CIVIL AND CRIMINAL JURISDICTION REFORM AND MODERNISATION AMENDMENT BILL

Message from Governor

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.31 pm): I present a message from Her Excellency the Governor.

The Speaker read the following message—

MESSAGE

CIVIL AND CRIMINAL JURISDICTION REFORM AND

MODERNISATION AMENDMENT BILL 2010

Constitution of Queensland 2001, section 68

I, PENELOPE ANNE WENSLEY, Governor, recommend to the Legislative Assembly a Bill intituled—

> A Bill for an Act to amend the Bail Act 1980, the Body Corporate and Community Management Act 1997, the Criminal Code, the Criminal Practice Rules 1999, the District Court of Queensland Act 1967, the Drug Court Act 2000, the Drugs Misuse Act 1986, the Evidence Act 1977, the Financial Accountability Act 2009, the Justices Act 1886, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Penalties and Sentences Act 1992, the Police Service Administration Act 1990, the Property Law Act 1974, the Public Trustee Act 1978, the Queensland Civil and Administrative Tribunal Act 2009, the State Penalties Enforcement Act 1999, the Supreme Court of Queensland Act 1991, the Uniform Civil Procedure Rules 1999, the Workers' Compensation and Rehabilitation Act 2003 and the Youth Justice Act 1992, to reform and modernise civil and criminal jurisdiction and for other particular purposes.

(sgd)

GOVERNOR

Date: 13 APR 2010

Tabled paper: Message, dated 13 April 2010, from Her Excellency the Governor recommending the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill.

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.31 pm): I present a bill for an act to amend the Bail Act 1980, the Body Corporate and Community Management Act 1997, the Criminal Code, the Criminal Practice Rules 1999, the District Court of Queensland Act 1967, the Drug Court Act 2000, the Drugs Misuse Act 1986, the Evidence Act 1977, the Financial Accountability Act 2009, the Justices Act 1886, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Penalties and Sentences Act 1992, the Police Service Administration Act 1990, the Property Law Act 1974, the Public Trustee Act 1978, the Queensland Civil and Administrative Tribunal Act 2009, the State Penalties Enforcement Act 1999, the Supreme Court of Queensland Act 1991, the Uniform Civil Procedure Rules 1999, the Workers' Compensation and Rehabilitation Act 2003 and the Youth Justice Act 1992, to reform and modernise civil and criminal jurisdiction and for other particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010.
Tabled paper: Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010, explanatory notes.

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.35 pm): I move—

That the bill be now read a second time.

The Australian Labor Party has a well-deserved reputation as the party of reform and the Bligh government is continuing this tradition as it seeks to respond to emerging challenges and make decisions that will help build a safe, modern and progressive state.

This approach extends to the justice portfolio where we have been implementing various reforms. This bill contains the government's first stage of reforms in response to the review by the honourable Martin Moynihan AO QC of the civil and criminal justice system in Queensland. The government has adopted a staged implementation program in response to the report. The reforms aim to make more effective use of public resources to deliver improvements across the justice system, thereby delivering improved justice to Queenslanders.

Extensive consultation was undertaken by Mr Moynihan. Last year the government released a draft bill for public comment and a number of submissions were received. Changes have been made to

the original draft bill to reflect the outcomes of that consultation. Stakeholders support the need for reform and the underlying objectives of the proposals. However, this consultation has reinforced that, given the extensive and significant nature of the reforms, implementation raises some complex and challenging issues.

In particular, the proposals to expand the jurisdiction of Magistrates Courts to deal with indictable offences have been limited. The amendments in the bill, however, ensure that appropriate matters are dealt with by Magistrates Courts and serious cases continue to be dealt with in the District and Supreme Courts. Specifically, the bill creates a new category of indictable offences in the Criminal Code which must be dealt with by Magistrates Courts unless a magistrate is not able to adequately sentence the person or, recognising the importance of jury trials, is satisfied, on application by the defendant, that exceptional circumstances justify why the matter should not be dealt with summarily.

This new category will encompass all indictable offences in the Criminal Code with a maximum penalty of three years or less. Consistent with recommendations 34 and 35 in Mr Moynihan's report, property offences such as stealing which have a maximum penalty above three years imprisonment must also be dealt with on a summary basis if the value of property involved is less than $30,000, subject to some exceptions. This $30,000 threshold recognises changes to the value of money and is in line with the approach taken in South Australia and the Australian Capital Territory.

Consistent with the current provisions in the Criminal Code, those property offences involving a value of $30,000 or more will also be able to be dealt with summarily if the defendant pleads guilty. However, in line with the recommendations, the value is not relevant for wilful damage offences. Serious property offences excluded from the new mandatory summary disposition category include, for example, robbery, arson and corruption.

While some property offences in the new mandatory category have a maximum penalty above the current three years imprisonment that can be imposed by a magistrate, these offences are already subject to summary disposition under section 552B of the Criminal Code unless the defendant elects to be tried by a jury. Furthermore, not all cases will warrant the maximum penalty. Mr Moynihan found that at present defendants frequently elect to proceed on indictment only to plead guilty in the District Court and receive a penalty of less than three years imprisonment for offences involving minor behaviour, such as stealing a wallet.

