Speech by

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HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Ms LEE LONG (Tablelands—ONP) (12.46 pm): I rise to contribute to the debate on the Health and Other Legislation Amendment Bill 2007. The main objective of this bill is to create the framework for root cause analysis of reportable events occurring during the provision of a health service by a public sector health service, a private health facility or the Queensland Ambulance Service—in plain English, legislating to allow the basic cause of health care related incidents to be identified.

The explanatory notes indicate that this is to be achieved by establishing what are called root cause analysis teams in response to a prescribed event. A prescribed event will include the death of or permanent harm to a patient which will be a reportable event. This will all be an internal process—that is, it is not an avenue available to members of the public. The explanatory notes spell out that the voluntary participation of health personnel will be essential to the RCA process, both as members of an RCA team or as providers of information about a reportable event. To quote from the notes—

... health personnel will be reluctant to participate in an RCA unless they can be assured that they are provided with protections from liability.

As a result, a number of the amendments before us today are aimed at providing protection against liability for certain acts. For example, the new section 38ZD in the Health Services Act provides that an RCA team member or a relevant person for an RCA team who acts honestly and without negligence is not civilly liable. This protection extends to actions of defamation, breach of confidentiality and disciplinary action. The notes go on to spell out the situation for those who may provide information to an RCA team—

Unless the legislation offers protection for the provision of information to an RCA team for the conduct of an RCA, it is anticipated that health personnel will be reluctant to contribute information. It is therefore essential that concerns about potential legal liability be addressed by the legislation to ensure that health personnel can provide information that will help identify systemic factors that may be compromising the safety and quality of health services.

Also incorporated in the explanatory notes, this time in describing the regulatory framework behind the RCA, is this—

... provides for an RCA to be stopped, if during the course of an RCA, a reasonable belief is developed that the event involves a blameworthy act by an individual or the capacity of a person who is involved in the event was impaired by alcohol or drugs.

Finally, the explanatory notes state—

To ensure that health service personnel can participate in RCA free from the fear that the information they divulge will later be used against them, the Bill will provide statutory privilege to information and documents produced for RCA purposes.

While new information produced as a result of an RCA will be privileged, the legislation will not prevent pre-existing information being used as evidence in civil, criminal, coronial or disciplinary proceedings.

In plain English, no information anyone gives in an RCA can be used against them, nor can it be used to establish that someone is to blame. Unless it has been discovered prior to being given during an RCA it cannot be used in any legal proceedings at all. It cannot be used against the person giving it, it cannot be used to establish blame and it cannot be used in court unless it had come out before the RCA.

I believe this combination creates a possibility that when someone dies or suffers permanent harm in our public or private health systems or in an ambulance those people who knew what happened can keep their information to themselves until an RCA takes place. It appears that if they provide the information during an RCA they will be certain of three things: that it cannot be used against them, it cannot be used in any other legal action and if it looks like it will establish that someone is to blame then it will in fact bring the entire RCA to a halt anyway. In such circumstances the right of an injured person or the family of a dead person to seek a legal remedy is either severely compromised or even completely removed. This is all in the hope that an RCA might find that there was a systemic problem.

We have seen time and again health ministers and those on the government benches defend the delivery of public health services in Queensland. They did it ad nauseam before Bundaberg, they did it ad nauseam after Bundaberg and they still do it now. Today we have a bill before us that will create a process to capture vital information and lock that information away from any of the normal legal processes.

Then this government tries to convince us that it is for pure and ethical reasons. It is this government's handling of health issues for the past near decade that has left Queenslanders with a total mistrust of the management and administration of public health in this state. It is bills like this with their capacity to quarantine vital information away from normal legal scrutiny which prove that this mistrust is well earned.

I expect the minister may well say that systemic failures need to be dealt with internally so there is no future repetition and that it is essential to ensure no future patient is killed or suffers permanent harm. The difficulty is that the way the bill goes about protecting patients' rights is by effectively removing the injured person's rights or their family's rights to legal redress. I believe that all of the existing avenues of investigation will be crippled by this bill and the RCA process.

We have in circumstances where a death may have occurred a coroner who can choose to investigate. In all cases there are professional registration boards and colleges, the Health Quality and Complaints Commission and the Office of the Ombudsman. In some cases the CMC may be involved. There is the power of royal commissions and even ultimately the floor of the parliament where issues can be raised. We also have whistleblower protection laws aimed at making it easy for those people aware of the problems to come forward. Yet despite the existence of all of those avenues we apparently need yet another avenue called root cause analysis which seems hell-bent on making sure no-one can be held accountable.

I am sure many members in this place have dealt with constituent issues involving systemic flaws that have shown that our health system is to blame for bad outcomes, for permanent harm or even death. I am sure many of us have also been faced with constituent issues where the system was not to blame but one or more individuals were at fault. This bill before us creates the potential for those people to escape being held responsible. I believe it is a lethal farce and a blight on the health and even the lives of Queenslanders.

There has been intense focus on the public health system. However, these processes we are debating today also apply to private health facilities. This brings the quality of overseas trained doctors whom the federal government permits to operate in the private health system under Medicare into focus as well. Many overseas trained doctors are well trained and highly skilled. We are grateful to have them help make up the shortfall caused by so many years of shameful neglect by both our state and federal governments with regard to training young Australians to become our doctors and allied health professionals.

However, as in the public health system there are overseas trained doctors in the private health system who can leave a person wondering how on earth those doctors got there. Incomprehensible English language skills, non-existent computer skills, a lack of understanding of normal or even basic procedural issues are among the issues. It does not take an RCA to find that our governments have left this state and this country in a perilous situation. Worse, it is doing nothing substantive about fixing the situation by training our own young people in these roles. Given the appalling failure of Canberra, I believe the state government should bite the bullet and take the task on itself and provide scholarships for hundreds of new university places each year until the shortfall is addressed.

I turn now to the provisions relating to the Mental Health Act 2000. These amendments bring into effect recommendations from a review of the Mental Health Act. In essence these amendments relate to two issues. One is to provide that the community's interests and the victims' interests are taken into account when various decisions are made by the Mental Health Court or a decision is made under the Mental Health Act. The second is to provide for the appointment of additional judges to this court. According to the explanatory notes this is due to the rising workload of the Mental Health Court.

Queensland's 2020 planning document indicates that there is an expectation that one in four Queenslanders will encounter mental health issues in their lifetime yet our mental health services, mental health wards and so on are drastically underfunded and underresourced. This terrible lack of support means that the dedicated and professional staff who serve in those areas face impossible decisions about who can and who cannot be helped, who can and cannot be admitted to the limited number of mental health beds and wards and who can and cannot access the limited number of specialists.

In the far north there have been and are a number of coronial inquiries into the deaths of people who have had or should have had treatment for mental health issues. I believe that underresourcing is one of the underlying causes for these tragic incidents. It is nothing more than a cold, politically calculating decision by the Beattie government to spend tens of million dollars on pedestrian bridges and sporting fields in Brisbane in preference to that money going into addressing health and mental health issues. It is opportunistic, politically expedient and a lethal curse on some of our most vulnerable citizens.