ports. Previously there was a power to detain boats and ships that caused damage; now ports are able to charge a bond. It is recognised that this is a fairly standard provision in other state jurisdictions and international jurisdictions. So we hope that the administration of this provision will be fairly straightforward but the principle is one that has been accepted in other jurisdictions, and we support that.

There are other issues, too, that are not dealt with in the legislation but are worth mentioning. Proposed new section 285D in clause 12 of the legislation provides that the minister may return a draft land use plan. The issue of land use plans is certainly within the province of this legislation but, as I understand from the briefing, under these land use plans it is still possible for ports to enter into commercial arrangements and undertake development that may have no sympathy with the local governments plans and they are not required to be integrated with their plans. In short, these plans must provide detail with regard to the primary use of the ports but they are silent, as I understand it, with regard to the non-primary use of these ports. The opposition has concerns that, if the state government chooses, through the ports, to sell off land, to have land redeveloped without having regard to the impacts upon the local government and the wider area, that can go ahead. As the legislation currently stands, it is silent on that. Scarborough and Wynnum are areas that come to mind. It is worth mentioning because it is a current issue of concern.

Ports are of extremely significant economic value to Queensland—both airports and shipping ports. With the controversy over Dalrymple Bay and the backlog of ships waiting to load coal, we have seen that when infrastructure fails it impacts upon jobs and the community. While this is a complex issue, it highlights the need for governments to deliver infrastructure. Where there are other arrangements involving private investment and third parties, such as the Queensland Competition Authority, there is also a need for governments to have a will to help resolve issues because such issues have a tremendous impact upon the overall economic efficiency of some of our most significant industries. The delays at Dalrymple have certainly highlighted that.

Something that is new in this legislation is the creation of a power to control jet skis, particularly the power to exclude jet skis from defined areas. That process will occur in consultation with local governments. It certainly will involve local governments and we strongly support that. I acknowledge that this matter has been subject to public consultation. There have been concerns raised by local governments. In the briefing we were assured that the government is satisfied with how these concerns have been resolved. I still put some issues on the record for the minister to address.

One of the issues is that local governments will undertake the education programs associated with the zoning process. I know that transport departmental officers will also be involved in those education programs. I ask for the transport minister's assistance to ensure that there is funding from the state to help local governments implement these education programs and the process of bringing in appropriate zones. This power is significant in that, where previously the maritime legislation for waterways was set up to control safety issues, the legislation has now expanded to include issues of amenity. There are safety issues with jet skis but the main problems that are being experienced in areas of great popularity for jet skis is not just safety but also noise and the nuisance value of having very noisy craft in close proximity to people's residences and other areas of recreation.

Mr Lucas: And, frankly, bad manners on the part of a number of people who operate jet skis.

Miss SIMPSON: Unfortunately, as the minister notes, it is really those who abuse the privilege of using our waterways and who abuse the rights of others to have peace and quiet that has brought about the need for this legislation. There are many very responsible jet ski owners, but unfortunately the water hoons have necessitated bringing in legislation that will keep them out of defined areas and give the power to the appropriate authorities to penalise them for their bad behaviour.

I acknowledge that there has been a trial of special jet ski patrols with three transport officers operating in the last six months. I am keen to see the continuance of this trial. Three people do not seem to be a lot to carry out the work that is required. I think it is also a very significant departure from what was previously occurring on our waterways with regard to the policing of maritime regulations and legislative provisions. Previously it was up to the police and boating and fisheries officers to enforce the provisions with regard to breaches of the act. This has expanded with regard to jet skis to transport officers. Transport

officers on jet skis—some would say that would be a great job, being on jet skis in the waterways of south-east Queensland during the summer months and heading north during the winter, which I believe is the current plan. Great work if one can get it! As I understand it, it has been well received. But I raise with the minister that there are other issues that require a greater focus of resources, particularly environmental issues.

We have talked about the noise and nuisance issues that this legislation deals with in relation to jet skis. But there is a significant problem with sewage being dumped into our waterways. The lack of pump-out facilities to deal with that and the lack of legislative controls mean that our rivers are being treated like sewers. I believe this is an issue that needs resolution and resolution very quickly. For all the talk about how important the rivers are, there is a hell of a lot of sewage going into them, being pumped out by boats, and there is a paucity of pump-out facilities available. As I understand it, the number of boats—let alone the number of jet skis—is going to double over the next 15 years. That will have a huge impact upon our waterways. I have raised previously my concern that boating and fisheries officers who have to deal with all the regulations under the Department of Primary Industries are also the main people who have to enforce this legislation, yet they do not have the resources to do so.

I have mentioned that there is a lack of resourcing for water police to carry out these measures. I believe it is time there was adequate resourcing. We need to look at a way to expand the roles of these new officers with regard to some of the environmental concerns. There are issues with live-aboards, as they are called—that is, people who live on boats against current rules. Enforcement is not occurring because of a lack of resources. This issue is not only one of maritime safety. There is an environmental duty of care and the issue of nuisance. Our rivers, which are subject to transport regulations and enforcement, are not really receiving the level of attention that they require.

An interesting issue which arose from the briefing on jet skis which I would like to bring to the minister's attention is the issue of onus of proof. As I understand this legislation, the intention is that local government officers will not be involved in issuing tickets or intercepting people who breach the act. That is well understood because of the problems of being involved in interception. They will, however, according to the departmental briefing, be receiving training to help gather evidence and to get photographic evidence from the shore of those who have been committing these offences. The registration of those personal watercraft, or jet skis, will be more significantly displayed under the new provisions. That is one aspect where local government is still being expected to pick up this issue of passive enforcement of the legislation. They will be capturing the evidence and passing it on, as I understand, to the transport department and the jet ski patrol for their follow-up action.

That is an interesting development, but what I am concerned about is that the onus of proof within this legislation is quite different from that in other legislation. It is quite different from legislation covering red-light cameras. It is concerning, and let me explain why. Someone is deemed to have committed an offence, whether or not they are operating that vessel at the time, if they own that vessel. So the vessel is identified and a person is deemed to have committed an offence. The problem is: what excuses or exclusions a person can use in their defence is not clear. They may issue a statutory declaration to the department saying, 'It was not me; it was Fred,' but there is not a clear exclusion or excuse for the owner of that vessel. I question whether this requires a provision similar to the red-light camera provision, where a person is deemed to have committed an offence unless they identify the person who was in control of the vehicle at that time. It seems that the measures for exclusion are not clear and this is potentially a landmine.

I will await the minister's response in his reply to the second reading debate and certainly in the consideration in detail stage. We strongly support the general provisions of this legislation. With jet skis, in particular, there is a need to get a balance between people's personal rights and the rights of the public. As long as some of those provisions are addressed, I believe this is a step in the right direction. We would certainly like to see assistance to local governments in the way that those new zones are implemented and also resources to ensure this is not just legislation that looks good but legislation that actually works and is resourced. I would like to see more done with regard to environmental nuisance and certainly policing of issues of sewage being dumped in waterways. There is a desperate need to clean up our rivers and to have adequate infrastructure and facilities or else we are not treating these rivers and waterways with the respect that they deserve.