Having the Supreme and District Courts deal with matters that can be fairly, justly and appropriately dealt with by the state's professional, qualified and experienced magistrates is a wasteful use of costly judicial, prosecutorial and other resources. For victims of crime, the reforms will also mean that cases can be resolved earlier. The government will monitor the expanded jurisdiction of the Magistrates Courts and, if the reforms are successful, the government will consider increasing the summary jurisdiction of magistrates further, as Mr Moynihan recommended.

020 The bill will also amend the Drugs Misuse Act 1986 to expand the prosecution's current election to have matters dealt with by Magistrates Courts. This expansion will apply to offences for possession of a dangerous drug which attract a maximum penalty above 15 years imprisonment. However, this election will only apply in circumstances where the offence does not involve a commercial purpose.

Currently, the prosecution's election for summary disposition of possession charges is limited to offences that carry a maximum penalty of 15 years or less. However, there are a number of offences which attract a higher maximum penalty but involve very minor criminal behaviour. For example, currently a charge of possession of three grams of ecstasy for personal use must be dealt with by the Supreme Court even where the defendant has no previous criminal history. This is not an efficient or effective use of our justice system resources.

Mr Moynihan noted that many criminal cases that can be disposed of by magistrates in other states and territories are committed to the District or Supreme Court in Queensland. He also found that under the current framework the majority of sentences for these types of cases were within the current three-year maximum penalty that a magistrate may impose. Allowing more minor drug offences to be dealt with by magistrates also provides offenders with an opportunity to access diversion initiatives, such as the Drug Court. Speedier finalisation in the Magistrates Courts also reduces the risk of reoffending.

The government will continue to closely monitor the impacts of the reforms in relation to the Drugs Misuse Act 1986, as it will all of the reforms it is implementing in this first stage. If, over time, they prove effective, the government will consider expanding the reforms to production and supply offences as recommended by Mr Moynihan.

Based on Mr Moynihan's recommendations, the government also proposed amendments in relation to the early entry of a plea of guilty by accused persons. However, given the recent decision to establish a Sentencing Advisory Council for Queensland, it is considered appropriate that further advice be obtained from the council about these proposals in the context of broader community sentencing issues.

I will now outline some of the other key amendments in the bill. The bill will increase the monetary limits for the civil jurisdiction of the District Court and the Magistrates Courts. The District Court limit will be increased from $250,000 to $750,000 and the Magistrates Courts limit from $50,000 to $150,000. The current limits have not been amended in over 10 years. The changes reflect inflation and other relevant factors.

To ensure that Magistrates Courts have additional capacity to deal with these changes, the bill also includes amendments to transfer the jurisdiction for workers compensation appeals from industrial magistrates to the Queensland Industrial Relations Commission where dual appeal rights currently exist. The bill also amends the cost scales for the Magistrates Courts in the Uniform Civil Procedure Rules 1999 to bring them into line with the District and Supreme Courts, given the new monetary limit. A broader review of the adequacy of the cost scales will also be undertaken by the Rules Committee in consultation with the legal profession.

The reforms to the civil jurisdictions of Queensland courts will provide increased access to justice. At the other end of the scale, they will free up the Supreme Court to deal with major and complex cases. Under the bill the District Court's general criminal jurisdiction will be increased to all indictable offences with a maximum penalty of 20 years or less. Currently, subject to some exceptions, it only has jurisdiction for offences with a maximum penalty of 14 years or less. This amendment will enable a number of Commonwealth offences and drug offences to be dealt with in the District Court rather than in the Supreme Court. This brings Queensland into line with other Australian jurisdictions.

Another significant and long overdue aspect of reform relates to the committal process. For more than a decade there has been a steady trend towards reform of committals around Australia and overseas. Queensland and the Northern Territory are the only jurisdictions that still allow unrestricted cross-examination of witnesses. Mr Moynihan found that most of the historical reasons for committals are no longer relevant. He also found that in a large number of cases agreement to proceed by a paper committal occurs at the last minute. The costs of this are borne by many people, including witnesses and victims, not just the court and defendants.

Mr Moynihan recognised that committal hearings are sometimes justified. When used appropriately they can help to clarify issues, refine charges, negotiate pleas and identify weak cases. However, unfettered access in all cases cannot be sustained because it is inefficient and ineffective. It is not the government's intention to abolish committals, as has occurred in some other Australian jurisdictions. On the contrary, the reforms in this bill seek to make them more useful and productive.

The amendments restrict the calling and cross-examination of prosecution witnesses unless the prosecution consents or the magistrate is satisfied there are substantial reasons in the interests of justice why such witnesses should be called. This will ensure that witnesses cannot be called and cross-examined on a general 'fishing expedition' by the defence. Requiring justification for committal hearings will ensure that parties turn their minds to issues at an early stage.

