Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (2.29 p.m.): I rise to generally support this bill. I intend to deal with only a limited number of its provisions. It is imperative that the legal process, which incorporates statute law, is fluid and recognises the mores of our community. The community continues to evolve. As a consequence, the law generally follows that evolution, certainly within the realm of the criminal and quasi-criminal jurisdictions. As I said, the process usually follows the community's changing point of view. Yet, it is considered that the legal process must continue to be an evolving one.

The amendment that this bill makes to the Civil Liability Act 2003 provides an additional definition of 'community worker' to incorporate those who donate food provided their donations are—

... not for private financial gain and are done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose.

The bill goes on to amend the term 'volunteer' to incorporate a person who donates food in certain circumstances. Clause 39 sets out the details of those circumstances. The intent of the bill is to remove civil liability from those persons who qualify under its terms. However, I note that clause 24(3)(b) states as one of the conditions to gain the exemption from liability the following requirement—

That the food was safe to consume at the time it left the person's possession.

I wonder if the Attorney-General could clarify in his reply whether that clause means that, if through no fault of a volunteer the food was not safe to consume at the time it left the volunteer's possession, the exemption will not apply. The subclause appears quiet on the question of knowledge. The clause amending the Civil Liability Act poses one problem. The amendment means that if a person suffers illness or even death as a consequence of consuming food given by a volunteer, that person's rights or their family members' rights to commence legal proceedings as a consequence of the illness or death is removed. Of course, this is a serious step and needs to be weighed against the benefits highlighted by the terms of the bill. Generally, the removal of a legal right is seen as a retrograde step. The removal in this amendment needs to be balanced against the need in our community to acknowledge those people who act with a community spirit and to acknowledge the vital role that volunteers play in our society. On balance, the need in the community is greater, given the social and economic times in which we reside. However, the interpretation and implementation of this legislation will need to be watched carefully.

The amendment to the Drug Rehabilitation (Court Diversion) Act 2000 proposes to extend the operation of the drug courts until 31 December 2006. The purpose of the drug courts is well known. However, it is indeed time for the courts to be assessed on various levels as to their effectiveness. Again, the community needs in the current social and economic context need to be addressed. The drug courts have been operating since 1998-99 and they have spread throughout the state. Clearly, an assessment of their viability is due. I hope that there will be no future extension of that assessment beyond December 2006.

The amendment to the Jury Act 1995 opens in part the age-old debate of the viability of the jury process and what takes place within the jury room itself. Consistently, the common law has refused to enter into a debate of what takes place in the jury room unless there are exceptional circumstances. There

are many decisions throughout Australia of similar note. However, section 70 of the Queensland Jury Act provides the limited circumstances under which disclosure of what has occurred within the jury room may occur. As the law stands currently, it does not specifically deal with a juror disclosing information to a health professional who is treating that juror in relation to issues arising out of that juror's service. The proposed amendment is somewhat similar to section 78 of the Victorian Juries Act 2000 and, on balance, deals appropriately with jurors who suffer as a consequence of what they see, hear, or discuss in the confines of the jury. It is unfortunate that we as a community are beset by horrendous crimes in escalating numbers. As a consequence, jurors being human suffer significant psychological and/or psychiatric injuries as a result of what takes place in their role as juror.

Additionally, the amendments to the Jury Act provides the sheriff with authority to disclose certain information to the health professional, but the type of information is very limited. However, I note that subsections 7, 8 and 9 of section 78 of the Victorian Juries Act 2000 provides additional protection for people in certain circumstances, such as permitting publication or disclosure of information where the juror or the legal proceedings cannot be identified or, with the consent of the Attorney-General being obtained, a person conducts a research project into matters relating to juries or jury service. It may be appropriate for those provisions to be considered at some time in the future as they would seem to be a natural flow-on of the amendments proposed today.

The amendment to the Peace and Good Behaviour Act 1982 deals with an issue that arises on many occasions. People often complain that they have a fear, brought about by the conduct of another, that that other person will destroy or damage their property. This is a commonsense amendment and it is to be commended.

Of importance is the amendment to the Supreme Court Act 1995, which I deem to be significant and long overdue. Part 24 of the bill proposes an amendment to the Supreme Court Act 1995. Historically, part 24 goes back to old English common law and is known in Australia as a Lord Campbell's action, which provides a right for a deceased family to pursue an action where the death was caused by a wrongful act. This has been enshrined in Queensland's Supreme Court Act 1995. The decision in the High Court in De Sales v. Ingrilli supported the community's strong feeling that damages should not be reduced on account of the possibility that the surviving spouse may make a beneficial remarriage or enter into a new relationship in the future. Historically, this law has impacted severely on women and the movement by the High Court, albeit belatedly by many years, is at last seen as a step in the right direction. This bill now proposes to place in legislation the decision of the High Court and in addition implements the recommendation of the Queensland Law Reform Commission. Historically, the impediments imposed under a Lord Campbell's action, predominantly on women, were grossly unfair and, to say the least, sexist. It removed the fundamental right of a woman, and in many cases her children, from a rightful claim by way of compensation. It became so farcical that—and I quote from a Parliamentary Library brief on the issue, No. 2004/14—

> ... the argument often raised to justify the discount of a damages award to account for the possibility of remarriage was that to do otherwise would give the surviving spouse a windfall and to require the defendant to pay for more than what the surviving spouse has lost financially.

In many cases the question came down to whether the surviving spouse, again predominantly female, would remarry. In my opinion, this placed a women in the position of a chattel and the court would weigh up her prospects as it would the qualities of cattle. It degraded the status of women. This legislation finally does away with that practice. I commend the bill to the House.