



Speech by

Jann Stuckey

MEMBER FOR CURRUMBIN

Hansard Wednesday, 28 October 2009

HEALTH AND OTHER LEGISLATION AMENDMENT BILL; HEALTH PRACTITIONER REGULATION NATIONAL LAW BILL

Mrs STUCKEY (Currumbin—LNP) (3.15 pm): Before addressing the Health and Other Legislation Amendment Bill 2009 and the Health Practitioner Regulation National Law Bill 2009 in this cognate debate, I wish to place on record my association with the medical profession in that I am a former registered nurse and married to a general practitioner with our own medical practice.

The Health and Other Legislation Amendment Bill was introduced into the parliament on 23 April 2009 by the Minister for Health, the honourable member for Lytton, and seeks to amend a large number of Health portfolio acts along with the Police Powers and Responsibilities Act 2000 and the Workers' Compensation and Rehabilitation Act 2003. The government has voted to debate the Health Practitioner Regulation National Law Bill 2009, introduced by the health minister on 6 October, at the same time as we debate the Health and Other Legislation Amendment Bill 2009, thereby exhibiting—despite profferings otherwise—how unimportant they think this legislation is. One bill, which included supposedly important smoking laws, has sat on the *Notice Paper* for over six months and the other, containing national laws, a mere three weeks. In what appears to be a recurring pattern, the Bligh government has bunged them in together to suit its questionable agenda.

There are some positive aspects to these bills and, as we have heard from my side of the House, the LNP has stated that it is giving them their guarded support. Honourable members have heard from the shadow minister, the honourable member for Caloundra, that the LNP has considerable reservations about aspects of the Health Practitioner Regulation National Law Bill and will be moving some amendments. In addressing part 1 of the national bill in November last year, the honourable member for Caloundra described it as a 'sugar-coated toxic blend' of reform, as did many health professionals.

In the minister's second reading speech for the first bill before us today, he announced that it contained a number of important changes that will enhance the safety of all Queenslanders. In fact, he almost made it sound like a panacea for all ills. The minister stated—

The most significant amendments seek to: better protect our children and the wider community from the harmful effects of smoking; safeguard patients from the professional misconduct of medical practitioners with the introduction of mandatory reporting; strengthen the accountability of the Health Quality and Complaints Commission in setting healthcare standards which assist in its role of monitoring health service quality and independently reviewing complaints.

The minister's federal mate, Mr Rudd, created much fanfare—as is the prerequisite for any Labor leader—by saying that he would take over the public health system if the states did not perform better. We are all waiting—just like the patients in the never-ending public hospital queues. This gushing Prime Minister boasts about reforming the ailing health scheme by creating the biggest review of our Australian health system since the introduction of Medicare and then proceeds to create divisions among key healthcare groups, namely, doctors and nurses, but also other professionals such as psychologists, podiatrists and physiotherapists, to name a few.

When the first stage of Rudd's health legislation was debated in this House in November 2008, the concerns of various stakeholder groups were well articulated by the shadow minister and subsequent LNP

members. As we debate state and national legislation here today, there is no doubt that this legislation is part of the grand plan—the collectivist approach to health care that has failed miserably in the UK.

A big concern for a number of medical bodies was that the November legislation passed absolute control of the Australian medical standards to governments and bureaucrats, which meant that if the politicians have authority for medical education, training courses and professional standards for medical practice, the profession would lose its ability to maintain the highest professional standards. The former AMA president, Dr Capolingua, believes that the international recognition of Australian medical training has been put at risk. But what else should Dr Capolingua expect from a period of wall-to-wall Labor governments which has made doctor bashing an art form?

Sure there are some bad apples in medicine, just as there are in any profession. Just take a look at the corrupt bunch opposite. Labor's obsession in lowering morale, crushing spirits and not listening to concerns of health professionals has seen confidence in the public health system fall to an all-time low. It is no surprise that the medical fraternity are not welcoming a number of provisions contained within this bill.

Madam DEPUTY SPEAKER (Ms Johnstone): Order! The honourable member would remember the comments made by the Speaker this morning about unparliamentary conduct and language. I ask that you withdraw that comment.

