PRIVILEGE

Ethics Committee Report No. 119

Ms BATES (Mudgeeraba—LNP) (11.02 am): I refer to Ethics Committee report No. 119. I respect the institution of parliament and its established processes in relation to dealing with matters of privilege. Therefore, I accept the committee's findings and, accordingly, I apologise unreservedly to the House.

LAW REFORM AMENDMENT BILL

Introduction and Referral to the Legal Affairs, Police, Corrective Services and Emergency Services Committee

Hon. PT LUCAS (Lytton—ALP) (Attorney-General, Minister for Local Government and Special Minister of State) (11.03 am): I present a bill for an act to amend the Animal Management (Cats and Dogs) Act 2008, Anti-Discrimination Act 1991, Births, Deaths and Marriages Registration Act 2003, Child Employment Act 2006, Child Employment Regulation 2009, Classification of Films Act 1991, Corrective Services Act 2006, Criminal Code, Criminal Law (Rehabilitation of Offenders) Act 1986, Dispute Resolution Centres Act 1990, District Court of Queensland Act 1967, Evidence Act 1977, Guardianship and Administration Act 2000, Guide, Hearing and Assistance Dogs Act 2009, Jury Act 1995, Justices Act 1886, Justices of the Peace and Commissioners for Declarations Act 1991, Land Court Act 2000, Legal Profession Act 2007, Magistrates Act 1991, Manufactured Homes (Residential Parks) Act 2003, Motor Accident Insurance Act 1994, Peaceful Assembly Act 1992, Penalties and Sentences Act 1992, Queensland Civil and Administrative Tribunal Act 2009, Recording of Evidence Act 1962, State Penalties Enforcement Act 1999 and Trustee Companies Act 1968 for particular purposes, and to make minor amendments of the legislation stated in the schedule. I table the bill and explanatory notes. I nominate the Legal Affairs, Police, Corrective Services and Emergency Services Committee to consider the bill.

Tabled paper: Law Reform Amendment Bill 2011.

Tabled paper: Law Reform Amendment Bill, explanatory notes.

The administration of justice is fundamental to ensuring that our democracy is fair. The justice system, including legislation such as the Criminal Code and the Penalties and Sentences Act 1992, must be reviewed regularly to ensure it is modern, up to date and is responsive to the needs of our society. The Queensland government has a strong record of being tough on crime and tough on the causes of crime. Our crime rates are going down. The overall crime rate has dropped by 28 per cent in the last 10 years. Statistics show that the rate of imprisonment in Queensland is 161.6 per 100,000 adults compared with Victoria where the rate of imprisonment is 105.5 per 100,000 adults. We also have more police on the beat. There are now over 10,000 police in Queensland, up from 6,808 when we took government in 1998.

Despite these achievements, there remains significant concern in the community that the actual time being served by prisoners must be substantial enough to be seen as a deterrent. The Sentencing Advisory Council was set up to give the community a greater say in the state's sentencing regime. Its members include victims of crime representatives and people from our communities. Since the establishment of the council in 2010, the government has made a number of significant referrals:

- minimum standard non-parole periods;
- review of sentences imposed on child sex offenders; and
- sentencing of offenders convicted of armed robbery.

Minimum standard non-parole periods

One of the more significant amendments in the bill is the amendment to the Penalties and Sentences Act to insert a new sentencing regime of minimum standard non-parole periods. On 25 October 2010, the government announced its intention to introduce a tough new scheme of minimum standard non-parole periods for certain serious violent offences and sexual offences. The government also committed to introducing legislation into parliament by the end of this year that will establish such a scheme. A standard non-parole period is the minimum amount of time an offender should spend in jail if found guilty of a crime.

The government asked the council to explore:

- what offences the scheme should apply to; and
- how long the standard non-parole period should be for each offence.

The council consulted widely and provided its report to me on 30 September 2011. The opposition has indicated its support of the Sentencing Advisory Council report. These amendments are being made in recognition of the general expectation of the community that people who commit violent and

sexual offences will spend appropriate periods in prison before being released on parole. The introduction of this new sentencing regime in Queensland also aims to promote consistency and transparency in sentencing.

I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

I will briefly address the specific amendments.

The Penalties and Sentences Act sets the sentencing framework in Queensland. It includes the sentencing options and principles that the court must have regard to when sentencing criminal offenders.

The Bill inserts a new sentencing regime of minimum standard non-parole periods into Part 9A of the Penalties and Sentences Act.

The Bill provides for a standard percentage scheme of minimum standard non-parole periods where an offender convicted of a serious offence and sentenced to imprisonment of five or more, but less than 10, years must serve 65 per cent of the term of imprisonment before being eligible to apply for parole, unless the court is of the opinion that it would be unjust to do so.

