Speech by

# Hon. Cameron Dick

## MEMBER FOR GREENSLOPES

Hansard Wednesday, 11 November 2009

## STATE PENALTIES ENFORCEMENT AND OTHER LEGISLATION AMENDMENT BILL

**Hon. CR DICK** (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.45 pm), in reply: At the outset, I thank all honourable members for their contribution to the debate, particularly those members of the parliament on the government benches. I would also like to thank the member for Nicklin for his thoughtful contribution to the debate on the State Penalties Enforcement and Other Legislation Amendment Bill 2009. As honourable members know, this bill implements important initiatives that will significantly enhance the compliance and enforcement capabilities of the State Penalties Enforcement Registry.

These initiatives include tough new measures, such as wheel clamping, seizure and sale for dealing with high-value recalcitrant debtors. Driver licence suspension is extended to all unpaid amounts, not just those related to motor vehicle related offences. The measures in this bill support the objective of the State Penalties Enforcement Act 1999 to maintain the integrity of fines as a viable sentencing or punitive option for offenders. Further, they help maintain public confidence in the justice system by enhancing the way fines and other monetary penalties can be enforced.

The bill also amends the State Penalties Enforcement Act 1999 and the Industrial Relations Act 1999 to enable and retrospectively validate the referral of orders for the payment of unpaid wages and other entitlements to the State Penalties Enforcement Registry for enforcement. This aspect of the bill responds to observations in two recent Industrial Court decisions that this historical practice was not catered for in either of the acts amended.

Chapter 3 of the bill concerns the national exchange of criminal history information for people working with children, which was subject to national agreement at COAG in November 2008. The amendments pave the way for Queensland's involvement in the national exchange, which is due to commence in late November 2009. All jurisdictions will participate in the exchange. Not all jurisdictions need to amend their legislation to enable them to supply information under the exchange. For example, Tasmania, South Australia and the two territories advise that they need not amend their principal legislation to participate in the exchange, largely because they do not have spent convictions legislation that operates to restrict the supply of the information interjurisdictionally.

I am able to advise the House that, of the remaining jurisdictions—the Commonwealth, Queensland, Victoria, New South Wales and Western Australia—Queensland will be the first to have passed its amendments removing the legislative barriers to supplying the information interjurisdictionally. All jurisdictions continue to prepare administratively for the exchange and advise that their preparations are well advanced in readiness for exchange to commence.

The exchange of information will help to better protect children across Australia from the risk of sexual, physical and emotional harm. In recognition of the sensitivity of the criminal history information to be exchanged, the agencies participating in the exchange must meet COAG's criteria for receiving the information, including that the agency in all cases obtains the applicant's consent to the provision of the criminal history, will provide natural justice to the applicant when considering giving a negative notice

based on the applicant's criminal history and will adhere to best practice in records management and privacy protection.

Chapter 3 will also enable the Queensland College of Teachers to receive the expanded criminal history from police in other jurisdictions, by making the college compliant with COAG's strict criteria for using the information. Queensland's commission for children and young people will also participate in the exchange, but the commission's legislation requires no change for it to do so. Most jurisdictions within their jurisdiction have already answered the policy question: 'Do we provide this sensitive and potentially prejudicial criminal history information to those working with children?' The affirmative is the answer that they have provided. Particularly in our state, those agencies have done so with appropriate safeguards to the consideration and use of that information.

What the national exchange does is extend that provision of information across Australian borders. Currently, if someone has lived in Ipswich all their lives and they apply for a blue card, their expanded Queensland Police Service criminal history information is available to the Queensland children's commission. However, if that person has only recently moved to Queensland, their full Western Australian or New South Wales criminal history is not necessarily available to the Queensland children's commission and is certainly not routinely available without additional effort. The amendments to the bill address this important issue for the nation.

Chapter 3 and the amendments being progressed by our colleagues interstate to establish the national exchange will remove such inconsistencies to better protect children. The amendments related to the Queensland Civil and Administrative Tribunal will assist in ensuring that everything is ready for QCAT's launch on 1 December this year.

