Speech by

Dr Alex Douglas

MEMBER FOR GAVEN

Hansard Tuesday, 26 October 2010

POLICE LEGISLATION AMENDMENT BILL

Dr DOUGLAS (Gaven—LNP) (2.45 pm): The Police Service has a long history of the successful transition of crime prevention to crime resolution that reflects the times. Our Queensland Police Service, QPS, has more than its daily work cut out for it managing an increasing deluge of paperwork and process when the community is calling on it to be far more visible. This bill is a sensible attempt to reduce the increasing paper chase for our police officers for offences that should not impede their ability to do that for which they are properly trained. Additionally, this bill enables the CrimTrac system to function as per its design and the PLA, the Prostitution Licensing Authority, to be able to proceed with its activities in the event of no-shows by industry offenders.

The critical piece of this legislation deals with public nuisance offences, which include being a public nuisance, urination in public and associated offences. These associated offences still seem to remain unclear on reading both the bill and the explanatory notes. This issue is a significant one. Public disorder has become a hallmark of Labor in government for nearly all of the 20 years of its governance. It is so because Labor underestimates offenders and overestimates its own ability to manage those offenders and the reasons that are associated with the offending behaviour. The evidence for this statement is merely to be found in the report card—that is, the number of offences of a nuisance nature annually responded to, the growth of those offences and the relative cost of those offences, inclusive of reception costs. There are 1,000 plus offences annually of this type, the growth is at least three per cent to four per cent and the cost is one to two hours of police down time. For each new offence that hourly cost is $200 directly and roughly $340 if one allows for having to replace that officer in the community when the other officer is doing the critical clerical work.

The QPS ran a trial in 2009 using infringement notices for public nuisance, urination and other minimal offences. It followed a CMC report recommending this step. Griffith University has been engaged to undertake the evaluation of the trial and has done so with a result determining that the issuing of these tickets is a cost-effective means of dealing with public nuisance offences. The minister has stated that 46 per cent of those issued with tickets have no prior criminal history. For those living on the Gold Coast this law particularly has focused on 'managing party people'—I quote the minister from his second reading speech—'with a potential to prevent them from entering the criminal justice system'. I want to discuss everything from the offences, the definitions, tickets and what really is best to manage party people. But I am going to start with the last first because one needs to state the blindingly obvious. To manage party people one needs to remove the party people from the environment where their behaviour is so unacceptable, because, often under the influence of alcohol and drugs, those offenders will often continue to offend until they are removed. On the Gold Coast there are too many examples where offenders are not removed and they continue to cause havoc until they are removed. Issuing this group with tickets is naive. The police need to remove the offender, whether or not they issue them with tickets, and that will actually stop the offending behaviour. Certainly, this is the Gold Coast environment and I do not want to speak for all of the other parts of the state, but it is very similar across Australia.

It may be even that zero tolerance is not enough and the government, by refusing to use its powers under the Liquor Act, is compounding everything from public nuisance offences to more serious offences.

Yesterday, the fair trading minister refused to accept interstate and overseas evidence that demonstrates that restricting the number of licensing outlets in a particular area reduces offending behaviour. His statements fly in the face of powerful evidence. Yet we have a flawed strategy of issuing tickets as a general response where far more specific action is called for. The minister jumped on the bandwagon and said that caps on the number of outlets that sell alcohol would be against national competition rules.

In view of the serious nature of the offences, the difficulty in managing these types of behaviours, and evidence from Sydney and London that restricting the numbers of licences in designated areas does reduce crime and offending behaviours, has the minister ever considered the submission to the federal government and also to the Attorney-General with regard to reviewing that component of competition law that may well save lives? Ideology should not blind one to what is needed in the community. We have a problem with the issue of zero tolerance, because some people falsely equate it with a police state mentality. The issue of zero tolerance in certain situations will prevent serious injury and maybe even save lives. We need to change our attitudes to what will work in certain situations and appropriately deliver laws that suit those environments.

The issue of tickets is really very interesting. If one is to use traffic offences as any guide, many of these tickets—possibly nearly 80 per cent—are lost, destroyed or ignored. SPER, that Leviathan-like monster that lurks in the background, will have a major role in the consequences of issuing tickets. No doubt SPER will go on to cancel further licences and we will have the issue of further unlicensed drivers who committed offences, and others, driving around our streets. Presumably, these tickets will largely be for amounts of between $100 and $300, which is strangely about what some seem capable of spending on a very big night or a weekend.

