Speech by

# Evan Moorhead

## MEMBER FOR WATERFORD

Hansard Wednesday, 22 August 2007

## JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

**Mr MOORHEAD** (Waterford—ALP) (3.07 pm): I have not been in this House for long—

**Mr Reeves:** You've got a hard act to follow.

**Mr MOORHEAD:** I do have a hard act to follow. I sat here while the member for Caloundra quoted himself to support his own proposition. He then quoted a part of his speech which is recorded in *Hansard* and read it into *Hansard* again. I say to the member for Caloundra: to quote oneself as an authority for oneself does not contribute to the debate and consideration of the matters before the House.

I start my contribution by speaking to the Scrutiny of Legislation Committee *Alert Digest No. 5* which raises three issues for this House to consider concerning the manner in which this bill affects the rights and liberties of Queenslanders. The first issue raised by the Scrutiny of Legislation Committee in report No. 5—an insightful report, if I might say so—deals with the limitation of the Judicial Review Act in its application to decisions under the Building and Construction Industry Payments Act 2004 at parts 2 and 3.

The provisions in question provide for a speedy and effective interim resolution of disputes and overpayments in the building and construction industry. That is eminently sensible. That system means that subcontractors and their contractors are not driven to the wall while they wait for payments and litigation to be finalised in respect of construction work that has been ongoing.

Obviously the construction industry is one that requires significant capital outlay by subcontractors and their subcontractors before proceeding and before payment for that work can be received. But while judicial review is limited in that regard, that in my view is entirely consistent with the nature of the provision. The interim adjudication provided by the tribunal in this case does not affect a party's right or any interest they have and their ability to pursue those claims through the courts. This is simply about payments that are disputed and are made through a rapid adjudication system to ensure that our construction industry can continue in an efficient manner. While the committee did refer that matter to the parliament, in my view that is an entirely appropriate amendment to be making and I think clause 91 of the bill deals with that quite well.

The Scrutiny of Legislation Committee's report No. 5 of 2007 also deals with the recognition that the bill does retrospectively impose amendments to the Justices of the Peace and Commissioners for Declarations Act 1991 and the requirement that the form be endorsed by a local, state or Commonwealth member of parliament or by a business nominator when they cannot obtain the signature of their local, state or Commonwealth member of parliament. While this is retrospective in nature, this is one of those occasions where retrospective legislation is there to cure a defect of an unintended legislative consequence from previous amendments to the act.

While some people may have had their applications to become justices of the peace or commissioners for declarations rejected on this basis, I understand the practice to be that the registrar responsible would provide to the applicant a further opportunity to take their application to their state member for endorsement, and I am sure that process provides little inconvenience to those who do it. Like, I am sure, other members of the House, I quite regularly interview applicants and complete their form. In my view we are not retrospectively taking rights off people; we are legislating to fix a technical defect that

has existed in the law and, importantly, the requirement is largely a procedural one because the test required for local members is only that they are not aware of any reasons why the person should not be a commissioner for declarations.

The other issue before the Scrutiny of Legislation Committee was clause 108 which provides immunity to a member in the Land Appeal Court and participants in those proceedings from prosecution. Given that the Land Appeal Court has proceedings similar to other Queensland courts, it is appropriate that those proceedings be protected with Supreme Court type immunity.

I now turn to clause 6 of the bill which amends the Anti-Discrimination Act 1991 and put on the record my sincere thanks to both the current Attorney-General, the member for Toowoomba North, and his predecessor, the member for Kurwongbah, when she was Attorney-General for their hard work on this issue. Before I was elected to this place I was part of a delegation from the Australian Manufacturing Workers Union—the delegation also included Andrew Dettmer and Katelyn Allen from the union—that met with the then Attorney-General, the member for Kurwongbah, to raise with her the real quandary that these provisions placed Queensland workers in, particularly given the real lack of any effective redress for workers who are discriminated against on the basis of their trade union activity in the federal jurisdiction.

The federal jurisdiction in this regard provides two means of redress at different ends of the spectrum. Workers who feel that they have a claim to pursue are either required to proceed to the Federal Court and take action in that quite expensive jurisdiction under what was part 10A of the Workplace Relations Act 1996, in particular section 298K—and often when we are talking about issues of employment, the costs of those proceedings would outweigh any compensation that employees may well be entitled to. At the other end of the spectrum was the Human Rights and Equal Opportunity Commission where, while a worker is entitled to make a complaint of discrimination on the basis of trade union activity and HREOC is given the opportunity to investigate that matter, there is actually no means of redress.

Unlike other areas of discrimination, if one makes a complaint of discrimination on the basis of trade union activity they cannot then take their finalised complaint to the federal Magistrates Court or the Federal Court to pursue some remedy. They are really left with that empty feeling of a sympathetic HREOC but no redress whatsoever. This provision ensures that Queensland workers who may be on federal awards or are now within the federal jurisdiction—and I note that the WorkChoices legislation has immensely increased that number—will have an opportunity to make their complaint to the Anti-Discrimination Commission of Queensland, and that reduces the conflict between the Industrial Relations Commission provisions and the Anti-Discrimination Commission provisions.