The bill includes amendments relevant to the judicial registrar pilot in the Magistrates Court. I want to address this because of the negative and critical comments made by the opposition which were quite unfounded and unbased. This pilot has proved successful and cost-effective to date, and therefore will be extended for 12 months at the Townsville and Southport magistrates courts. These are Queensland's two busiest regional courts. During this further 12-month period, a review will be undertaken to determine whether the types of matters that can be heard and determined by judicial registrars should be expanded on a permanent basis. However, in the interim, to ensure that judicial registrars can be used more effectively under the pilot consistent with the original intent of the legislation, this bill contains some minor amendments to the powers and functions of judicial registrars.

Firstly, the bill will allow judicial registrars in show cause situations under section 16(3) of the Bail Act 1980 to vary or enlarge bail and also to grant bail following a consent committal providing the prosecution does not oppose the application. Consistent with current restrictions, a judicial registrar will not have power to remand a defendant in custody. This decision must be referred to a magistrate. These amendments will allow judicial registrars to conduct more mentions and call-overs in uncontested criminal matters. How anyone in the parliament could argue against an effective measure to create more efficiency in the judicial system is frankly beyond me, but the members of the LNP sought to do so during the debate.

The bill also includes amendments to enable judicial registrars to hear and determine minor civil disputes for QCAT subject to agreement between the president of QCAT and the Chief Magistrate. Judicial registrars currently have power to hear small claims and minor debt claims. However, the jurisdiction for these matters will be transferred to QCAT from its commencement on 1 December. The amendments in this bill to allow judicial registrars to deal with minor civil disputes will support regional service delivery arrangements for QCAT.

The bill incorporates minor amendments to the classification acts to enable my department to continue to use experienced fair trading inspectors to investigate classifications complaints and prosecute alleged offences under these acts.

The amendment to the Disability Services Act 2006 will extend the transitional period for restrictive practices and allow disability service providers a further nine months to prepare for the full scheme. During the transitional period, existing protections for the individual, under the current scheme, will continue.

The bill contains minor technical amendments to the Information Privacy Act 2009 and the Right to Information Act 2009, both passed this year. The amendments clarify provisions dealing with internal review applications, reviewable decisions and documents the subject of external review. The amendments benefit applicants by confirming their review rights and also ensure that natural justice can be afforded to all parties to an external review.

I now wish to address some of the matters raised by honourable members during the course of the debate. The member for Southern Downs accused this bill of being 'an admission of failure', in his words. On the contrary, the member for Southern Downs has, in both the substance and form of his comments, admitted that he still clearly fails to understand what the State Penalty Enforcement Registry does and how the registry does it. The State Penalties Enforcement Registry receives unpaid fines from a variety of government and non-government agencies. SPER is responsible for the collection and enforcement of

these unpaid fines. Enforcement is proactively undertaken through the use of licence suspension, warrants against property and fine collection notices issued to employers and banks.

Each year since it was established, SPER has improved its efficiency of collection techniques and other enforcement options, which has allowed SPER to maintain the integrity of fines without resorting to routine imprisonment of fine defaulters, which was commonplace before SPER was introduced. The member for Southern Downs, however, asserted that these tools have always existed in the toolbag. Regrettably, this demonstrates how little he understands. SPER relies on being able to contact the debtor. Where they can make contact and advise someone of their obligations and options, they generally get a result. But in some cases someone may not have a driver's licence or assets in their name. Information such as employer information, bank account details or assets descriptions is generally difficult to locate unless contact has been made with the debtor.

There is no single database available to SPER to access this information—nor should there be in a free and open society. Therefore, existing sanctions are sometimes not appropriate or able to be used at a particular point in time. Expanding the available options allows SPER the flexibility to undertake enforcement action that is appropriate to an individual debtor.

It is also important to note that, as a part of the extension of existing powers, SPER is piloting the use of Magistrates Court bailiffs to enforce seizure and sale warrants against debtors who owe unpaid amounts totalling $1,000 or more. This pilot will run for two years in the Brisbane Magistrates Court district. Seizure and sale is also an important part of the wheel-clamping initiative. Magistrates Court bailiffs will also be used to seize and sell vehicles under this initiative.

