Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 17 June 2009

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL BILL; QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (JURISDICTION PROVISIONS) AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (3.12 pm), in reply: At the outset, I would like to thank all honourable members for their contributions to this debate on these important and historic bills. In particular, I thank honourable members for the way the debate has been conducted and the thoughtful way they have made contributions to this important law-reform measure in our state.

These bills represent the most significant reform to Queensland's justice system in 50 years. The establishment of QCAT will provide Queenslanders with access to civil and administrative justice through a single gateway. Queenslanders will no longer have to negotiate the maze of administrative review bodies, tribunals and courts in order to identify where to seek redress.

The benefits are many and include greater consistency and quality of decision making through increased standardisation of procedure, the requirement to provide written reasons, increased access to appeals and greater sharing of knowledge and resources; specialised approaches for particular jurisdictions through specialist procedures in enabling acts and the transfer of existing members to QCAT; an enhanced focus on early resolution of disputes; and a greater openness and accountability in government decision making.

A number of issues were raised during the second reading debate that I wish to address. Some of those I will need to address in detail because of the number of issues raised, particularly by the member for Southern Downs. One of the issues that was raised during the debate, albeit fairly tangentially, was the concern that there was some delay and procrastination in bringing this bill to the House. I remind all honourable members that the Commonwealth parliament passed the Administrative Appeals Tribunal Act in 1975, some 34 years ago, and even on the admission of the member for Southern Downs, the Victorian parliament passed the relevant legislation to establish the Victorian Civil and Administrative Tribunal in 1984, some 25 years ago. The Bligh government announced this initiative in March 2008 and some short time later—some 14 or 15 months later—we have this very significant reform moving through the parliament. I do not believe there has been any procrastination at all in bringing this important measure before the House.

I acknowledge that the member for Southern Downs indicated his support for the bill but he raised a number of issues. I will endeavour to deal with these issues under a series of headings. The first is jobs. I can assure the member for Southern Downs that no permanent public servants currently employed in a registry being amalgamated into QCAT will lose their job as a result of QCAT's creation. QCAT's larger structure provides improved career paths and opportunities for staff, which is very important.

The small number of applications each year for some tribunals as they are currently constituted means that only one person performs the registry role. That means there is no opportunity for the person to progress to a more senior registry role. The larger structure also means that training and professional

development for staff can occur more regularly. At the moment, in some of the smaller tribunals, the registry function has to fit in around other duties for that particular person.

With respect to the issue of possible duplication, this is an issue that the government has taken very significant steps to attempt to avoid. To this end, Mercer consultants—experts who specialise in organisational design—have been engaged to assist in the design of a registry system and framework to ensure that the duplication of function is avoided.

The member for Southern Downs raised a concern that the tribunal would not be independent. I can assure the honourable member that the independence of this tribunal—as with all decision-making bodies that Labor governments bring to this parliament in any legislative reform—is a central concern. This bill specifically provides at clause 162 that the tribunal is independent and is not subject to direction or control by any entity, including any minister.

The member for Southern Downs also raised concerns that hearings may occur in the absence of one of the parties. The bill does make specific provision in clause 93 for the hearing of matters in the absence of one of the parities but only in those circumstances where the tribunal is satisfied that the absent party has been given notice of the proceedings or the tribunal is satisfied that the person cannot be found. In all cases, the tribunal must apply the principles of natural justice in determining whether or not a matter can proceed in this manner. There is also specific provision made for a party aggrieved by such a proceeding to apply for leave for the matter to be re-opened. These are non-controversial matters and form the nature of legal proceedings in a range of other courts and tribunals throughout this state and the Commonwealth.

An important matter raised by the member for Southern Downs is regional access to QCAT. The member for Southern Downs raised concerns that QCAT will be Brisbane focused. I can assure the honourable member that nothing could be further from the truth. The reality is that, like all courts in Queensland, the primary registry and majority of the work will occur in Brisbane but the needs of regional Queenslanders were foremost in this government's mind when designing this tribunal. To this end, QCAT will operate throughout Queensland and build on existing regional access strategies and frameworks for current tribunals and courts, particularly the Magistrate's Court.

QCAT will have a central Brisbane based registry office. However, applications will be able to be lodged at Magistrates Court registries in the regions. Case management of all QCAT applications will occur through the Brisbane registry, except for minor civil disputes which will continue to be managed in the regions. Payment of fees for applications will be able to be done locally at any Magistrates Court. A range of strategies will be implemented for hearing matters in regional, rural and remote areas, including the improved use of regional members and information technology resources—in particular, videoconferencing and teleconferencing—as well as the continued use of current resources used to provide services in regional and remote areas, for example, the use of magistrates and court buildings in regional parts of Queensland. A variety of different venues are to be used in the regions to hear matters, including magistrates courts and other venues used by existing tribunals who have regional arrangements at present.