The Bill adopts the scheme recommended by the Sentencing Advisory Council in its 2011 report titled, 'Minimum standard non-parole periods' with the exception of its application to 17 year old offenders. In its report the Council recommended that the scheme not apply to 17 year old offenders. However, this would in effect create three different sentencing regimes for persons aged 16 years and under, 17 year olds, and then persons aged 18 years and over.

The Government appreciates that there are quite divergent views on how 17 year olds are dealt with in the justice system but points out that this legislation is not the appropriate forum to resolve that issue either way.

The scheme interfaces with the existing serious violent offence regime in Part 9A of the Penalties and Sentences Act which already applies to offenders sentenced to 10 or more years imprisonment or where the court makes a serious violent offence declaration. Under that scheme, the offender is required to serve 80 per cent of the term of imprisonment before they are eligible for parole.

The new scheme will apply to the offences listed in Schedule 1 of the Penalties and Sentences Act with some necessary additions to ensure that a comprehensive range of sex-related and child exploitation material offences are captured by the scheme.

The drafting of any schemes that potentially impact on the courts is scrutinised closely by the courts themselves and, in particular, the High Court. Careful drafting of other Queensland schemes, such as that provided for in the Dangerous Prisoners (Sexual Offenders) Act 2003, has successfully withstood High Court challenges where other states have failed.

A key aspect of this scheme is that it appropriately retains judicial discretion and independence, a fundamental element of our Westminster system of democracy. The sentencing court can depart from the 65% minimum standard non-parole period where the court is of the opinion that it would be 'unjust' for it to apply. In those circumstances, the court can set either a shorter or longer non-parole period.

This discretion is designed to avoid the potential for injustice in the practical application of the new scheme. Where a court decides to depart from the minimum standard non-parole period, the court must state and record its reasons. This will help to ensure transparency.

Importantly, this amendment enshrines in legislation the community's views on these matters as expressed through their elected representatives.

Dangerous management of a dog

There has been significant public concern about recent publicised cases of death and serious injuries inflicted during dog attacks.

While there are current provisions in the Queensland Criminal Code such as manslaughter through criminal negligence that could arguably cover this type of situation, a specific provision would remove any doubt at all. This is similar to what occurred many years ago when a specific provision for dangerous driving was provided so that the courts did not need to rely on manslaughter.

The Bill amends the Criminal Code to insert the new offence of 'dangerous management of a dog'. The new offence will apply to a person responsible for a dog who manages the dog in a way that is dangerous, having regard to all the circumstances, and where such dangerous management causes the death or grievous bodily harm to another person through an attack. This offence will carry a maximum penalty of 10 years imprisonment.

The offence will bridge the gap that exists between the high-level criminal negligence offences, such as manslaughter, and the lower tier offences contained in the Animal Management (Cats and Dog) Act 2008.

The maximum penalty of 10 years imprisonment is the same as the maximum penalty for the offence of dangerous operation of a vehicle causing death or grievous bodily harm.

The Government acknowledges the legitimate use of guard dogs for personal and property protection. This is provided for in the definition of the term 'manages the dog dangerously' which means managing the dog in a way that is dangerous having regard to all the circumstances. Where a dog is used to protect persons or premises, consideration will be given to whether the use of the dog was appropriate in the circumstances. This will be a matter of fact for the jury to determine.

Increased use of technology in the Magistrates Court

For some time now, the Magistrates Courts have been, by the consent of the parties, conducting matters such as chamber applications, appearances, and the like via video link. Due to existing requirements about the need for Magistrates Court matters to be dealt with in the district or division in which they commence, the Magistrate dealing with a matter via video link must be physically present somewhere within the particular district. This is nonsensical. If it is appropriate to hear them via video link 10 kilometres away it is just as appropriate 1,000 kilometres away.

The Bill includes an amendment that authorises a Magistrates Court to order that proceedings may be conducted using audio link or audio visual link facilities, where the Chief Magistrate has permitted this to occur by issuing a practice direction, and where the type of proceeding is authorised to occur using such a link. The proposed provision will apply even if the Magistrates Court is constituted for a district or division outside the district or division in which the proceeding would otherwise be required to be heard.

The amendment will be of particular benefit to people in remote and regional communities. It will encourage greater use of technology and enable cases to be heard and finalised more quickly.

Importantly, this amendment does not take away from any existing requirements for the consent of the parties to have their hearing conducted in this way. This is because the use of video technology in the courts is hampered by issues such as bandwidth

(pre the NBN roll-out) still not being mature. I look forward to the day where in many instances parties demand video hearings rather than accepting them as a necessary evil.

