Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 16 September 2009

STATE PENALTIES ENFORCEMENT AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.14 pm): I move—

That the bill be now read a second time.

The principal purpose of the State Penalties Enforcement and Other Legislation Amendment Bill 2009 is to strengthen the compliance and enforcement capabilities of the State Penalties Enforcement Registry—otherwise known by its acronym, SPER. SPER has been highly successful in recovering and enforcing unpaid infringement notices and court ordered fines and penalties since 2000.

In the last financial year, SPER collected more than $143.8 million in unpaid fines and lodgement fees. Of this sum, approximately $119 million was returned to consolidated revenue, $13.5 million to victims of crime, and $11.3 million to agencies such as local governments and universities who refer unpaid infringements to SPER for enforcement. However, government has acknowledged that tougher enforcement measures are needed to deal with the many people who thumb their nose at fines.

The bill amends the State Penalties Enforcement Act 1999 to implement the enforcement initiatives package I announced in July this year. I will deal with each of these in turn.

Firstly, the bill expands SPER's existing power to suspend driver's licences. This enforcement action is currently available only for unpaid amounts relating to motor vehicle offences. The bill extends the application of this enforcement action to any unpaid amount. In doing so, the bill brings Queensland into line with all other Australian jurisdictions, except the Australian Capital Territory.

Secondly, the bill creates new powers to wheel clamp, seize and sell vehicles registered to high-value debtors who steadfastly refuse to pay their debt. This tough new enforcement option will apply to debtors who owe amounts totalling the threshold amount prescribed by regulation, are the sole registered operator of a motor vehicle and for whom other compliance and enforcement options are either not suitable or have proven ineffective. It is the government's intention to prescribe the threshold amount for wheel clamping at $5,000.

The wheel-clamping process is designed to provide debtors with ample opportunity to pay the debt or enter into compliance before their vehicle is actually clamped, seized and sold. The wheel-clamping process involves five key steps. Firstly, SPER will register an interest over the vehicle on the Register of Encumbered Vehicles. This will make it harder for the debtor to avoid clamping by selling the vehicle or transferring its registration.

Secondly, SPER will serve the debtor with an intent notice that gives the debtor 14 days to pay in full or enter into compliance. Thirdly, if the debtor does not pay or enter into compliance within 14 days, SPER will then serve the debtor with an immobilisation warrant. This warrant empowers SPER to clamp the vehicle at any reasonable time of the day or night, without further notice to the debtor.

Importantly, the process incorporates an assessment of whether clamping will cause severe and unusual hardship to the debtor, the debtor's family or a third person who uses the vehicle but has no capacity to ensure the debtor pays the debt. This hardship assessment will be made before the immobilisation warrant is issued and may be reconsidered while the vehicle is clamped. It will take account of considerations including the debtor's homelessness, employment or family/carer responsibilities.

Fourthly, if after the warrant is served the debtor still does not pay in full or enter into compliance, trained enforcement officers will then execute the warrant and clamp the vehicle for up to five days. Enforcement officers will be given powers of entry, search and to require information in order to locate and clamp vehicles. They will not be able to use force when exercising these powers.

Under the new legislative regime it will be possible to clamp more than one vehicle at a time. The bill allows vehicles to be clamped in public places, at the debtor's home or business, or any other place with the occupier's consent. However, the bill prevents vehicles being clamped in places where the vehicle would be a traffic or safety hazard or where the safety of the vehicle's occupants could be compromised, for example, in an isolated location.

Fifthly, if after five days the debtor still refuses to pay in full or does not enter into compliance, vehicles will be able to be seized for sale immediately after the clamps are removed. Vehicles of low monetary value will be released and SPER will refer the debtor to the next warrant evaluation committee for an arrest and imprisonment warrant.

The bill also creates a range of new offences targeting activity that attempts to avoid, frustrate or interfere with the clamping, seizure and sale process. Wheel clamping is a tough new measure which will be trialled in the Brisbane metropolitan area for 12 months, starting on 1 January 2010. Based on the Victorian experience, the government expects that the threat of clamping will significantly increase debt recovery rates by encouraging contact from debtors who have refused to engage with SPER up to that point.

The third initiative implemented by the bill is to strengthen SPER's existing powers to seize and sell real and personal property. These amendments align the SPER seizure and sale provisions with the powers and process for enforcing money orders under the Uniform Civil Procedure Rules 1999. These amendments support the wheel-clamping initiative as well as a separate initiative that will pilot the use of Magistrates Court bailiffs in the Brisbane metropolitan area to seize and sell property owned by debtors owing amounts of $1,000 or more.