The member for Southern Downs suggested that regional Queensland would suffer because it would increase the workload on magistrates in regional centres. With respect to the honourable member, there is nothing in the bill to support the particular conclusion drawn by the honourable member. On the contrary, the jurisdiction being exercised by regional magistrates is the same as that they currently exercise—namely, minor debt matters and small claims matters.

While it is true that magistrates will be required to provide reasons, this is a very significant improvement in the way the Small Claims Tribunal, to be folded into the new Civil and Administrative Tribunal, will work. It is a very significant measure, because it will add to greater consistency, greater certainty of outcomes and greater effectiveness for that particular jurisdiction. This side of the House has viewed this requirement as increasing the consistency, as I have said, and in particular the quality of decision making across the state and across jurisdictions, ensuring that people who have a right to know how the decision was made will know how it was in fact made. This is a very significant part of the bill. It should be noted that reasons can be given orally or in writing, and only in writing where there is a request by the parties.

In respect of rights of appeal, I would like to assure the House that there is no general diminution of appeal rights through the tribunal. In fact, on the whole, an increase in appeal rights will result from the QCAT amalgamation—something which the member for Nicklin spoke about in his contribution. The bill enables a party to appeal to the appeal tribunal where a judicial member did not sit on the original hearing. If a judicial member constituted the original tribunal then the appeal is to the Court of Appeal. A party may appeal to the appeal tribunal on a question of law as of right. Leave of the appeal tribunal is required where the appeal is on a question of fact or mixed question, is from a decision of the tribunal on a minor civil dispute, or is an appeal from an interim or interlocutory decision.

With respect to the issue of judicial review, clause 156 partially ousts judicial review of QCAT decisions and conduct. Applications under the Judicial Review Act 1991 may still be made on the ground

of jurisdictional error. The rationale for this restriction is that the bill provides substantial appeal rights, representing an increase in appeal rights for parties in many of the current jurisdictions. Further, in practice, a judicial review application is likely to be dismissed by the Supreme Court on the basis of the availability of the QCAT appeal process in any event.

In respect of reporting on government services, small claims and minor debt matters are the only original jurisdiction tribunal matters that are currently reported through the *Report on government services* process. This will not change after these jurisdictions are amalgamated into QCAT. The government is currently developing an evaluation framework that will enable reporting on the effective operation of the tribunal.

Some issues were raised in respect of specialisation. The adoption of a single amalgamated tribunal will not result in a loss of specialisation for persons having their matters heard through the new tribunal. The experience in other jurisdictions is that the amalgamation of tribunals in this fashion improves the consistency and quality of decision making, results in improvements in tribunal practices and ensures the principles of natural justice are applied consistently. Care has been taken to ensure that in the development and design of QCAT the specialisation of tribunal hearings is maintained where appropriate.

While the QCAT Bill sets out general procedural provisions for the hearing of matters before QCAT, it also allows an enabling act to contain specialist provisions that modify the provisions of the QCAT Bill for the jurisdiction conferred by that enabling act. For example, under the Children Services Tribunal Act 2000, the Children Services Tribunal must hear reviews of administrative decisions made under the Adoption of Children Act 1964 and the Child Protection Act 1999 in private. This requirement is designed for the particular needs of vulnerable children and adults involved in, or the subject of, these proceedings.

The jurisdiction provisions bill will continue this specialist requirement for the hearing of these matters by amending the Adoption of Children Act and the Child Protection Act to require QCAT to hear these matters in private. This provision overrides the provision of the QCAT Bill that says hearings are public unless otherwise ordered by the tribunal. Specialist practices and procedures for particular jurisdictions will also be set out in the tribunal rules, and the rules will be a significant part of how QCAT operates.

In respect of alternative dispute resolution, this is central to the work of QCAT. It is integral to the fabric of the tribunal. The bill provides that mediation can be ordered at any time. There are provisions for case conferencing as well. The new registry structure will have a specific ADR area to examine the role of ADR within the tribunal and how this can be improved over time.

Issues were raised in respect of accessability for vulnerable persons. The bill at length goes into how steps have been taken to ensure the needs of vulnerable people are protected under the new QCAT arrangements. Clause 29 requires QCAT to ensure parties understand the practices, procedures and decisions of the tribunal. Proceedings must be conducted in a way that is responsive to cultural diversity and the needs of parties or witnesses who are children, people with impaired capacity or people with a physical disability. This is a very significant reform measure.