Removing the limit on reserve jurors

The Bill also includes an amendment to section 34 of the Jury Act 1995 to remove the limit on the number of persons who can be chosen and sworn as reserve jurors in a criminal or civil trial.

Trial judges currently have discretion to appoint reserve jurors, limited to no more than three reserves in addition to the 12 substantive jurors on a criminal trial and four jurors on a civil trial. Reserve jurors may be called upon to take the place of jurors who are discharged for whatever reason prior to verdict. In a criminal trial, a jury of at least 10 must determine the verdict. Therefore, a trial with the maximum number of reserve jurors (three) would have to be aborted if more than five jurors were discharged during the course of the trial.

The amendment is intended to avoid lengthy trials needing to be aborted, with the associated delay, expense and inconvenience.

Other amendments relating to Courts and QCAT

The Bill includes a number of other measures directed to improving the administration of the courts and the Queensland Civil and Administrative Tribunal and justice system:

The Bill amends the District Court of Queensland Act 1967 to:

- clarify the Court's jurisdiction on appeal by stating the Court's powers on appeal rather describing them with reference to the powers of the Supreme Court immediately before the commencement of the District Court Act 1958; and
- repeal provisions concerning prerogative writs which have become obsolete following the enactment of the Judicial Review Act 1991.

Amendments to the Land Court Act 2000 in the Bill are intended to

- clarify that the Land Court has all the powers of the Supreme Court for exercising jurisdiction conferred under the Land Court Act and other Acts;
- provide time limits on rehearing of a judicial registrar's decision in a proceeding;
- provide that the Uniform Civil Procedure Rules 1999 will apply to record management procedures and policies in the Land Court; and
- provide that the Land Court Registrar is appointed by the Chief Executive Officer rather than the Governor in Council.

The Bill amends the Magistrates Act 1991 to:

- clarify that the powers of the Chief Magistrate under section 12 extend to magistrates, acting magistrates and judicial registrars;
- provide that the Chief Magistrate is responsible for directing the professional development and training of magistrates and judicial registrars;
- expand the Chief Magistrate's powers to allow for the allocation of functions to a particular magistrate and the nomination of a magistrate to be a supervising magistrate or a coordinating magistrate;
- provide the Chief Magistrate with the power to issue directions about the exercise of jurisdiction in specified matters or a class of matter; and
- allow for the appointment by the Governor in Council under section 5 of more than one Deputy Chief Magistrate; and provide the Chief Magistrate with the power to appoint more than one Acting Deputy Chief Magistrate under section 5A.

The Bill amends the Queensland Civil and Administrative Tribunal Act 2009 to:

- expand the definition of 'judicial member' to enable former judges who are senior or ordinary members to sit as a judicial member on a broader range of matters;
- remove some restrictions on which tribunal members can exercise stated tribunal's powers;
- provide a discretion for the provision of written reasons for interlocutory or procedural decisions; and
- ensure that costs assessors and conciliators have appropriate protection and immunity.

The Bill amends the Penalties and Sentences Act 1992 to:

- specifically enable the court to refer a person convicted of a minor breach of the alcohol restrictions in Indigenous communities to attend an approved alcohol information and education session as part of a court order; and
- make explicit that the court can make a recognisance order for an eligible offender who is convicted of breaching the alcohol restrictions on the conditions they be of good behaviour and attend an alcohol information and education session.

The Bill amends the Recording of Evidence Act 1962 to recognise the Queensland Sentencing Information System (QSIS), an internet based research tool for information relating to criminal practice and procedure developed in conjunction with the Judicial Commission of New South Wales. QSIS will provide relevant information to parties and sentencing courts to promote greater consistency in sentencing.

Because of issues relating to the disclosure of personal information most frequently found in sentencing remarks, access to QSIS has been restricted. The amendments in the Bill will authorise the chief executive to make arrangements with prosecuting agencies such as the Queensland Police Service and defence lawyers, including Legal Aid Queensland, and other relevant agencies, for access to QSIS and ensure the protection of any personal information in the database.

Other significant amendments to legislation not in the Justice Portfolio

The Bill also includes some significant amendments to legislation that is not within the justice portfolio. These amendments have been included at the request of the Ministers responsible for the disability services, housing and industrial relations portfolios.

Guide, Hearing and Assistance Dogs Act 2006

The first of these amendments is to the Guide, Hearing and Assistance Dogs Act 2006 to make it an offence for a person in control of accommodation offered to the public to deny accommodation to a person with a certified guide, hearing or assistance dog. A breach of the offence would incur a maximum penalty of 100 penalty units. This is the same penalty as the similar existing offence under the Act for denying access to a public place to person with a certified guide hearing or assistance dog. This will further promote the inclusion of people with disabilities in the community consistent with the United Nations Convention of the Rights of Persons with Disabilities.