I am concerned that the implementation of the tickets has not included a consideration of including what is known as a positive ticketing program. That program, which was introduced originally in Vancouver in 2001, has since spread to more than 50 countries. I am greatly concerned that the program is being politely ignored by this state Labor government and that the QPS has, in fact, denigrated it. That disappoints me and many other people, particularly on the Gold Coast, where the CEO of the Gold Coast City Council, Dale Dickson, after a study tour has elegantly described the philosophy behind the program, how it operates and what are the outcomes. I put it to members that there are many ways to skin a cat—and for cat lovers I do apologise for that turn of phrase; it is rhetorical. By using tickets we can cover both ends of the behavioural equation—that is both good and bad—to obtain a positive result.

I will get to the bad, but I cannot understand why a party that believes that its government is a committed reformist government would not merely suggest these positive ticketing programs when evidence from 53 countries that have used this approach shows that 93 per cent of offenders do not reoffend within the scheme. For those who are curious, I point out that the positive ticketing program initially targets disconnected and at-risk youth in the community. Its intention is to ensure that positive tickets would legitimately reinforce positive behaviour exhibited by youths by offering them something of value. Community partners in Vancouver are McDonald's, which issues food coupons; the 7-Eleven group, which issues slurpee coupons, movie and entertainment passes; local councils, which give pool and ice rink passes; and theme parks. Local businesses donate. These tickets have on them the vital phone numbers for the Kids Help Line, drug information and health services. At the opposite end of the ticket equation, which is the punishment aspect, the issue of this punishment ticket can be seen in the same terms as tickets being issued when caught speeding by speed cameras. It raises concerns about easy revenue raising when members of the public have effectively very limited capacity to defend any claim that the police have made against them in these circumstances.

The bill provides for the capacity of the members of the public to have their right to be heard in a Magistrates Court. With 60 per cent of people appearing in the Magistrates Court on the summary offence of being a public nuisance and 97 per cent of those people either pleading guilty or being found guilty, in sporting terms their chances are dismal at best and hopeless at worst. On most occasions the alleged offender's word against that of the law is not upheld. It is a no contest. No doubt there are too many of these offences being dealt with in the Magistrates Court and even the swearing-in of judicial registrars and the delivering of no new money—read we need to have these offences removed from the courts. Is that the correct legal process? I say that it is not and that these actions appear to be reinforcing negative steps in that direction.

Before government members start telling me that people who commit these offences of public nuisance and public urination should be fined and not dealt with by courts, let us look at some real examples. In my electorate of Gaven, we have bus drivers being given bus timetables by TransLink that date back to 1995 and earlier. Because of the tightness of the schedule, these poor drivers—male and female—have no time in the schedule in which to get to the toilet. A month ago, just outside my electorate boundary on the east-west bus route, which starts in my electorate, a bus driver had to go to the toilet. The council had locked the public toilet near one stop. It locks the toilets after seven o'clock at night because of vandalism. She was behind the bushes and was unfortunately interrupted by a group of people who did not realise the nature of the situation. They were offended by the public urination by this woman and the

exposing of herself in public. After some considerable discussion by a variety of people involved, the police were not called. The staff union representative—

Ms Grace interjected.

Dr DOUGLAS: Unions have been involved. We have had extensive meetings over this. The situation is appalling. The lady involved is obviously blameless but, under this law, she is going to be guilty of public urination and should be fined and issued with a ticket. This is the issue that is raised by the Law Society and other members of the bar. When is public urination an offence? When is it inappropriate? I accept minors are exempt, but what of incontinent older men and women—in some cases not very old at all? I am sure most do not support a lot of those people urinating in all manner of places where it should not occur, but sometimes it is not their fault. There is nowhere else to go.

This bill is somewhat glib in its politics in that it is just knee-jerk and sounds like a good idea, where, in practical terms, it may be just a bit ridiculous. For those who then go on to say, 'If the person is aggrieved, they can just refuse to pay the fine and go to court to explain their circumstances,' I ask: who says that a magistrate will believe, in an environment light years away from a very small bush in the backblocks of Surfers Paradise—where my unfortunate lady bus driver had to go—that they are telling the truth? Do members really think that these honest, hardworking individuals should have to be inconvenienced both in time and financially and be subjected to the humiliation of stating their case in court? I strongly disagree that they should have to do so, and so will most members of the public. Clearly, to any sensible person, one would have to embrace the sensible change to the Summary Offences Act 2005—

A government member interjected.

Dr DOUGLAS: The member should just listen to this. Alastair MacAdam suggests that the Summary Offences Act 2005 be redrafted to provide that the offence of urinating in a public place is not committed unless the urination occurs in an indiscreet and offensive manner or, in other words, the introduction of a 'without reasonable excuse' element to the offence. He then states that, as the provision is currently worded, a person who urinates in the following circumstances would commit an offence for which there would be no defence. He goes on to give the example of a man with a prostate problem and someone who was denied entry to licensed premises to access the toilets because of a lockout, the public toilets being locked, and lists all the circumstances in between. Alastair MacAdam remains very concerned about the offence of wilful exposure. So do I and so do Surfside bus drivers, because they cannot use the toilets easily on the Gold Coast, especially at night. Honourable members, for too many to be fined $200 for urination in a public place is grossly unfair and takes no account of the difficulties that many have in both accessing toilets and controlling their own physiology.