From a practical perspective, current sessional members of the Guardianship and Administration Tribunal, the Children Services Tribunal and the Anti-Discrimination Tribunal will be automatically transitioned into QCAT for the first two years if the member consents. This means their practical knowledge about how to run a hearing that effectively meets the needs of people with special needs will be used when QCAT hears these matters. The president will play a major role in ensuring that the processes and procedures used in hearings involving people with disabilities are appropriate. Clause 4 of the QCAT Bill requires the tribunal to ensure the tribunal is accessible and responsive to the diverse needs of persons who use the tribunal.

There are a range of other provisions in the bill which I will not delay the House with at this time in respect of responsiveness to vulnerable persons, but I would refer honourable members to clauses 167, 183, 29, 43, 66, 90, 91 and 99 of the bill. In addition, where certain jurisdictions have unique requirements, these have been incorporated into enabling legislation. For example, the Child Protection Act 1999 will have a new part 'Tribunal Proceedings' with a range of provisions aimed at protecting these vulnerable children in tribunal proceedings.

In respect of consultation with the Children Services Tribunal, I appreciate the concerns raised by the member for Southern Downs on the protection of children and the delivery of services to vulnerable children. However, the Children Services Tribunal has been consulted extensively during the development of this bill and the tribunal supports the amendments. The key issue raised by the member for Southern Downs concerned the importance of the interests of the child as the paramount concern in decision-making processes. The preservation of the focus on the child and how the specialisation of the current tribunal would be translated to the new QCAT were also issues specifically raised by the department of child safety during the consultation process and were addressed accordingly.

In short, there are no significant changes to the way QCAT will deal with matters formerly heard by the Children Services Tribunal. The QCAT framework recognises the particular sensitivities of tribunal hearings of administrative decisions made under the Child Protection Act 1999 and Adoption of Children Act 1964. Accordingly, the new chapter 2A to be inserted into the Child Protection Act 1999 and the new part 1 to be inserted into the Adoption of Children Act 1964 replicate a number of provisions of the Children Services Tribunal Act 2000. Those provisions preserve the tribunal's child focused perspective.

The Children Services Tribunal Act 2000 has specific provisions designed to increase the accessibility of review proceedings for children and young people, and provide a more protective environment for the people who may appear in the tribunal. The QCAT Bill incorporates a number of the provisions aimed at ensuring the tribunal as a whole is responsive to vulnerable persons. However, specific provisions are inserted into the enabling acts to ensure that the procedures, particularly for children and young people, that currently apply in the Children Services Tribunal will continue to apply in QCAT.

Although the QCAT Bill proposes to repeal the Children Services Tribunal Act 2000, the independence of reviews in the child protection jurisdiction will be maintained. Those specialist provisions which are not suitable for the QCAT act will be located in the Child Protection Act 1999, in a chapter 2A devoted to tribunal proceedings. In this way, the detailed provisions for children will be retained within a child protection framework. In order to maintain the independence and integrity of this jurisdiction, however, administrative arrangements will be made so that this part of the act will be administered by the Attorney-General instead of the minister responsible for the decisions being reviewed.

QCAT will also have the power when it reviews decisions to make written recommendations about the agency's policies, practices and procedures to the chief executive responsible for child safety and to monitor the progress of these recommendations in this jurisdiction. In this way the important role of the Children Services Tribunal to improve the quality of decisions involving children in the child protection system will be continued under QCAT.

The member for Southern Downs raised a concern that children may not be aware of how to overturn a decision by a department. The Child Protection Act as well as the QCAT legislation require that departmental decision makers give people notice of decisions made by the tribunal affecting them and what steps they may be entitled to take if they are unhappy with the decision made. With respect to the enforceability of tribunal orders concerning departmental decisions, the current bill will reflect existing practice.

In respect of confidentiality, there are specific provisions in the Child Protection Act 1999 to protect the confidentiality of children in the child protection system. These will apply to tribunal proceedings to ensure that vulnerable children are protected. There will be no change in respect of recognised entities from the current position under the Children Services Tribunal to the way in which the views of recognised entities for Aboriginal and Torres Strait Islander children will be taken into account in reviewing decisions under the Child Protection Act 1999.

When hearing a review of a decision in this jurisdiction about an Aboriginal or Torres Strait Islander child, QCAT will be bound by the obligations contained in section 6 of the Child Protection Act 1999. This means that, standing in the shoes of the decision maker, QCAT will have to consider the views of the recognised entity for the child. This may occur through a variety of ways, including hearing directly from the recognised agency in the tribunal.