There is an existing obligation under Queensland's Anti-Discrimination Act 1991 not to discriminate by refusing to provide accommodation to a person who has an impairment and is accompanied by a guide, hearing or assistance dog. However, the new offence will provide an alternative avenue for redress that is likely to be less complex, expensive and time consuming for a complainant.

Manufactured Homes (Residential Parks) Act 2003

The Manufactured Homes (Residential Parks) Act 2003 (the Act) regulates the arrangement where a manufactured home owner enters into a site agreement with a residential park owner to position their home in a residential park.

In March 2011, a new section 99A of the Act commenced to provide a clear framework for the way a park owner may recoup the costs for the on-supply of a utility. The provision was developed with the intention of prohibiting residential park owners from charging manufactured home owners more than the supply price for utilities and to prohibit additional charges for the on-supply of utilities, such as electricity. However, its operation has proved unclear as to its interpretation. The Bill seeks to ensure the section gives effect to its original policy intent, balancing park owners' commercial needs and consumer protections for generally low-income manufactured home owners.

Child Employment Act 2006

The Bill also amends the Child Employment Act 2006 and Child Employment Regulation 2006.

A gap was identified in existing legislation, whereby children aged 16 and 17 years are not prohibited from being employed in adult entertainment type activities in some circumstances.

The Criminal Code prohibits the employment of children under 16 years in performing any indecent act such as adult entertainment type activities.

Under the Liquor Act 1992, persons under 18 years of age are completely prohibited from being in an area in a licensed venue where adult entertainment is being provided. Children are expressly prohibited from working as an adult entertainer and their employment in other non-sexual roles such as a waitress, glass collector, or disc jockey is also prohibited in such areas.

A gap exists, therefore, in that employment of children of the ages of 16 and 17 years in the adult entertainment industry is not prohibited in unlicensed venues, that is, in the unregulated adult entertainment industry.

This Bill amends the Child Employment Act 2006 to prohibit an employer from requiring or permitting a child up to the age of 18 years to work in inappropriate roles and situations. This includes performing acts of a sexually explicit nature or being present in an area while such acts are performed by another person. The proposed approach ensures that all children, including those aged 16 and 17 years, are protected while working in any industry, in any role.

Other justice portfolio amendments

The Bill amends the Evidence Act 1977 to clarify that husbands and wives are competent and compellable in all non-criminal proceedings, whether or not, both or either of them is a party to the proceedings.

In 2004, amendments were made to the Evidence Act to ensure that the husband or wife of a party to any proceeding were both competent and compellable to give to evidence in criminal or non-criminal proceedings in any court. The subsequent finding by the Court of Appeal in Callanan v B [2004] QCA 478 cast doubt on whether the current provisions in the Evidence Act were effective for making husbands and wives compellable to give evidence in any criminal proceeding against one of them.

This amendment will ensure spouse witnesses do not have any greater rights and privileges than other witnesses.

The Bill includes a range of amendments for improving the administration of justice and justice portfolio legislation.

- The Anti-Discrimination Act 1991 will be amended to improve complaint handling processes and provide the Anti-Discrimination Commission Queensland with additional discretionary grounds for the rejection or lapsing of complaints.
- Appointment processes are proposed to be streamlined under the Births, Deaths and Marriages Registration Act 2003 by providing for the Registrar and Deputy Registrar of Births Deaths and Marriages to be appointed by the chief executive of the Department of Justice and Attorney-General, rather than the Governor in Council.
- Administrative efficiencies are to be facilitated through amendments to the Classification of Films Act 1991 to enable the Commonwealth Classification Board to consider exemptions to screen unclassified films at film festivals as in other states. This will relieve Queensland from assessing hundreds of film applications each year.
- The Bill provides for the abolition of the Dispute Resolution Centres Council under the Dispute Resolution Centres Act 1990, as recommended by the Independent Review of Government Boards, Committees and Statutory Bodies.
- An amendment to the Evidence Act 1977 also promotes efficiency by requiring a DNA analyst for a party to attend court to give evidence only if the other party, by notice in writing, indicates the analyst is required to give evidence.
- Flexibility is to be provided under the Guardianship and Administration Act 2000 to allow for the appointment of community visitors on a casual basis.
- The Bill amends the Justices Act 1886 to allow the Minister to delegate to the Chief Executive Officer a decision to release copies of records in certain proceedings.
- Amendments to the Justices of the Peace and Commissioners for Declarations Act 1991 will allow for the register of Justices of the Peace and Commissioners for declarations to be maintained in electronic form and the registrar to exempt appointees from gazettal in appropriate cases.
- The Bill amends the Peaceful Assembly Act 1992 to allow the Police Commissioner to delegate his functions under the Act to a police officer of the rank of sergeant or higher which reflects the rank that usually performs the role of Superintendent of Traffic.
- The Criminal Law (Rehabilitation of Offenders) Act 1986 is proposed to be amended to exempt court registry and State Reporting Bureau staff from criminal liability under the non-disclosure provision when performing a function of their employment.
- The Bill amends the State Penalties Enforcement Act 1999 to clarify, with retrospective operation that, if a corporation defaults in paying fines, penalties or other amounts under a court order, the amount can be registered with the State Penalties Enforcement Registry. The Bill also ensures officers of shared service agencies are protected from liability when performing functions on behalf of the State Penalties Enforcement Registry.
- The Bill amends the Trustee Companies Act 1968 to facilitate the voluntary transfer of trustee company business from one trustee company to another under the new voluntary transfer regime in the Corporations Act 2001 (Cwth). In addition, it