I now turn to the amendments in this bill that deal with the Drugs Misuse Act 1986 and the Penalties and Sentences Act 1992. One of the more significant amendments contained in this bill goes to the inclusion of offences against section 10(4) and 4A of the Drugs Misuse Act 1986 into the illicit drug diversion program. Part 3 division 1 of the act provides for the referral by a drug diversion court of an eligible offender who has been charged with an eligible drug offence to a drug assessment and education session, and this is known as the court diversion program for minor drugs offences. Eligible drug offences are defined in section 15D of the act, and the offence of possessing and failing to take reasonable care and precautions with respect to a hypodermic syringe or needle and of possessing and failing to dispose of a hypodermic syringe or needle in accordance with the regulations are added to the list of eligible drug offences for which an offender may be diverted. The amendments mirror those in clause 103 in relation to child offenders. So the same procedure would work in the Children's Court provisions and in the provisions relating to adults. The Queensland Illicit Drug Diversion Initiative is part of the COAG Illicit Drug Diversion Initiative and is an initiative funded by the Commonwealth. While initially a pilot was established in Brisbane in 2003, since 1 July 2005 it has been a statewide program.

The program aims to divert adults and juveniles convicted of minor drug offences into counselling rather than simply imposing a fine on them. If the offender pleads guilty and meets strict eligibility criteria, the court may place the person on a recognisance with a special condition requiring attendance at a drug assessment and education session. The program offers people charged with a minor drug offence the opportunity to receive professional help through early intervention and programs rather than proceeding through the normal court process. This is an important alternative rather than continuing to fine minor offenders who may well come back into the process because of their involvement in drugs. This alternative is about fixing the problem, not just papering over the cracks with some proceedings. This means that we will directly affect the underlying issue of drug misuse that brings the person before the court. Since the program commenced as a pilot, a total of 10,924 assessments have been undertaken, 9,352 offenders were diverted into an assessment and education session and 91 per cent of those people who participated in the program complied with the order.

This bill includes amendments that broaden the list of eligible drug offences through the inclusion of section 10(4) and section 10(4A). The amendments will enhance the operation of the program and its reach on tackling the illicit use of drugs in our community. Experience with the program has shown that a lot of offenders who appear in court on charges relating to the possession of drugs or utensils tend to also face charges relating to a failure to dispose or take reasonable care. These people can successfully be

diverted to the program for the possession of dangerous drug or utensil charge, and they are normally diverted into an assessment or education session. However, for the syringe charge, another penalty has to be imposed. In my view, these amendments are common sense. They bring together those drug related charges that an individual faces and they deal with the underlying cause. I do not think any member of this House has sympathy for those who put others at risk of needle stick injuries, but if we can work through this program to fix the underlying issue of drug misuse, we can then address the issue of needles and the appropriate use of needles in our community.

There was an article published in the *Courier-Mail* on 27 February 2007 which described this program under the heading of 'Drugs court: a soft option on users'. It criticised the program as doing little to ease the social cost of drug use while offenders were forced to attend only woefully inadequate sessions with no ongoing monitoring. This program is not about soft options. Offenders who comply with the requirement to attend a counselling session are deemed to have satisfied the conditions of the order and have no conviction recorded. Noncompliance with the requirements of the court diversion program, however, results in the commencement of breach proceedings for adult offenders and may ultimately result in a warrant being issued and the offender being returned to the court for resentencing.

The philosophy of the program is to offer all offenders who have been charged with a minor drug offence and who have little or no criminal history the opportunity to attend an assessment and education session rather than having the traditional sentence of a fine imposed upon them. The assessment and education session is about addressing their drug use and preventing a new generation of drug users from committing drug related crime. It is about the opportunity for them to acknowledge and to take personal responsibility for their offending behaviour whilst not having a conviction recorded against their name. Invariably, this leads to safer environments for Queenslanders by reducing the personal and social cost of drug misuse in our communities.

In the time that I have left, I want to deal with the important amendment that the bill makes to the Penalties and Sentences Act 1992 which relates to the requirement that a court when sentencing must have regard to the successful completion of any rehabilitation, treatment or other intervention program that the offender was required to attend as a condition of their bail. This amendment recognises that there may be cases where the offender was on bail for an extended period and subject to onerous conditions. In such a case, the court may consider compliance as evidence of the offender's efforts at rehabilitation.

There is no intention in this legislation to require the courts to have regard to failure to comply with the bail program. That is because the person's bail is itself the subject of its own legislative regime which provides its own consequences for a breach. Asking the court to consider imposing a greater punishment than it otherwise would raises issues of double punishment, which I do not think any member of this House would support.

The intention of the amendment is to not allow for a positive consideration that can be held in favour of an offender but to allow a court to consider whether an offender's failure to comply with terms and conditions of their bail should result in a higher punishment in the range available being imposed. Unlike other proposals being put forward by the coalition, this amendment will allow for a positive consideration rather than providing for that double punishment, which is being put forward by the coalition.

This bill is an important measure in providing a viable alternative to fines that will address the underlying drug problem. It will ensure that we have safer communities and communities that are protected from drug related crime. I commend the bill to the House.