QCAT has a significant degree of flexibility to inform itself as it sees fit and to determine its own procedure. There is also a legislative obligation on the tribunal to take all reasonable steps to ensure that it understands the context of actions taken and views expressed by parties and witnesses, especially having regard to the party's cultural background.

In respect of matters raised by the member for Southern Downs about the relationship between QCAT and the Queensland Law Reform Commission's review of guardianship, my department has provided regular updates to the QLRC to ensure its review process is informed of the development of QCAT. As well, the QCAT review team sought submissions from the Queensland Law Reform Commission on the development of the QCAT legislation to ensure that the amendments to the Guardianship and Administration Act maintained the government's commitment to implementing the most recent QLRC report. When QLRC conducts consultation later this year as part of its review, my department will be providing information on the QCAT legislation as it affects the Guardianship and Administration Tribunal.

Issues were raised with respect to monitoring and reporting. As I have noted previously, an evaluation framework is being developed jointly by Griffith University and the University of Queensland. The framework will provide government and the president of the tribunal with indicators of whether QCAT is meeting its objectives. Both outcome indicators and processes and systems will be able to be assessed as part of the evaluation framework. The framework will take into account the different requirements of the diverse jurisdictions within QCAT. For example, a measure that QCAT hears a matter within a very short

time is useful for minor civil disputes. It is not a good measure for other more complex matters that require more extensive inquiries and hearing processes.

The member for Southern Downs raised an issue in respect of accountability and the right of review under the Disability Services Act, the Legal Profession Act and the Property Agents and Motor Dealers Act. The QCAT legislation maintains the current review rights for these matters.

The member for Southern Downs was worried that because the rules of the tribunal were not included in whole in the legislation this would provide scope for the government to subvert the independence of the tribunal. With respect, it is neither unusual nor cause for concern that the operational rules governing aspects for tribunal or court practice are not included in establishing legislation or come to this House. This ensures such rules can adapt most effectively to the needs of the tribunal and those persons that come before it. It should be further noted that these rules will be subordinate legislation and, as such, could be disallowed by parliament.

The member for Gympie raised some issues in respect of franchisees. Due to the current Commonwealth activity in the area of national consumer laws, it is not possible to say at this stage whether franchisee matters will be included in QCAT's jurisdiction. I note the member's interest in the issue and I undertake to consider what steps may be taken in the future to address these concerns.

In respect of operational issues, the member for Southern Downs raised a range of operational and budgetary questions at the conclusion of his speech. I would point out to the member for Southern Downs that these are the types of questions that, I would respectfully suggest, could be raised during the opposition briefing on the bill. That is something I do as a matter of course for all bills brought before the House.

With respect to his budgetary questions, the QCAT budget is currently being finalised, but $6.5 million has been allocated to the creation of QCAT. On operational matters, the number of staff in the registry will be 91. The member asked whether the tribunal would pay for independent witnesses. I am unclear what he is proposing in this regard, but given that there is no such provision in the existing tribunals, there is no current intent to change this approach. The member for Southern Downs has asked who will be appointed as the president of QCAT. I am consulting a range of individuals in respect of that. That appointment is under active consideration by me.

In conclusion, I would like to thank all honourable members for their contributions during the debate on this bill. I would particularly like to thank my predecessor as Attorney-General, the member for Toowoomba North, the Hon. Kerry Shine, whose dedication to reform and the evolution of our legal system saw this project move forward with clarity of vision and continued attention to legal and practical detail.

I want to acknowledge the expert panel who worked tirelessly on this process: Julie-Anne Schafer, the Hon. Glen Williams and the now Justice Peter Applegarth of the Supreme Court of Queensland. Can I also reinforce to all members in this place that the development of this legislation, affecting virtually every department, has been a very significant piece of work by the Queensland Public Service. This is reflected by the number of officers from across government who have been directly involved in its drafting—over 100 of them. They are too numerous to mention. On behalf of myself and the government, I want to personally thank those officers and the departments that have made their staff available to do this work. There are some individuals that I would like to particularly thank. I thank these officers of my department: Kyla Hayden, Joanne Linde, Kim Chandler, Therese Oxenham, Nicala Haigh, Belinda Guinea and Jenny Lang, in particular, who led this team. They set the goal standard for the preparation of legislation. Their commitment to this project was absolute. They contributed enormously in respect of consultation, in particular, both within government and with external agencies and external individuals. This bill before the parliament is a credit to them. I thank them most sincerely—including staff of my office, particularly Mark Biddulph—for their magnificent contribution to this law reform process.