Fourthly, the bill expressly authorises SPER to use SMS technology to communicate with debtors, without requiring debtor consent. This amendment facilitates an initiative to send SMS reminder and warning messages to debtors in different circumstances, such as when a debtor has defaulted on their instalment plan, or when SPER intends to commence enforcement action, such as suspending the debtor's driver's licence.

The bill also amends the State Penalties Enforcement Act 1999 and the Industrial Relations Act 1999 to enable the referral to and enforcement by SPER of orders for the payment of unpaid wages, tool allowances, unpaid superannuation contributions and fees charged illegally by private employment agents. This amendment will establish referral to SPER as an additional, alternative enforcement option under the Industrial Relations Act. This will assist employees who may have limited resources to pursue the existing civil recovery processes.

The amendment also validates the past practice of these orders being referred to and enforced by SPER. In doing so, the amendment responds to observations in two recent Industrial Court decisions that these orders did not fall within the scope of SPER's enforcement jurisdiction. The two decisions are Palk v Kneeves (2007) 186 QGIG 700, which dealt with an order for payment of unpaid wages and, more recently, Whitson v Golinski C/2009/25, which dealt with an order for unpaid superannuation contributions.

The SPER enforcement initiatives implemented by this bill illustrate the Queensland government's response to community expectations that people who receive a monetary penalty for breaking the law should repay their debt to society in full. The bill also contains amendments to the Police Service Administration Act 1990 to implement the Council of Australian Governments agreement of 29 November 2008 to facilitate the interjurisdictional exchange of expanded criminal history information for people working with children. As part of the COAG agreement, each jurisdiction is required to remove any legislative barriers to the exchange of the expanded criminal history information.

The expanded criminal history is to include spent convictions, pending charges and charges that did not result in a conviction, such as withdrawn charges and acquittals.

Given the sensitive and potentially untested nature of the information to be exchanged, the COAG agreement also stipulates participation requirements for its use by receiving jurisdictions as follows. Firstly, the use of the information is limited to assessing risks to the safety of children. It may not be used for assessing general employment suitability or probity screening.

Secondly, the screening units receiving the information must be authorised by their government to participate; have a legislative basis for screening that prohibits further release or use of the information, except for legislated child protection functions; receive the written consent of the person to obtain and use the person's criminal history information; comply with applicable privacy, human rights and records management legislation; reflect principles of natural justice; and have risk assessment frameworks and appropriately skilled staff to assess risks to children's safety.

The Queensland College of Teachers and the Commission for Children and Young People and Child Guardian will participate in the exchange. The amendments to the Education (Queensland College of Teachers) Act 2005 will ensure the college meets the COAG participation requirements. The commission meets the requirements already.

As COAG has recognised, safeguarding our children from sexual, physical and other abuse is a key priority of all governments. In meeting that priority, governments also have to get the balance right when exchanging and considering the type of information that will be the subject of the national exchange. This balance is achieved by COAG's strict criteria that screening agencies must meet before they can receive information under the exchange. I commend these amendments enabling Queensland's participation in the exchange to the House.

The bill also contains amendments that relate to the Queensland Civil and Administrative Tribunal, otherwise known by its acronym QCAT. In June of this year, this House passed the QCAT Bill and the QCAT (Jurisdiction Provisions) Amendment Bill. The first bill established QCAT, while the second bill amended over 200 pieces of legislation to confer jurisdiction on QCAT.

As I told the House when I introduced the relevant bills, they represent the most significant structural reform to Queensland's justice system since the re-establishment of the District Court in 1959. This bill contains both significant and minor amendments that are required to be made before the commencement of QCAT operations on 1 December. Significant amendments are few in number, and largely concern the conferral of new jurisdiction that has arisen since the QCAT bills were passed, along with the adjustment of jurisdiction that was previously conferred on QCAT. Minor amendments largely concern the correction of small or technical errors and the clarification of provisions contained in the two acts. As the two bills combined were over 1,000 pages in length and were complex in nature, some amendments and adjustments were inevitable.

The bill also includes amendments relevant to the judicial registrar pilot in the Magistrates Courts. The judicial registrar pilot, which is authorised by part 9A of the Magistrates Act 1991, has been operating since 1 January 2008. Judicial registrars are authorised to hear and determine less complex matters usually determined by magistrates, including: minor debt claims and small claims; civil chamber applications; domestic violence adjournments, temporary protection orders and orders by consent; bail applications for certain offences where the prosecution does not oppose; 'hand-up' committal hearings—where there is no oral evidence or cross-examination of witnesses—and where the defendant consents to committal for trial or sentence; and mentions in criminal matters.

