Speech by

Dr Alex Douglas

MEMBER FOR GAVEN

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CIVIL AND CRIMINAL JURISDICTION REFORM AND MODERNISATION AMENDMENT BILL

Dr DOUGLAS (Gaven—LNP) (4.18 pm): This is the Labor government's response to the Moynihan report. As has been stated, the Hon. Martin Moynihan AO, QC reported after being set specific terms of inquiry by the Bligh Labor government. There was a heavy emphasis on the terms of inquiry for advice regarding the more effective use of public resources in civil and criminal jurisdictions in Queensland courts. I highlight that the inquiry was commissioned by the former Attorney-General, who is here today, the member for Toowoomba North. The government's response is couched in heavy tones, with a basis of cut-price justice. In his second reading speech, the minister has stated that the ALP and the Bligh Labor government have a well-deserved reputation for reform and seek to respond to emerging challenges and to make decisions that will help build a safe, modern and progressive state. I acknowledge that this is the government's first-stage response.

If this is the mission statement of the bill then, critically, those sentiments need to be examined closely, and where the bill appears not to reflect those lofty ideals it is appropriate for opposition members to question whether this bill truly is reflective of those stated goals. On close examination I see insufficient evidence that the bill is indeed progressive reform. It is a response to challenges but it takes the lowest common denominator approach to a solution in too many harder areas. In doing so, it makes neither the state nor the public any safer or better provided for.

In list form, the evidence supporting my position would be on the following changes, and I will expand on all: (1) the transition of significant criminal issues from the District Court to the Magistrates Court, removing the right to trial by jury; (2) the requirement to generate a new group of indictable offences that will be heard by a magistrate and only by a higher court where it is not able to adequately sentence the person; (3) the expansion of the Drugs Misuse Act 1986 to expand the prosecution's current election to have matters dealt with by a Magistrates Court; (4) the new monetary limits for civil jurisdictions; (5) the changes to the committal process; and (6) the issue of the commitment to case conferencing and giving it teeth.

In his speech the minister gave some pretty shallow reasons to support both his claims and his justification for the changes to be implemented as a result of this bill. The Moynihan report was continually referred to throughout his speech but, on the majority of points raised above, the detail of his report does not appear to support the changes implemented. In other words, there is a wide gap between intent and action. In the formulation of a response when presented with a rational review, if the recommendation is a Holden Commodore but one delivers a Mini Moke then you have not delivered and there is an inconsistency, and there is a major problem in that inconsistency. If law is about fact, consistency and at least an attempt at justice then this is not the way to do it in response to a senior legal adviser. I say this on the basis of that inconsistency between intent and action in this bill, reflecting in a recurring manner back to the mission statement.

The major concern must be the same issue as that expressed by the Queensland Law Society—that is, the concern that all rightfully have at removing the right of an accused to elect trial by jury by removing a

significant number of those cases from other courts to the Magistrates Court. Legal Aid has the same view. The Moynihan report on this point says that no entrenched right to trial by jury exists and it is a matter for parliaments to decide. Parliaments are under no constraint and can lawfully determine whether there can be trial by judge or magistrate alone. However, there is a widely held view that trial by jury should not be lightly dispensed with given the serious consequences that may follow. It was based on the concept of proportionality. That is, the processes and resources that are employed in response to particular offences must be proportionate to the seriousness of the offence from the aspect of the community and from the aspect of the consequences on the accused if convicted.

So what is the detail of the implementation step proposed by the Attorney-General in this bill? Without a preliminary step of improving the training and clarification of skills available for Queensland magistrates and a significant component of funds to apply to it, as has been previously canvassed at great length by the member for Maryborough, the minister is proposing to grandfather quite an extensive range of cases dealt with as summary justice by the Magistrates Court and add quite a range of new ones. When that is added to all those indictable offences in the Criminal Code with a maximum penalty of three years or less and property offences where the value of the property involved is less than $30,000—reasonably it does exclude robbery, arson and corruption, as has been raised earlier—this new summary disposition category is very broad.

I accept, but I need to emphasise, that, in law, summary matters are matters dealt with by the Magistrates Court. The current Queensland Magistrates Court handles almost 300,000 matters every year and is currently experiencing significant backlogs of 30 per cent of criminal matters and 42 per cent of civil matters alone—and that was in 2009. Has anyone in the Attorney-General's department or the Attorney-General himself just paused for reflection here and thought to themselves, 'Are we creating a rod for our own back here?' or, 'By creating a whole new gridlock, are we perhaps making the idea of justice for all just a little bit harder to attain?'