facilitates the transfer of trustee company business to the Public Trustee (if agreed by the Public Trustee) where the licence of the trustee company has been cancelled.

Minor amendments

Finally, the Bill also includes minor and technical amendments to justice portfolio legislation identified as desirable by the Office of the Queensland Parliamentary Counsel.

Conclusion

The Bill provides for a range of substantial reforms to the criminal law through the introduction of minimum standard non-parole periods and the introduction of the offence of dangerous management of a dog.

It includes measures to modernise, streamline, clarify and improve the administration of justice and justice portfolio legislation, including through the expanded use of audio and visual link facilities.

I commend this Bill to the House.

First Reading

Hon. PT LUCAS (Lytton—ALP) (Attorney-General, Minister for Local Government and Special Minister of State) (11.07 am): 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.

Mr DEPUTY SPEAKER (Mr Wendt): In accordance with standing order 131, the bill is now referred to the Legal Affairs, Police, Corrective Services and Emergency Services Committee.

STRATEGIC CROPPING LAND BILL

Second Reading

Resumed from 30 November (see p. 3974), on motion of Ms Nolan—

That the bill be now read a second time.

Mr LAWLOR (Southport—ALP) (11.07 am): I resume my speech in support of the Strategic Cropping Land Bill which I almost completed last night. For development under the Sustainable Planning Act, fees will range from $500 for small developments to $9,035 for mid sized development to $27,254 for large developments. For resource developments, the fees will range from $9,806 for developments which meet a standard conditions code to $27,254 for all other types of developments.

The final step in the Queensland government's extensive consultation process was the release of a draft state planning policy on 5 August 2011. The draft state planning policy was released to seek public feedback on the Queensland government's planning policy and development assessment framework for protecting strategic cropping land under the Sustainable Planning Act 2009. The new state planning policy will operate in tandem with State planning policy 1/92: Development and the conservation of agricultural land, which applies to a broader range of agricultural lands.

Submissions closed on 30 September 2011 and 67 submissions were received. The draft state planning policy is being reviewed based on the feedback received during consultation. It is intended that the finalised state planning policy will commence at the same time as the legislation. The government considered the feedback received on the draft state planning policy and will ensure that the final state planning policy will better account for developments that present a low risk to the protection of strategic cropping land resources.

Further, changes have been made to exempt small developments with a footprint less than 750 square metres, key resource areas and certain types of developments such as building structures or activities supporting cropping. This means that farmers on strategic cropping land will be able to diversify their business in many ways without being affected by this legislation. Consultation with key stakeholders and the public was the fundamental basis for the development of the Strategic Cropping Land Bill 2011. The consultation undertaken has been extensive, and I commend the bill to the House.

011 **Mr McLINDON** (Beaudesert—KAP) (11.09 am): I rise to make a contribution to the Strategic Cropping Land Bill 2011. I must say from the outset that I see this as reactive legislation. However, it is a step in the right direction—a very small step. Some 10 years ago, if not 15 or 20 years ago, the bill could well have been titled the 'Strategic Mining Land Bill'. That would have been far more beneficial in terms of looking at the strategy of where mining can and cannot take place within Queensland. What we are seeing here now is a rushed piece of legislation given that a lot of approvals have already been steamrolled across many parts of rural and regional Queensland which cannot be undone very easily given that there are contractual agreements in place. This bill should be looking at the future of Queensland—the next 50 or 100 years—in terms of where mining can and cannot take place. The