Speech by

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MEMBER FOR SOUTHERN DOWNS

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

Mr SPRINGBORG (Southern Downs—LNP) (Deputy Leader of the Opposition) (12.39 pm): I rise to contribute to the cognate debate on the Queensland Civil and Administrative Tribunal bills. The LNP will be supporting the intent of the bills at the second reading stage, although there are a number of points I would like the Attorney to address before proceeding to the consideration in detail stage.

At the commencement of the debate on these bills, I ask: with the amalgamation of some 18-plus tribunals into one supertribunal, will the Attorney guarantee the job of each person currently employed in the tribunal system? Does he anticipate that there will be some duplication of roles in the administration of the tribunal registry? How does the Attorney expect to address these issues?

The Queensland Labor government has been procrastinating for some years about reforming the tribunal system in Queensland. The first reforms happened in 2003, when the Commercial and Consumer Tribunal was established to replace a number of smaller tribunals. Nevertheless, this was very important reform in its time. In November 2007 the department of justice released a discussion paper on the reform of civil and administrative justice.

In March 2008 the government announced that the review had 'found the system of civil and administrative justice in Queensland was inefficient and fragmented'. In March 2008 the Premier announced the government's intention to create a new Civil and Administrative Tribunal. An independent panel was appointed to oversee the creation of the new tribunal. Stage 1 of the panel's program saw a report released in June 2008. In this report it was stated that there were almost 30 tribunals in Queensland which, together with some functions of the Supreme Court, District Court and Magistrates Court, create a complex system of administrative justice.

The panel recommended that the new tribunal be called the Queensland Civil and Administrative Tribunal and that its organisation broadly reflect the model developed by similar multijurisdictional tribunals that operate in some other states and also federally. The panel stressed that the QCAT is a tribunal and not a court. It was acknowledged that QCAT must retain the knowledge, specialist skills and some specialist processes of the existing tribunals it incorporates.

The panel identified risk factors that would be detrimental to the development of a successful tribunal such as QCAT. These risk factors include having members of the tribunal with the right experience and skills and who share and understand the organisation's vision. Attracting and keeping good members will be critical to success. The QCAT will need to have a strong tribunal-wide culture post amalgamation.

The discussion paper issued by the Department of Justice and Attorney-General in November 2007 stated that over 36 bodies including tribunals and courts determine civil and administrative disputes and conduct external merit reviews. These bodies include not only stand-alone tribunals like the Commercial and Consumer Tribunal, the Guardianship and Administration Tribunal and the Mental Health Tribunal but also formal courts including the Supreme, District and Magistrates courts in addition to bodies that are only constituted as they are required, such as the Health Practitioners Tribunal, which is convened by a District

Court judge, or the Small Claims Tribunal, which is convened by magistrates when necessary from time to time.

Because of the range of types of bodies and the variety of functions, it is extremely difficult to provide a figure for the staffing numbers or operating costs of all appropriate bodies. During the review stage, the independent panel provided advice on implementing a new tribunal to ensure that, as outlined in a briefing note provided by the department, the delivery of justice is in a way that is independent, efficient, expert, accessible, flexible and able to adapt to future pressures.

I would like to address some of the points the panel was required to report on. Firstly, on the issue of independence, as we know the Attorney can intervene in a proceeding at any time on behalf of the state. Reports have surfaced from Victoria that the Brumby government is interfering in the independent conduct of VCAT. What guarantees can the Attorney give that this will not happen here in Queensland?

We have to look at the crossover and creation of a centralised bureaucracy. By adding additional layers and rules through the new QCAT, how can having a large supertribunal based in Brisbane make for an accessible system? How will QCAT make itself totally accessible to the regions? This is one of the concerns which we have and some people in the regions have, and we would appreciate the Attorney's reassurances. How can this tribunal be truly flexible when many provisions take away rights of appeal or deny judicial review? How can it be flexible when its decisions can be made in the absence of one party? Is this really flexible and just?

It is not clear from the review how the civil components of the Magistrates Court will be affected by QCAT. How will the civil elements of QCAT be reported through the Commonwealth *Report on government services*? Is this an artificial way of skewing the civil case backlog by moving them out of the courts, or will the civil matters still be reported? I think this is an important question that must be answered by the government.

Academics write that the prototype of a general jurisdiction tribunal was the Commonwealth Administrative Appeals Tribunal, set up in 1976 as part of a package of administrative law reforms. That package has received warm commendation outside of Australia and indeed also very much inside of Australia. The Victorian Administrative Appeals Tribunal was established in 1995. Another five years passed before the next move—the replication of the Commonwealth system in the Australian Capital Territory when it achieved self-government in 1989. However, in the six years since 1995, use of the single, generalist model has accelerated, albeit the model has been adapted.