The fundamental gap in the member for Southern Downs's speech is that, for all his bluster about this being inequitable, about this being problematic, about his ignorance of SPER, there was a gaping black hole of policy alternatives. At least the opposition is consistent on its failure in respect of policy alternatives. He seemed incapable of deciding if punishment of fine defaulters was good or bad, and unable to contemplate a proactive system that was working to recover fines from debtors. Those opposite have vacated the policy field, unable to find a single positive solution to address the issue of fine defaulters. We are responding to fine defaulters in a careful and measured fashion, augmenting and extending existing powers and improving the proactive and reactive capacity of the SPER to do its job.

The member for Southern Downs also asked what impact the amendments would have upon existing blue card holders. There is a possibility that, in response to the first renewals of teacher registration or reapplications for blue cards after the exchange commences, the expanded interstate criminal history information could include criminal history information not provided previously to a screening agency. However, the Commission for Children and Young People and Child Guardian and the Queensland College of Teachers consider the likelihood of expanded criminal history information to be shared under the exchange—known as the Exchange of Criminal history Information for People Working with Children—raising significant issues for reapplications or renewals to be minimal.

Further, in relation to the Queensland College of Teachers' application process, it is a general requirement for teachers to self-disclose pre-existing criminal history. Also, in relation to the Commission for Children and Young People and Child Guardian application process, it is an offence for a person to apply for a blue card if they are a 'disqualified person' under the act. Any criminal history information newly supplied would be dealt with sensitively. It would be assessed alongside the usual considerations: time elapsed since the alleged offence, and employment history and personal development since then. Nevertheless, if the criminal history information indicated serious offending, the commission and the Queensland College of Teachers would, I am advised, act decisively in the interests of children's safety after giving the person an opportunity to respond to the information.

The member for Southern Downs also queried why the amendments to the Superannuation (State Public Sector) Act have, in his words, 'taken so long'. I am informed that these amendments are the result of prolonged negotiations with the regulators, specifically the Australian Prudential Regulation Authority, otherwise known as APRA, which has been involved in the process throughout. The QSuper board already falls within the regulatory reach of APRA and ASIC, the Commonwealth regulators of the superannuation industry in Australia. The proposed amendment simply clarifies that the QSuper board will have the same level of accountability as that applied to the boards of all other regulated superannuation funds.

The members for Kawana, Gaven and Burnett indicated that they did not support the increase to powers of judicial registrars. For their benefit, I will explain the reason behind these amendments. Currently, judicial registrars may constitute a Magistrates Court to hear and determine minor debt claims and small claims as well as a number of other matters. From 1 December 2009 the Small Claims Tribunal and minor debt claims jurisdiction of the Magistrates Court will be transferred and form part of the minor civil disputes jurisdiction of QCAT. Adjudicators, who are equivalent to judicial registrars, will be appointed in South-East Queensland for QCAT.

Allowing judicial registrars to also continue to hear and determine these types of claims, subject to the agreement of the Chief Magistrate, will support the proposed regional service delivery arrangements

for QCAT. These arrangements are designed to ensure a continuing high level of service across Queensland. These members who I mentioned earlier expressed complete disregard for the hardworking judicial registrars in our state. I would affirm the comments made by members of the government in support of the judicial registrar program.

Queensland courts administer justice over the most widespread geographic area nationally and are to be commended for the effective and efficient manner in which they operate. The courts in Queensland are amongst the busiest in the country, and this government is committed to working with the respective heads of jurisdiction to ensure that they are adequately resourced. There are a number of benefits to using judicial registrars in the Magistrates Court jurisdiction including: a saving in magistrates' time that can be better utilised in more complex areas; a saving in court costs for simpler matters; expedition in hearing matters; a further career path that is more challenging for court staff who wish to pursue it; and a source of highly trained court officers who have greater skills if called upon to act as magistrates.

The Department of Justice and Attorney-General has conducted an initial evaluation of the effectiveness of judicial registrars. This evaluation showed that they are a cost-effective and efficient way of disposing of minor and administrative matters before the Magistrates Court. This evaluation showed that judicial registrars have demonstrated effective decision making, with no appeals arising from their decisions. Stakeholder feedback, including domestic violence advocates, also confirmed that judicial registrars have been consistent and thorough in exercising their powers. Feedback received supported a further review to examine a possible increase in the types of matters that can be heard and determined by judicial registrars.