The other changes to be implemented as a result of the bill that need a little bit more discussion are points 3 to 6 that I raised earlier. The first of those is the change to the Drugs Misuse Act 1986. It involves the change of many drug related offences by law having to be heard in at least the District Court previously to now being heard in the Magistrates Court on the basis of the Moynihan report finding the majority of these cases being within the current three-year maximum penalty that a magistrate may impose. Moynihan's justification was that there was a need to simplify the charges of possession and supply but the majority of these could be better placed or heard by a Magistrates Court. He was influenced by the high number of multiple charges, recidivist behaviour and the recurrent theme of a guilty plea. He quoted Judge Patsy Wolfe's submission on page 144 on the matter. Correctly he excused all places of commerciality from a Magistrates Court hearing. His summary justification for earlier diversionary treatment and rehabilitation is reasonable and of course should be supported.

With regard to the monetary limits, I accept Moynihan's justification on the basis of research, but it does seem that the $750,000 limit set for District Court hearings implies that the level of expertise demanded of those judicial officers must be of very high order because this quantum can imply that if judgement of that amount is awarded against an individual in a civil case then it may be that that individual may never recover financially. This needs to be carefully considered. The committal process and the issue of case conferencing have been dealt with very well by the member for Southern Downs, and I do not propose to move on with that.

The changes being proposed by Labor will do nothing to streamline the courts; they just shuffle the deck of where the matters are heard. If this is the case, then this is not progress. This is not what Moynihan proposed and this is not justice. If the intention in truth by Labor is to take short cuts and overload our Magistrates Courts with cases that include cases where the accused has been denied the right to trial by jury, then the end result will be bad precedents, inconsistent sentencing, possible incompetence, excessive delay and very little justice. I see absolutely no evidence from any government statement released from the Attorney-General's office nor in the Attorney-General's second reading speech that mentions greater resourcing for the overloaded Magistrates Courts. The police in their submission are saying that this bill will increase their costs because the addition of another layer to the process without mandatory case conferencing before they have to prepare a brief of evidence will lead to much heavier costs and workload. Moynihan's report avoided the issue of the broader use of disclosure in this area.

Even Chief Justice Paul de Jersey, himself a former eminent silk, has said that these changes will also mean a need to maintain the quality of appointments to the District Court. For those who do not understand this, this means that the Chief Justice is saying that we will just have to increase those costs because, with senior silks already earning in excess of $1 million after costs annually, the state is going to have to offer much increased salaries for all levels of the judiciary but especially at the District Court level and above which previously may have been considered to be of lesser importance and therefore remunerated at a lower rate than that of the Supreme Court and Court of Appeal.

Minister, by application of a dumbing down process—consistent with the views that I previously expressed about the use of legal clerks becoming judicial registrars under the new changes implemented in the earlier State Penalties Enforcement and Other Legislation Amendment Bill 2009—we are weakening our courts and diminishing the trust that the public will have in this process. Ultimately, it is a failure of the process itself.

There will be case gridlock in the Magistrates Court and an overall cost increase in the system. In contrast to the Attorney-General's concluding statement in his second reading speech, this significant step is not progressive nor does it take us forward. It does not ensure the more efficient and effective delivery of justice to our state in the future. If this is not a step forward then why are we as a state doing it? I dispute the Attorney-General's selective use of comparing and contrasting those changes in other states to support his arguments when the justification for the base level of the legislative step required some selective verifiable evidence to support the changes that have been made. This is not reform. This is not just looking backwards. It is moving in that direction—backwards.

Isn't the Labor campaign slogan federally 'Moving forwards together'? This is exactly the kind of hypocrisy that Labor brings upon itself by its repeated actions in contrast to its public statements. This bill had at its core an attempt to streamline committals but its actions are all about putting further, unreasonable pressure on lower courts. This is occurring at a time of a second wave of economic decline, a rapid rise in cost of living pressures and Queensland's rising unemployment.

The government response is economically driven because the state under Labor racked up massive debt and an inability to charge enough taxes to pay for all this. What we see then in response is yet another wasteful step that will ultimately just cost us all a lot more. Did anyone ever think to ask the devil's advocate question? Will this cost us more for an equivalent level of justice? I suspect that if anyone did ask that question they were ignored because Labor's preferred response to all such questions is to ultimately throw money at crises that it alone creates. Are we seeing the creation of a justice crisis to follow the Health payroll crisis, the water crisis and ultimately a credibility crisis?

I totally concur with the Police Union response which was summarised as 'be careful what you wish for'. Sometimes reform driven ideologues never get the idea of balance. Just ask Peter Garrett and federal Labor about when they pushed for federally subsidised, insufficiently qualified people to install batts in people's roofs. I am sure they never believed that houses would burn down. But tradesmen and homeowners also lost their lives. All changes to law must have as part of their mission statement 'first do no harm'. This bill today has considerable potential to do a lot of harm. I urge all to beware when all seems rosy.