In 1997 New South Wales set up the Administrative Decisions Tribunal to combine a general jurisdiction administrative tribunal with existing civil jurisdiction. Victoria has followed suit. That state abandoned its administrative review-only tribunal and in 1998 set up a tribunal which brings under the one tribunal roof routine civil—that is, citizen versus citizen—matters as well as challenges to administrative decisions. The combination of matters in the Victorian Civil and Administrative Tribunal gives it a case load of over 90,000 cases per annum and makes it the largest and busiest tribunal in Australia. The flexibility of the model is indicated by the fact that the New South Wales and Victorian tribunals make both primary and review decisions.

So how does a generalist tribunal, rather than a series of specialist tribunals, better respond to these findings? The advantage of tribunals generally is that they are faster, simpler and cheaper than recourse to the courts, but that comment is capable of applying to all tribunals. The biggest criticism of tribunal systems comprised solely of specialist tribunals is that their tribunals have been developed in a haphazard fashion. The result is that there is no consistent pattern of decisions which are reviewable and no common procedures, making it difficult for citizens bringing claims and those who appear for them. Other criticisms are that they duplicate resources, premises and infrastructure and are generally an inefficient way to administer administrative justice.

Is there any reason to think these same advantages would not occur in Queensland? There is evidence of some residual scepticism about adopting a New South Wales or Victorian model in Queensland. In a 1999 report commissioned by the Queensland department of state development it was suggested that the Queensland business community is indifferent to the advantages of synthesising the Queensland tribunal system. This attitude contrasts with the earlier view of business reported in the EARC report which expressed support for reform to the system of administrative review.

There are two responses to this indifference. It is arguable that the use made by companies and business interests of tribunals is relatively low. Of more significance however is that in Queensland, more than in any other Australian jurisdiction, business has embraced alternative dispute resolution processes at the expense of using courts or tribunals. The reason is that these are seen as being more cost efficient, more satisfactory in terms of the time taken to resolve disputes and better able to secure the confidentiality of the outcomes than other forms of dispute settlement.

This should not lead to the conclusion that alternative dispute resolution, rather than a generalist tribunal, would best meet the needs of aggrieved citizens generally. There are other special reasons for the use by business of alternative dispute resolution. Counterarguments to a single administrative appeals

body with wide jurisdiction are that it would not be cost-effective and would lead to greater formalisation and inflexibility.

The cost argument can be met by examining the books of VCAT. In its first year of operation VCAT dealt with 75,076 cases within its budget of $18.3 million. In its second year of operation, with a slight increase—that is, nine per cent—to the budget, rounding it off to about $20 million, VCAT resolved 89,368 cases. That is an increased case load of 19 per cent. Realistically, this is very cost-effective. Matters finalised in 2000-01 exceeded 92,000 with no increase in the cost. It is clear that VCAT is demonstrating the greater efficiency that can come from being a unified, not just a colocated, system.

This is what some of the stakeholders have said about QCAT. The Office of the Public Advocate did not make a specific submission about whether or not the tribunals of particular interest to adults with impaired decision making should or should not be included in QCAT. Rather, it was concerned that the rights and interests of the vulnerable adults who are involved in proceedings or subject to proceedings are appropriately protected whatever arrangements are made. I would like to have the Attorney put on the record before the parliament that this concern has been considered and will not affect adults with impaired decision making.

Peakcare, a major non-government provider of foster care services, wrote in its submission that it was concerned that accessibility could be a problem for vulnerable clients. It noted that children were not aware how to make a complaint with the current Children Services Tribunal. A larger amalgamated system would only exacerbate the problem. I would like to hear from the Attorney how recognised entities, particularly Indigenous organisations, will be involved in the QCAT model, as was expressed by Peakcare in its submission.

The commission for children felt that a specific division of the new QCAT should be established to determine matters related to children and their best interests. I ask the Attorney to clearly outline how the system will make better improvements in primary decision making for vulnerable people, including children.

The Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009 inserts a new chapter into the Child Protection Act and makes changes to the Children Services Tribunal. I want to read into the record some of the points raised by the current tribunal. In its 2007-08 annual report the tribunal wrote that both oral and written submissions were made in this reporting year with regard to the establishment of the Queensland Civil and Administrative Tribunal which will commence operation in December of 2009. The tribunal was engaged in all aspects of the process taking a proactive approach to put forward robust, well-considered views regarding whether the CST was in the scope for the new tribunal. In its written submission of 10 April 2008, the tribunal took the position that—

In any determination of CST's place within the newly formed tribunal ... it is respectfully submitted that CST's place within the Queensland Child Protection Strategy remains a focal consideration.

It was further submitted that it is essential that—

... the legislative capacity for CST to conduct proceedings in a manner which enhances delivery of services to children is not lost in the new tribunal; recognition of the particular vulnerabilities of children and young people and CST's present progressive legislation to include them in review processes is not lost; continuing opportunities remain for CST (in whatever new guise) to engage beyond merely reviewing decisions as part of the broader child protection strategy in Queensland.

The tribunal considered whether the current attributes possessed by CST would be able to be maintained if CST were amalgamated into the new QCAT. The tribunal took the view that this is achievable for CST's client groups—

... if the focus

(a) and commitment remains on the best interests of children and on the objects and principles of the current Act;

(b) if quality decision making is informed by responsive case management at the registry level;

(c) if multi-disciplinary panels have the specialist expertise required;

(d) if there is no restriction on both professional and legal members presiding on matters;

(e) if comprehensive and relevant training is maintained for registry and for members;

(f) if the tribunal leadership and members are cognisant of the issues relevant to the child protection sector and to community values;

(g) if the membership is cognisant of cultural differences and is experienced in engaging indigenous and culturally diverse parties and witnesses;

(h) if the bigger picture role of CST is not lost in its legislative mandate to enhance delivery of services to vulnerable children.

I ask the Attorney to detail exactly how the concerns of the tribunal have been put through into the creation of the new QCAT model?

I turn now to reporting to the minister. Unlike the previous arrangements where the Children Services Tribunal had a separate act that governed its functions, clearly separating it from the department of child safety on which it was bound to give judgement, this government is suggesting that we now move

the powers of the tribunal into the very act governed by the minister and the department it is expected to be critical of.

Parts of the new bill could be seen as misleading. The bill does claim to ensure that tribunal decisions and recommendations are given effect to. However, upon reading the provisions contained in the bill, nowhere is there a compulsion on either the department or the minister to act on the decisions handed down by the tribunal. This is very much in the same way departments and ministers fail to act on findings handed down by the coroner. The bill does not even compel the tribunal to mandatorily report to the minister. It simply says that the president may report to the minister responsible for the department. Does that mean the Minister for Communities or the Minister for Child Safety? Who actually is accountable in this situation?

If this government was serious about ensuring that its departments were held to account when decisions were made against it, it would take a stronger position to ensure that recommendations or decisions made against it were given effect. Parts of the bill deal directly with appeals made against decisions of the commission relating to young children. I note here that the Labor government is quick to ensure that 'must' is inserted to protect the identity of persons challenging the decision of a department. This is much like previous sections relating to child safety. These confidentiality provisions are not to protect the best interests of a child or a person but, in many cases, to protect the best interests of this government and manage any negative decision that shows it is a poor manager of the Public Service. Is this Attorney able to outline what recourse there is when the relevant department fails to act on the order of QCAT? Is there an ability for the president to report to the minister, as in the previous provisions, on decisions not being given effect to?

Other parts of the bill deal with amendments to the Guardianship and Administration Act 2000. It was only last year that major changes were made to the Guardianship Tribunal after recommendations were made through the Queensland Law Reform Commission's review into guardianship. It would seem that, despite the ongoing review of the Queensland Law Reform Commission into guardianship, this is being bypassed by the QCAT bill. How this will affect the Law Reform Commission's ongoing review into guardianship is a matter of some debate.

Sitting suspended from 1.00 pm to 2.30 pm.

Mr SPRINGBORG: Before I resume my contribution, I ask that the record be corrected on a matter. Before lunch I said that VCAT was established in Victoria in 1996. It was actually established in 1984 and then it was reformed again in 1989. That puts in context the time frame that I was speaking of before. It was a typo. So VCAT was the precursor to other similar supertribunals that were established in Australia. As I said, the concept was actually established in 1984 and the enhancements went on from there.

