Speech by

Dr Alex Douglas

MEMBER FOR GAVEN

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Dr DOUGLAS (Gaven—LNP) (2.50 pm): This is one of those really busy bills that modifies 33 acts and makes minor amendments to another 35 acts. The genesis of these changes might be anything from the need to tidy up to right a wrong, to maybe some of the issues that I will speak on, demonstrating that two wrongs do not necessarily make a right.

In fairness, the courts have asked for consideration of changes on a few points, and they have been made. In contrast to that, the SPER changes seem draconian and potentially a significant liability for the government. I will cover only a few of those points via the amendments in the bill to a variety of acts, but possibly my examples might lead honourable members to question whether some of these proposed legislative changes are unfair in parts. The Attorney-General and his department have got SPER on their radar and are giving both them and the public all the wrong signals. The Labor government is giving SPER expanded powers, and no-one is quite checking whether there are safety mechanisms in place. Everyone has their favourite SPER moment of lunacy—

Mr Moorhead interjected.

Dr DOUGLAS: The member might enjoy this. But I recently found one complaint by a constituent to be the icing on the cake. Mr TC was fined 14 years after allegedly not voting in a state election. He did vote in his electorate on the day with his mother, and it was duly recorded as a normal vote, or so he believed. Over the last five years he has supplied three statutory declarations stating all of the above to the Australian Electoral Commission, stating that he had voted and he should not be fined. He forwarded the information to all other relevant authorities. The matter was still handed to SPER. The fine was increased from $60 to $164, and SPER were not backing down. In fact, they critically suspended his licence as well. After direct approach from ourselves to the Electoral Commission and SPER, we have had the fine removed and the charge withdrawn, and he has got his licence back. The constituent has breathed a sigh of relief and he has got on with his life.

I say to honourable members that this bill today gives SPER an interest in your car if you owe them $500 or more. If SPER wish to pursue that line, which is what I presume they wish to do, you could end up losing it. If SPER had added all of the additional fees on to my constituent for falsely being assumed not to have voted, SPER might have been able to put a caveat on his car too. Who thought this up? Did anyone take a moment to see whether they had taken their lithium that morning when this was drafted? For those who are uncertain, this relates to clauses 190, 192, 193 and 195. SPER also wants to ratchet itself up the list of debtor priority positions. This is the third set of amendments within one year to SPER, as Labor both desperately chases income and tries to improve its credentials regarding the management of fines, offenders, fines going unpaid and fine defaulters. Not only is it struggling; it is beginning to look beyond desperate and it is getting ridiculous.

How would members feel if this happened to them? Maybe while SPER could not get a caveat on your car, they could do the very next thing by putting wheel clamps on your car. If they cannot do that, they could suspend your licence—and, yes, you may have done absolutely nothing wrong. Then no-one wants

to talk to you: you are routinely asked to communicate with them via the internet, and voila you are treated worse than a criminal.

I say to honourable members that SPER is on steroids, but they have not got steroid induced rage; they are just getting even. We are not talking about just getting the filthy lucre; they want to take your ability to earn a living away via your licence. Who gives them the right? This parliament does and it is about to do so via this bill. What justification does SPER have? None is provided by evidence that I can see. I believe in fairness, I believe in the principle of paying your way and I believe in a mechanism of enforcement, but I also believe in a fair go—and that means exactly that—and redress where unfairness has been done to a group or individual. This change goes too far, and it is now timely for SPER to be reviewed. For amounts probably worth under $5,000, SPER should have no capacity to register an interest in your car. SPER must be penalised for attempting to suspend a driver's licence for crossover trivial fines. The penalty needs to be substantial to deter an enthusiastic staffer or an imaginative computer programmer from engaging in cyberbullying.

The other amendments in this bill to other acts are quite a cosmopolitan mix. The shadow minister, the member for Southern Downs, has made quite a few points about each. I wish to state, as someone who is interested in the area of child protection, that the bill gags child protection staff from speaking out publicly. This is occurring at a time when evidence in the current domain overwhelmingly states that excessive funds spent along the lines of current department policy not only does not improve conditions for children in protection but makes them worse. I refer them to articles by the child protection research association, which is an Australian publicly funded institution that collects research.

This Bligh Labor government now wants to prevent staff from doing what they want to do for children—protect them from this rapacious government and its appalling policies. Fortunately, researchers will be able to access court files to conduct research in child protection, and that is detailed in this bill. What needs to be said is that governments must act on that valid research, and that is my major point on this subject.

There are plenty of sensible amendments and some technical changes in this bill to address previous drafting errors. I will not go through all of those. I think the amendments regarding judges' associates to be very appropriate, and removing the need for rubber stamping by the Governor in Council probably frees up the system a little bit more to allow for many of our younger legal minds to access a different forum in their paths to deliver a significant part of the holy trinity of structures that represents the core principles of the separation of powers, which has been mentioned this afternoon and which I would like to discuss further as we travel along. Associates have historically been critical players in our judicial system, and this partially recognises that they need simplicity in appointment to facilitate their progress.