New South Wales legislation has been used as a model for the test included in this bill for justifying the calling and cross-examination of a witness. This test was recommended by Mr Moynihan given it has been in place for 20 years, considered by the New South Wales courts and is generally regarded as working satisfactorily. Where no prosecution witnesses are called or cross-examined and a defendant is legally represented and on bail, the Magistrates Courts' registry will be able to do an administrative committal on the papers.

The bill also introduces specific powers enabling courts to deal with noncompliance with disclosure obligations in criminal cases. Mr Moynihan acknowledged that proper and timely disclosure is an important part of the criminal justice system. It provides the accused with knowledge of the case against them and so is the foundation of a fair trial. Proper and timely disclosure also has a number of outcomes which make criminal justice procedure more effective.

While Mr Moynihan recommended that the provisions for prosecution disclosure in the Criminal Code, which were introduced in 2003, should be redrafted to be simpler, more coherent and consistent, the current provisions were the result of extensive consultation and represent an agreed position. Consultation on the draft bill highlighted that there is a need for continuing examination of amendments in this area and reinforced that the most crucial issue is the need for improved understanding of the current obligations and compliance with them. The Queensland Police Service has committed to implementing appropriate training to address these issues.

Further, the bill gives teeth to the disclosure provisions by giving specific power to judicial officers to issue directions to ensure compliance with obligations and impose sanctions for failing to comply with directions. To address concerns raised during consultation on the draft bill, the directions power includes a specific provision for the court, on application by the defence, to require production of an affidavit from an arresting officer about disclosure and to allow cross-examination about the contents of the affidavit. These new provisions will, however, be closely monitored to ensure that they operate effectively and are not abused.

Some other reforms are also included in the bill that are not based on Mr Moynihan's report but which will improve consistency between the courts. For example, the bill includes amendments to allow the state's Magistrates Courts to use verdict and judgement records for issuing orders, consistent with the Supreme and District Courts.

Amendments are also proposed to allow a bail application to be made by remote communication device to a magistrate at a location determined by the Chief Magistrate which is outside the relevant district. This amendment will provide additional flexibility to the Chief Magistrate to manage consideration of urgent bail applications over public holidays, vacation periods and on other occasions such as when a resident magistrate is ill. These amendments recognise that bail is a serious court process and provide that applications be made only if certain conditions are met.

Some other miscellaneous amendments are also included in the bill. The amendments to the Public Trustee Act 1978 will make it easier for Queenslanders to locate any unclaimed money held by the state. The bill also amends the Body Corporate and Community Management Act 1997 to clarify that an adjudicator does not have jurisdiction in debt recovery matters. The bill amends the State Penalties Enforcement Act 1999 to clarify the registrar's powers in relation to the suspension of driver licences and reinstatement of debts. Finally, the bill includes an amendment to the Queensland Civil and Administrative Tribunal Act 2009 to rectify an inconsistency relating to the recovery of costs.

The second stage of reforms in response to Mr Moynihan's report will see an overhaul and consolidation of criminal justice procedure legislation to ensure efficient, consistent and modern processes are in place. The government will be continuing to consult stakeholders and the community on the development of this legislation.

Implementation of outstanding recommendations in Mr Moynihan's report, including, as I noted earlier, further reforms to expand the jurisdiction of Magistrates Courts to hear and determine indictable offences as stated in the government's response to the report, will be considered following an evaluation of the impacts of these initial stages. This approach will provide a solid evidence base for consideration of further reform.

The reforms in this bill and those to be delivered in the second stage are a significant step towards ensuring more efficient and effective delivery of justice in our state. The Bligh government is committed to the ongoing improvement and reform of our justice system. I commend the bill to the House.

Debate, on motion of Mr Springborg, adjourned.

RACING AND OTHER LEGISLATION AMENDMENT BILL

Message from Governor

Hon. PJ LAWLOR (Southport—ALP) (Minister for Tourism and Fair Trading) (12.48 pm): I present a message from Her Excellency the Governor.

The Deputy Speaker read the following message—

MESSAGE

RACING AND OTHER LEGISLATION AMENDMENT BILL 2010

Constitution of Queensland 2001, section 68

I, PENELOPE ANNE WENSLEY, Governor, recommend to the Legislative Assembly a Bill intituled—

A Bill for an Act to amend the Racing Act 2002, the Raging Regulation 2003, the Gaming Machine Act 1991, the Wagering Act 1998 and the Wagering Regulation 1999 for particular purposes.

(sgd)

GOVERNOR

Date: 13 APR 2010

Tabled paper: Message, dated 13 April 2010, from Her Excellency the Governor recommending the Racing and Other Legislation Amendment Bill 2010.

First Reading

Hon. PJ LAWLOR (Southport—ALP) (Minister for Tourism and Fair Trading) (12.49 pm): I present a bill for an act to amend the Racing Act 2002, the Racing Regulation 2003, the Gaming Machine Act 1991, the Wagering Act 1998 and the Wagering Regulation 1999 for particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.