Mrs STUCKEY: Which comment exactly?

Madam DEPUTY SPEAKER: The lying comment about corruption.

Mrs STUCKEY: I did not use the word lie.

Mr Finn: You have been asked to withdraw

Mrs STUCKEY: I will just withdraw. I will continue. Labor's obsession in lowering morale, crushing spirits and not listening to concerns of health professionals has seen confidence in the public health system fall to an all-time low. It is no surprise that the medical fraternity are not welcoming a number of provisions contained within this bill as they have been at the short end of the stick under the rule of state Labor governments and now they are captives of the socialists who are trying the same attack on a federal level and calling it reform.

In May of this year AMA Vice President, Dr Gary Speck, felt the national registration and accreditation proposal, which we debated here in the Queensland parliament last December, was a very serious bureaucratic government intrusion. He believes it will turn out to be a grave threat to the health of the people of Australia and to their doctors and says—

Like freedom, access to high quality doctors and health care is not appreciated until it is lost. The National Registration and Accreditation Bill was a total rewrite of the registration process and allowed ministerial interference which is clearly unhealthy.

I am pleased to see the government at the last minute include changes negotiated by key stakeholders that will require the ministerial council to give consideration to the potential impact of a direction on the quality and safety of health care. Whilst the LNP are supportive of this move, we will be keeping a close eye on how this is implemented. Amendments that include mandatory reporting in provisions in this bill have raised the argument that this form of reporting is being used as a political tool in response to cases of rogue doctors such as Jayant Patel. Undisputedly, revelations of this doctor's malpractice have eroded the public's trust and confidence, as did the manner in which this Labor government handled the whole affair once the whistleblower nurses' accusations were made public.

Mr MOORHEAD: I rise to a point of order. The matter referred to by the honourable member is the subject of criminal proceedings in another place and subject to the sub judice rules of the parliament.

Madam DEPUTY SPEAKER: I caution the member under the sub judice rule and ask that you refrain from that argument.

Mrs STUCKEY: Amendments that include mandatory reporting in provisions in this bill have raised the argument that this form of reporting is being used as a political tool in response to previous incidents with doctors. Undisputedly, revelations of doctor malpractice have eroded the public's trust and confidence as has the manner in which the Labor government has handled these affairs once whistleblower nurses' accusations were made public.

Industry stakeholders question whether mandatory reporting is the appropriate mechanism to protect the general public's health and safety from doctors who may be putting patients at risk of harm especially when one considers that there are some already established frameworks such as incident management, reporting, open disclosure and doctors' health services in existence. The accusation here, told to me by an AMA spokesperson, is that health bodies prefer to protect doctors whose practices are substandard rather than to protect the health and safety of their patients. That really is quite an offensive statement for the government to insinuate. As we well know on this side of the House, Labor does not like doctors. Just look at how it treats them in the public system. It works them until they drop.

During my research with stakeholders regarding this legislation I was told that mandatory reporting may lessen the likelihood of a practitioner seeking advice, support or treatment from a colleague. I wonder whether this legislation will work. The fear of mandatory reporting and thus a lack of confidentiality was specified in a suicide note left by a doctor in December 2008. He specifically blamed mandatory reporting laws as preventing him from turning to colleagues for support and advice. As I said, the obligation to report may make doctors less likely to volunteer to staff health advisory services. Fear of being reported means that they are less likely to seek help if they know this will happen. The recent revelations of working conditions of many training doctors in the public health system are reason enough to prevent disclosures whether they have Queensland Health indemnity or not. There is still a degree of uncertainty as to what constitutes departure from accepted medical standards or misconduct in the practice of the profession and, as the honourable member for Moggill outlined, the case of impaired doctors.