The use of judicial registrars enhances the administration of, and access to, justice in the Magistrates Court, which is the busiest court jurisdiction in Queensland. Judicial registrars allow magistrates to focus on more complex and contested cases. The provisions for the judicial registrar pilot are currently due to expire on 1 January 2010. An initial evaluation of the pilot conducted by the Department of Justice and Attorney-General has confirmed that judicial registrars are a cost-effective and efficient way of disposing of less complex matters. Feedback received in this evaluation supported that a further review be undertaken to examine whether the types of matters that can be heard and determined by judicial registrars should be expanded. The judicial registrar pilot will therefore be extended for 12 months at the Townsville and Southport magistrates courts. These are Queensland's two busiest regional courts.

This extension of the pilot is authorised by regulation under the existing provisions of the Magistrates Act 1991. However, to ensure these judicial registrars can be used more effectively for the duration of the pilot, amendments are included in this bill to expand their bail powers in uncontested matters. This expansion of powers is consistent with the original intent of the legislation.

Given the jurisdiction for small claims and minor debts will be transferred to QCAT from 1 December 2009, amendments are also being made to enable judicial registrars to hear and determine minor civil disputes as adjudicators for QCAT if required. This approach will help ensure a high level of service is provided to all persons, given the accessibility of Magistrates Courts across Queensland.

The bill also amends the Classification of Computer Games and Images Act 1991, the Classification of Films Act 1991 and the Classification of Publications Act 1991 to facilitate the continued use of fair trading inspectors to enforce these acts, despite recent machinery-of-government changes. The bill also contains minor amendments to the Information Privacy Act 2009 and the Right to Information Act 2009. These are technical amendments to clarify provisions contained in the two acts.

The amendments: firstly, clarify that a principal officer and a minister have the power to make delegations and directions in relation to internal review applications; secondly, put beyond doubt that decisions under subsection 69(2) of the Information Privacy Act 2009 and subsection 55(2) of the Right to Information Act 2009 are reviewable decisions; and, thirdly, confirm the validity of these delegations, directions and decisions that have been made in the period between 1 July 2009 and the commencement of these amendments.

The amendments also clarify that the documents that the Information Commissioner must not disclose on an external review are limited only to documents that are the subject of the external review. This amendment ensures that the Information Commissioner is not prevented from giving other documents to parties to an external review so that natural justice is accorded to all parties.

This bill also includes an amendment to section 29 of the Guardianship and Administration Act 2000. This amendment corrects an oversight that occurred from 1 July 2008 when the amendments in the Disability Services and Other Legislation Amendment Act 2008 commenced. These amendments provided for the approval and consent regime for the use of restrictive practices by disability services providers under the Disability Services Act 2006. However, when amending section 29 to allow for the review of an appointment of a guardian to approve the use of a restrictive practice, the authority to make an application for the review of an appointment for an administrator was inadvertently omitted. The amendment in this bill will correct this oversight and also provide that any applications for a review of an appointment of an administrator that were lodged prior to the commencement of this amendment, including those made from 1 July 2008, were made under a proper authority.

I now turn to the proposed amendment to the Disability Services Act 2006. A consequential amendment is also made to the Guardianship and Administration Act 2000. This amendment relates to the use of restrictive practices by a disability service provider. Under the bill, the transitional period is extended for a further period of nine months. This will allow disability service providers to properly prepare for the full scheme. Importantly, the current safeguards for the individual, available under the existing transitional period, will remain.

The bill also amends the Superannuation (State Public Sector) Act 1990 to ensure that the QSuper Board of Trustees are subject to the same penalty regime as other Commonwealth regulated superannuation funds. The Australian Prudential Regulation Authority has noted that the QSuper act currently provides the board with state protection that may prevent Commonwealth regulators from giving directions or imposing penalties upon the board. The proposed amendment effectively states that the QSuper board does not have the immunities of the state for specific provisions of Commonwealth legislation relating to its operation as a superannuation provider.

The bill also amends the QSuper act to provide for the QSuper board to elect a standing deputy chairperson. The QSuper act currently allows for the QSuper board to appoint a deputy chairperson for a meeting if the chairperson is unable to attend. The appointment of a standing deputy chairperson will aid the operation of the board in the event of the unforeseen absence of the chairperson. I commend the bill to the House.