If members of the LNP were truly interested in court administration and the justice system in this state they would be supportive of an innovation that is helping our magistrates and members of the Queensland community to ensure that justice remains timely and accessible. The use of judicial registrars in the pilot areas has assisted in reducing backlogs and has allowed magistrates in these areas to concentrate on more complex matters, especially hearings.

I now turn to the member for Kawana. The member for Kawana asserted that this would be a case of imposing fines on top of fines. I would draw the member's attention, given that he purports to be a lawyer, to the fact that the Penalties and Sentences Act requires that when a court is exercising the power to fine pursuant to section 48 they need to consider the offender's financial circumstances and the nature of the burden that payment of the fine will place on the offender.

I would note for the member for Kawana's benefit that where a fine is referred to SPER for collection there is also the fine option order alternative of unpaid community service for people who genuinely cannot pay their outstanding fines. The member should be aware, but appears to choose to remain ignorant, that the issuing of fines is only one option a court might exercise. More than this, where fines are issued by a police officer or other ticketing authority there may be little capacity to check on the spot whether an individual has pre-existing fines. The role of SPER, therefore, is to recover those fines that are issued by any authority and then not paid by the offender.

But the final and most telling point that the member for Kawana fails to understand is that SPER currently undertakes significant effort to ensure that fines are recovered in a sensible and sensitive fashion from those who are genuinely trying to pay. There is a range of options and orders that SPER exercise to assist people in paying their fines.

The amendments in this bill are not about people trying to pay. They are about people who do not care, do not try and do not pay. They are about people who refuse to pay their fine and whom the system will now be able to chase and penalise more effectively if they continue down that road.

There is one matter that I wish to address in response to the member for Kawana's second reading contribution. The member for Kawana said at the end of his speech—

The bill will also retrospectively amend the Industrial Relations Act 1999 and the State Penalties Enforcement Act 1999 to establish a referral to SPER for the recovery of unpaid wages—something that this government has already been doing although it is not currently permitted to under any legislation.

The member for Kawana went on and had the hide to say—

Here we see the government once again covering up its mistakes and its unlawful practices.

It is not the place for any member of the parliament to come in here and allege unlawful activity by the government. It was made abundantly clear in the second reading speech that there have been two decisions of the Industrial Court of Queensland that raise concern about the capacity of SPER to address things and recover moneys such as unpaid superannuation payments, unpaid wages and unpaid tool allowances. These are workers who have been ripped off.

The government has in no way, shape or form acted unlawfully. But this is the type of rhetoric we receive from the LNP day in and day out. We have those opposite in here making bald assertions based on nothing but political rhetoric. For new members of this parliament to come in and use parliamentary privilege to raise these bald allegations about the government is frankly disgraceful and should not

continue, particularly from someone who purports to be a lawyer. I presume he read the judgements, but I may be wrong.

The member for Currumbin asked who will pay for the clamping of a vehicle. Where an immobilisation warrant is issued for a vehicle, a civil enforcement fee will be attached to the existing fine. If the vehicle is subsequently seized and sold, the costs associated with the seizure and sale—for example, advertising and auction costs—are met from the sale proceeds. This means that, in effect, the debtor pays for the clamping, seizure and sale and not the taxpayer.

In conclusion, I again thank all honourable members for their contributions during the debate on this bill, particularly members of the government. The development of this bill has been a very significant piece of work. It is a very significant achievement to which there have been a large number of contributors working under strict time limits to ensure we can commence the trial of vehicle immobilisation from 1 January next year.

They have done a sterling job. I place on the record my thanks to the officers from the Strategic Policy Unit of the Department of Justice and Attorney-General, the QCAT implementation team and particularly officers from the State Penalties Enforcement Registry, notably the registrar, Mr Paul Murray, who led the development of this bill and coordinated contributions from a variety of other agencies including the Department of Premier and Cabinet and Treasury. I commend the bill to the parliament.