Medical boards are in place in each state to assess complaints made by doctors or the public against doctors. The complaint is considered, heard, judged and acted upon with the accused doctor entitled to full legal defence. Outcomes vary from dismissal of the case to deregistration of the doctor and, if serious enough, court proceedings. Additionally, stakeholders have identified problems with the devil in the detail of this primary legislation, as has the shadow minister. Exemptions would be required in circumstances such as a registered medical practitioner who is the spouse of another registered medical practitioner or a registered medical practitioner who works for a medical indemnity insurer whose advice may be being sought regarding the reportable misconduct of the other registered medical practitioner. The government needs to get this right before proceeding further as there are still loopholes.

Doctor fatigue has long been a problem in Queensland public hospitals but nothing has been done to address it for years. Only when a damning media article appeared did the government whip up a response. What a shameful response that was. Let them drink coffee, lots of coffee. What sort of remedy is that? Caffeine is addictive in large quantities and certainly is no panacea for staying awake so long. I guess it once again proves how little this government values doctors. A sample of replies to the Salaried Doctors Queensland fatigue survey conducted by the doctors' union undertaken in May-June of 2009, who were mostly trainee doctors—our future—found that 70 per cent of respondents admitted to making mistakes at work due to fatigue when prescribing medications and writing patient chart information. I quote some of them—

I was so tired I went to sleep in a chair next to the patient's bed when I was inserting a cannula. The patient had to wake me up because my beeper was keeping her awake.

Another said—

One night after 45 hours straight without sleep I forgot to re-check an elderly patient. I was fluid loading and four hours later she coded. I attended her resuscitation. She died. Most likely overloaded. I am still having nightmares.

Another doctor stated—

I put a chest drain in the wrong side after 30 hours of work.

Another stated—

I have been so fatigued I have fallen asleep while performing surgery, literally slumping forward while standing over the patient's open body.

Is the government expecting these doctors to dob each other in? I note the minister's comments in the House yesterday about a certified agreement that would, amongst other things, address fatigue management. From the above cases this is certainly long overdue. Amendments to the Workers' Compensation and Rehabilitation Act will allow for full implementation of the nurse practitioner role which was a 2004 Labor election commitment. This will enable nurse practitioners to issue workers compensation certificates for a minor injury at the patient's initial attendance. The minister also says referral of these patients is often required for the sole purpose of obtaining a workers compensation medical certificate.

This amendment in particular is fraught with poor judgement and shows what a superficial grasp this minister and his government have on health issues. A workers compensation certificate is a complicated document and nothing like a routine sickness certificate. It requires the skills and expertise of a fully qualified medical practitioner. I wonder whether the minister has ever seen one. These certificates take about 40 minutes to fill in properly and call for a diagnosis, whether it is provisional or proven; the relationship between the symptoms and the injury; any pre-existing conditions that may be relevant to the diagnosis; the worker's capacity to work; the likely prognosis—which is crucially important, by the way, to the injured worker—clinical findings on physical examination; suggested investigations; a medical management plan; and a rehabilitation and return-to-work plan. I table a copy of one of those for the interest of the minister so that he can see just how detailed these documents are.

Tabled paper: Q-Comp form titled 'Workers' Compensation Medical Certificate' [1170].

It has been estimated that up to 95 per cent of workers compensation cases do not require hospitalisation but may well require considerable investigations. Injuries that initially seem minor often turn

out to be anything but. The statement that referral of these patients to a medical officer is often required for the sole purpose of obtaining a workers compensation certificate would be viewed as offensive by any member of the medical profession, not to mention the disregard for the seriousness of a patient's injury.

Just what is a minor injury? On page 118 of the Health and Other Legislation Amendment Bill the definition states—

Minor injury means an injury of a person that does not require the hospitalisation of the person as an in-patient to properly treat the injury.

This is really scary when we consider what I said earlier about some 95 per cent of people with minor injuries not requiring a stay in hospital. Over the years there has been a marked trend away from admitting patients to hospital if they can be managed at home, and there has also been an increase in day surgery operations. A care management plan involving doctors, nurses and therapists is frequently put in place and coordinated by a GP in close consultation with allied health workers. All this is about to change with the fragmented care that is being suggested by provisions within this bill.