Following on from what some of the stakeholders have put forward, I want to now ask the Attorney-General in general terms about the sorts of monitoring and reporting systems that will be put in place for QCAT. What data will be centrally collected—such as intakes, reviews, complaints, costs, staffing, time lines of decisions and the like—and how will this be reported and will it be on the QCAT website? The next point is the delivery of fast, efficient and accessible services to regional and remote communities. In reading this bill, I wonder if in fact it should not have been called the BCAT Bill—the Brisbane Civil and Administrative Tribunal Bill—as the effects of the new system will be truly felt only in Brisbane. The workloads of QCAT outside South-East Queensland will see the bulk of that work being completed by magistrates in regional areas. This of course will place an increased workload on them and will actually make the process longer—or maybe I should qualify that and say that it could actually make the process longer, and that is a matter about which we will just have to wait and see—and more drawn out than it currently is, and there is good reason for having this concern.

At this point I ask the Attorney: how much extra resourcing has been allocated to QCAT's regional work, because magistrates will now have to provide written findings upon requests whereas previously there was no such requirement? How long will the findings of QCAT be delayed because of this and would this not slow down any process rather than actually make it more efficient? This is a very important point—that is, to make sure that the same advantages that are available to QCAT in the more resource-rich areas such as our capital city flow on to our regional centres without loading up those people who are principally responsible for dealing with QCAT matters. This is particularly so in the case of magistrates in the small claims areas who now have to provide a written reason on request for a particular determination that they have made whereas at the moment they do not necessarily have to give a reason for a finding in a case, certainly not in writing. This is one area which we will be watching very closely with interest in the future.

I want to turn to the views expressed by the Scrutiny of Legislation Committee. One of the key themes that I took from that committee's *Alert* report was that many changes being proposed in the QCAT model relate to diminishing the accountability that is afforded through the various tribunals that currently exist. Across many amendments in the jurisdiction provisions we see a reduction in the time that parties can seek a review of a decision of QCAT. I am concerned that there is no right of review for matters affected under the Disability Services Act 2006. Under the Legal Profession Act, amendment decisions will

now be nonreviewable. Amendments to the guardianship and property agents acts will see the abrogation of the protection from self-incrimination.

The Scrutiny of Legislation Committee notes that across many amendments the changes remove the scrutiny of parliament by way of using subordinate legislation. One has to question why, on so many occasions, the Attorney is seeking to circumvent the scrutiny of this House to ensure that he alone can sneak through changes by way of regulation, thereby avoiding the scrutiny that would come from proper parliamentary debate. I dare say that there may be good reason for this in the Attorney's view and I would very much like the Attorney to outline to the parliament why parliamentary scrutiny can be avoided in this situation, particularly given the range of important issues that can be dealt with by the tribunals and the potential impact that this will have on so many lives of so many Queenslanders.

The appointment process for the president and deputy president of the tribunal raises some questions as to openness and transparency. The appointment is limited to existing Supreme Court judges and is by way of the minister in consultation with the chief judge. The bill will allow the president to continue to act in their role as a Supreme Court judge. While the LNP supports the intent of what this bill proposes, the proof of the pudding will ultimately be, as they say, in the eating. Knowing this government's track record on delivering efficient, cost-effective services, I do not think we should hold our breath, but I look forward to being pleasantly surprised.

Finally, I have some important questions relating to the function of QCAT that the House should have answered before we proceed to the consideration in detail stage. What will be the total cost of amalgamating the tribunals into QCAT? What will be the total operating budget for QCAT this year and forecasted? How many staff will be employed in the registry? How much additional funding will be allocated to the delivery of services in regional areas to meet the demand of magistrates now having to give written decisions? What is the expected impact on court delays in the Magistrates Courts in regional areas as a result of this additional burden on regional courts? How will QCAT operate in regional areas? Will people have to come to Brisbane for more hearings? Will payments be made by QCAT for independent witnesses who may be required to appear? Does the Attorney have an idea as to which Supreme Court judge he has in mind for president of QCAT at this stage? Given that the state government proposes that QCAT will commence on 1 December 2009, is the Attorney able to provide to the House a copy of the organisational structure of QCAT? Will all of the tribunal matters be heard also in the new central location? If not, how many will be off site and how will this affect the desire to not just co-locate existing tribunals?

In conclusion, the aspirations of the legislation as espoused in the explanatory notes and all of the other documentation which accompanies the legislation before the House go through what are the very obvious potential benefits from having this particular supertribunal. There is no doubt that the legislation is broadly supported, but some questions do need to be answered. We do need to make sure that, if we take this particular step, which we ultimately should, people are the beneficiaries in effectiveness, in efficiency and in access to just outcomes for their particular grievances while ensuring that there is that equity right across the state and that, at the end of the day, Queenslanders should not be worse off. With that, I support the bills on behalf of the LNP.