In contrast to the points made by the member for Southern Downs about magistrates—and I feel that he has made those points well—I want to cover a few things in a slightly different way. The decision to raise the mandatory retiring age to 70, I believe, is fundamentally wrong. I have heard the points made this afternoon that the transition is to replicate that which occurs in both the District Court and Supreme Court. I believe it should be optional and it should be based on factors such as desire, health assessment, mental capacity and an independent review of performance.

We increasingly live in a society that is looking at seniors with very different eyes. As a GP, I share those views, since most of the care that is generally offered in general practice is towards this group. Indeed, some at 65 years old are not old and they do not need to retire; but there are some at 65 who do need to retire. Certainly there are some at 70 who are still very youthful and have much to offer. I think these points were well made by Michael Kirby, who recently retired from the High Court. He wrote a seminal piece on the matter. In summary, what Kirby said was that it was appropriate for him to retire at 70.

The transition of responsibility based on age criteria is not always wrong, nor is it all right. But, increasingly, where performance based criteria is commonplace and will be accepted, judicial officers need to be included in this group. They must not, nor cannot, demand that they are now exempt from this process based on historical reasons. Times have certainly changed and we must move with the times. My family are deeply immersed in the law. My brother is a barrister in town, and I have many cousins and uncles who are judges in the courts here. In fact, my two great uncles were chief justices of the Supreme Court of Queensland. We certainly have a very strong interest in the judiciary. I believe that appointments to the judiciary under the Goss, Beattie and Bligh governments have not always been made on merit, and this has led in recent times to dreadful and, I would have to accept, often unintended consequences.

There has been for the first time a dreadful popularly referred to case of internal legal challenge within the courts that led to an incorrect incarceration after a conviction and which was subsequently reversed. The problem is vertical in the system. As a member of a family which really does care and honestly understands the implications of not only change but also the dangerous effects of politicisation of the process, we need to understand that abuses of process that do occur need to be corrected. I have

actually faced the same issue of a breach of process in a Magistrates Court with my own wife in her defence of the rights of a victim of sexual intimidation. This was an appalling process.

Our life appointments to the Magistrates Court and higher courts need to be more widely discussed. I respect the difficulties members may have in leaving the role of both advocate or solicitor to the courts—and the point has been made today that magistrates overwhelmingly are more likely to be solicitors, although that has not always been the case—and I accept that returning to those prior occupations is not easy. Sadly, there have been too many examples of serious illness impeding capacity, a reluctance to retire and also, in parts, manifest incompetence. Those two words will cause great difficulty in my case with friends, immediate relatives and colleagues, but we all need to talk about these things.

In contrast to those who may feel that this argument is an issue of appointments based on political affiliations, friendships and such—when one party is in power, there is a feeling that appointments are made along these lines; there are too many examples of this both now and in the recent past—I respect that Queensland really is small and the pool is somewhat small, too. Outstanding legal minds have in the past and will in the future rise to the occasion, for the advocate is really the gun for hire and can easily prosecute—and often successfully—any argument that in fact they do not believe in. They do not always win for their client but they give it their best shot. By virtue of their training, their moral compass and their belief in the system, they want to impartially discharge their duties on the basis of evidence, law and common sense.

I have no reason to suspect that it will not always be so, but it has come time to ensure that it does occur. At a lower level appointment, we need to ensure there are adequate controls in place. This age change is inappropriate in its current form. The steps to 'proper cause' to removal need to be removed in such a manner that there is a graduated process that promotes excellence and guarantees impartiality. As such, the idea of setting the bar so high to lead to proper cause is a disincentive to the preventative action on behaviour where it is inappropriate and probably entrenches the very problems we currently are facing.

Honourable members, governments change, people die and political allegiances are fickle. 'One day friend, one day foe' is a truism in the history of man for we are all indeed flawed. I urge the Attorney-General to leave the age of retirement as it is in the Magistrates Court. It is also time to begin questioning the actions of our judiciary in such a manner that does not damage the independence of the judiciary.

There are appropriate measures that can be taken to both redress balance and renew the judiciary itself. Criticism is not always wrong, even if it is unwelcome. There appears to have developed a clear pattern of failure of appropriate review of a judicial officer that may have as its genesis a weakness in the appointment method. Collectively, this must be remediated and the parliament may have to have a role in that process. These matters are difficult but they must be discussed without resorting to cross-parliamentary personal abuse and facile arguments. It would be unworthy to the institution of parliament and it would reflect poorly in the public's perception.

I wish to highlight the simple point made by the member for Southern Downs when he correctly reflected on the diminished roles of the Industrial Relations Commissioner now that there has been a mass transfer of their roles to the Commonwealth but not a commensurate transfer of themselves, their staff and the costs of those processes to the Commonwealth itself.

Times indeed change, the rules do change, the needs of society change, and our Constitution recognises that evolution. Rather than blind adherence to simplistic ideals that ensure what you see is not always what you get, we need to ensure that our system reflects practicality and the time in which we live and has community acceptance.