Will a soft tissue injury be classified a minor injury? How will nurses rate stress fractures and severe RSI? All of these can lead to ongoing problems, and what if there are pre-existing conditions or underlying complications? How can the minister be sure that nurse practitioners will not act beyond their scope of practice and perform tasks they are neither skilled nor qualified to undertake? What happens if they make mistakes that harm a patient immediately or down the track by ordering wrong or inadequate tests? How can we be sure the patient will not be disadvantaged by receiving a diagnosis from a nurse practitioner? We have all heard of people trying to rot the system by making false workers compensation claims and no doubt we have seen malingerers exposed on numerous TV shows. However, the majority of cases are legitimate and deserving of well-qualified attention.

Having suffered several soft tissue injuries, with one requiring several days in hospital, and living with residual pain, I can tell honourable members I would not feel confident being treated by a nurse, and neither would a number of people to whom I have spoken in relation to the bill. In fact, I have not yet spoken to a nurse currently working in a hospital who is supportive of these moves.

As a former nurse, I am well aware of the critical role that nurses play in the care continuum. So before members opposite bellow at me for not standing up for nurses, let me place on the record my enormous admiration for the work they do. It is emotionally, physically and mentally draining and there are rotten hours to boot. Quite rightly, nurses are held in high regard by the community at large, rating as one of the most trusted of all workers—way above politicians, who rank near the bottom of the popularity list.

With the direction that Labor governments are taking with regard to health in the name of reform, I am genuinely worried that they are pitting doctors and nurses against each other without putting the patient first. This is a truly dangerous move as it has the potential to disconnect patient care when connected care is essential. Close communication and collaboration are critical to safe, responsible patient care. It is to be hoped that as the nurse practitioner role is expanded monitoring will be thorough and reviews regular. There is a school of thought out there that if nurse practitioners want to do a doctor's job then why do they not do the rigorous training and carry the same insurance costs as those who put in the years of study?

With regard to amendments regarding antismoking laws and banning smoking in vehicles carrying children under 16, I note also that the minister aims to regulate smoking in outdoor pedestrian malls and at public transport waiting points. There is no doubt that smoking and smoking related illnesses cost Australia dearly in lives, in quality of health and, of course, in monetary terms—massive monetary terms, to both the smoker and the health system.

Whilst the intent of this bill is certainly noble, one has to wonder how it is going to be implemented. The issuing of infringement notices sounds all well and good and, unquestionably, it will be a popular amendment. As is the case with mobile phone users, it will be extremely hard to patrol, let alone enforce. I am flabbergasted at how many drivers are still using a mobile phone while driving, even though it has been banned for quite some time. Obviously few people get caught. A recent RACQ survey found that talking or texting on phones while driving a vehicle had overtaken tailgating as the most annoying complaint. If the government is serious about its smoking bans, why does it not ban smoking in cars as it poses just as much of a distraction, if not more, as holding a mobile phone? As I mentioned before, the main defect with the provision is the ability to implement it. With our police resources stretched to a thin blue line, how on earth does the minister think his government will be able to monitor this law?

In summary, the LNP agrees that maximising patient safety is paramount, but we must also make sure that any legislation does not inadvertently undermine patient care or inappropriately burden the health system. Also of importance is that legislation does not create a punitive atmosphere that fosters a culture of fear and blame, as is already too common in Labor government top-heavy bureaucracies. Impaired colleagues deserve some assurances that they will receive even-handed treatment when seeking support

to become fully functioning again so they can continue to work, if appropriate and if they so choose. This legislation needs to promote the principles of fairness which, in its current form, it fails to do as it favours one group of health professionals over another.

The federal government certainly has not done its homework with the national law legislation, which contained over 120 drafting flaws. However, Labor will use its majority here in Queensland to push it through despite a number of bodies expressing not only their concerns but also their views that the legislation is unworkable and lacking in critical details.

There is little doubt that patients who receive continuous, comprehensive, coordinated care benefit from a team approach. The enemy of quality care is fragmentation. Successive Labor governments have not offered much confidence in their ability to manage public health services and they have shown here again by the interjections I have heard over the last 20 minutes that they do not like it when people do not agree with them. They certainly are not putting patients first in this state.