I strongly believe it is discriminatory and I intend to write to both the minister and the Anti-Discrimination Commissioner on the issue of the discriminatory values of this offence. To then allow 'SPER monster' to try to take these people's driver's licence if they refuse to pay the fine and then try to defend the fine in court after debating what is going on I think manifestly compounds the discrimination. I believe it renders the amendment unjust and impractical. We must never condone the passage of legislation that is unfairly weighted against those who are least able to defend themselves, that being everyone from the elderly to the poor, the homeless and, in some cases, pregnant women.

Mr Roberts: So you would be opposed to mandatory sentencing on this argument, then, wouldn't you?

Dr DOUGLAS: No, I said I support it in circumstances, Minister. We can go into that, but this is about tickets.

Madam DEPUTY SPEAKER (Ms Farmer): Order! Members should direct their comments through the chair.

Dr DOUGLAS: Examining the key part of this bill by working backwards shows that the amendment is inappropriate. It is poorly targeted. It is not proportionate. It is not transparent. It is therefore poor legislation and is unworthy of support.

By initially ignoring the balance of the use of tickets, a lopsided result eventuates. It is therefore inconsistent law. You might ask what happened here. I can only guess someone thought, 'Gee, this is really a good idea. It is all just so simple.' But life is somewhat different. Critically, there was no key stakeholder consultation beyond government agencies. The broader stakeholders—the Police Union, which the government seems routinely to want to vilify, and the Law Society—were excluded. It is no wonder they have a dismissive view of this bill. I think the comments of Michael Cope from the Queensland Council of Civil Liberties really say it all. He said—

This will become the thing police slap on someone whenever they aren't happy.

…

No-one will fight them and ultimately people who are homeless or young will bear the brunt of this.

He referred to the powers being a concern when it comes to offensive language and that it would see public nuisance offence rates soar. I have to say that it increasingly looks like a cash grab under the pretence of a management step for public order. Since the government agencies are not an independent umpire on the fairness of these new changes if the key stakeholders were excluded, and they subsequently commented negatively on the legislation anyway, I suspect it is dead legislation and deservedly is headed for the scrap heap.

The two other key aspects of this bill relate to changes enabling the electronic assessment of criminal history records for employment screening purposes. This completes the link to CrimTrac's National Police Checking Service support system. Sensibly, it protects the confidentiality of the information of an individual by restricting access by third parties. It may be that this is too restrictive and one might not have considered that a valid third party should be considered for access on the basis of security clearance in the national interest.

The change to the Prostitution Act 1999, and by default the Prostitution Licensing Authority, will primarily enable the PLA to deal with non-compliant operators who choose to not pay annual fees—there has been a variety of reasons raised; some seemed to have misunderstood that they were annually rather than for three years—not turn up for hearings and refuse to comply. These changes have been dealt with today by the shadow minister. I do not intend to go much further than this. The compulsory powers regarding the behaviour of witnesses are interesting. The minister concludes with the statement—

No offence is committed where the answering of the question or production of the documents or information would self-incriminate.

In the twilight world of prostitution nearly everything that operators do might be deemed to be incriminating, so one might conclude from this that all witnesses might well claim the Australian equivalent of the US fifth amendment—that is, section 10 of the Queensland Evidence Act 1977. So could the changes be nearly as effective as the public urination offence? If this bill might be considered as a whole, I believe the answer is yes.

In conclusion, this is a relatively simple piece of legislation that has been drafted in such a manner that a critical part of it is both unjust and impractical. I have referred to it as a potential piece of dead legislation even before it begins. Parts 2 and 3 of the legislation are probably going to survive for reasons of practicality. Certainly parts of step 3 might not. This seems to juxtapose two opposing views of a being, presented here as a bill. Interestingly, the Shakespearean play *Hamlet* is often seen as the true father of existentialism that is the forerunner of humanist theory that forms a core philosophical basis of Labor policy. In *Hamlet,* the Prince of Denmark is very similar to the Premier—not one to broker disagreement when challenged and pining for love from anyone who would listen in a one-sided statement of position. The immortal line 'To be, or not to be: that is the question' could easily have been replaced here by the same base motives that Hamlet wanted to understand—that is, 'To pee, or not to pee: that is the question'. Well, honourable members, unless we change the Summary Offences Act 2005 as well, all the advice to the punters must be, 'Hang on, even if you are busting.'