Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Tuesday, 3 August 2010

CIVIL AND CRIMINAL JURISDICTION REFORM AND MODERNISATION AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (4.58 pm), in reply: At the outset I want to thank all honourable members for their contributions to this debate on the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill. This bill is the first stage of a legislative response to the review by the Hon. Martin Moynihan AO, QC of the civil and criminal justice system in Queensland. The bill introduces a range of reforms designed to achieve a more efficient and effective civil and criminal justice system in Queensland. I and the other members of the Bligh government are committed to ongoing reform to ensure that this state has a contemporary and responsive justice system that can be accessed easily by the community. I particularly want to thank the government members for their thoughtful contributions to the bill.

I now wish to address some of the matters raised by honourable members during the course of the debate. The member for Southern Downs commented that the reforms do not meet the expectations and the promises made by the government. Nothing could be further from the truth. I can reaffirm that the Bligh government has decided on a staged rollout of reforms based on Mr Moynihan's report, given the extensive and significant nature of the reforms.

Mr Moynihan recognised the need for such a staged, prioritised and structured approach to the implementation of any recommendations. The government has also committed to ongoing monitoring and evaluation of the effectiveness of the reforms. This will help ensure that there is a solid evidence base for consideration of future reform and change. Consultation undertaken by the government on a draft of the proposed reforms highlighted divergent views on what are extensive reforms. The concerns raised by stakeholders support the government's decision to adopt a staged, incremental and prioritised approach to implementation of these changes. Where possible, changes were made to the reforms originally proposed for the first stage to address the issues and concerns raised by stakeholders during consultation. The amendments made in this bill seek to represent a compromise solution, the government having listened and heard stakeholders.

While Mr Moynihan identifies a number of problems with data and information management, following extensive consultation with stakeholders he established a need for reform in a large number of areas and his recommendations are based on those findings. In terms of the data issues identified by Mr Moynihan, the government has already developed and implemented a number of initiatives aimed at ensuring the collection of accurate, reliable, coherent and compatible information. Work has also already commenced on a number of the short-term initiatives recommended in the report, including cleansing of single person identifier data by the Queensland Police Service. The government is committed to the examination and development of further innovative and integrated strategies to make more effective use of existing criminal justice information.

The government also supports the increased use of technology and has made a significant investment in court technology in recent years. As part of the second stage of reforms, the government will also be considering the recommendation for the establishment of a criminal justice procedure coordination

council for Queensland. It is envisaged that the role of this new body would include facilitation of the development of integrated, valid and consistent data across the criminal justice system, implementation of effective electronic data collection, management and use across the criminal justice system and the development of process and data systems for sound evidence based decisions to evaluate the effectiveness of criminal justice practices and procedures.

The member for Southern Downs raised concerns over the capacity of the District and Magistrates Court to deal with the more complex civil matters that may present before these courts due to the changes in the civil jurisdiction limits. I hold no such concerns. I have the fullest confidence in the capacity of both our judges and magistrates to deal with matters listed before them and in the respective heads of jurisdiction in managing both the lists and the judicial officers to achieve the best results. With respect to the District Court, I would note for the member for Southern Downs that there is a wide depth and range of experienced judges on our state's District Court. In February this year I appointed four new judges to the district whose combined experience totalled 127 years of legal practice. All appointees have broad backgrounds with particular strengths in civil matters. The organisation of the court's workload is a matter for the District Court. In particular, the Judge Administrator is responsible for the administration of the District Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the District Court. The Judge Administrator must consult with the Chief Judge in carrying out the Judge Administrator's functions.

In recommending the increase to the civil jurisdictional limit of the Magistrates Court, Mr Moynihan had specific regard to the changes in the professional qualification and the increasingly broader range of professional experience of appointees to the Magistrates Courts over the last 10 years, during the stewardship of Labor governments. The member for Southern Downs also asked what impact the reforms are likely to have upon the workload of a Magistrates Court. There are a number of issues and difficulties which make any precise assessment of the impact of the reforms difficult. The government is therefore committed to closely monitoring the impacts of the reforms. The bill provides that the reforms will only apply to new prosecutions started after commencement so that the impacts are incremental and gradual. An evaluation of the impacts will also be conducted following implementation of the second stage of reforms.

The member for Southern Downs raised a concern that the committals process was being interfered with and substantially reformed. That was rebutted in considerable detail by the member for Barron River in his contribution to the debate. The information collected by Mr Moynihan during the course of his review led him to conclude that the current system does not make effective use of public resources and has adverse effects for many. The bill's reforms, based on Mr Moynihan's recommendations, are aimed at providing a more focused, streamlined and effective committal process. A particular concern identified by Mr Moynihan was the number of matters listed for committal hearing which turn into a full hand-up committal on the day of the hearing or proceed with only one or two witnesses being called. This is clearly an inefficient and expensive use of the court's, as well as the parties', time and puts witnesses to considerable inconvenience. Those of us who have practised criminal law know the costs and expense this can cause to all participants in the criminal justice system.

Mr Moynihan also noted that the accused can require the prosecution to call every witness to be available for cross-examination no matter how trivial or insubstantial their evidence may be, and without the need to prove any justification. The committal hearing has also on occasion been used for the purpose of intimidating a witness before trial so as not to incur a jury's disapproval. The limitation—not removal—on the cross-examination of prosecution witnesses contained in the bill is designed to reduce these problems and ensure that the parties put their minds to the issues involved in the case at an earlier stage.

It is important also to note that the reforms to the committal process contained in this bill will align Queensland with the approach taken by most other Australian jurisdictions. The committal proceedings process has been the subject of extensive reform across Australian jurisdictions. Western Australia and Tasmania have introduced significant reforms effectively abolishing the committal. Other jurisdictions have retained hand-up committals whilst making provision for the cross-examination of witnesses in exceptional cases only. In Queensland, amendments to the Evidence Act 1977 which commenced in 2004 imposed restrictions on the right of an accused to call a child witness at a committal hearing in relation to a sexual offence. The changes brought about by the bill imposing restrictions on the cross-examination of prosecution witnesses generally are based on the New South Wales Criminal Procedure Act 1986. This legislation has been in place for a number of years, has been tested by judicial considerations and is generally regarded as working satisfactorily.

The member for Southern Downs raised concerns about summary disposition and queried the perception that these reforms removed a right to trial to certain accused persons. The reforms in the bill introduce increased clarity and structure by creating a new and distinct category of offences which must be determined summarily subject to some limited exceptions. These amendments will go some way to addressing the current haphazard selection of matters being heard in the District Court for a number of offences.

The government will monitor the impacts of the reforms and conduct an evaluation. A combination of factors influence the decision not to have a matter heard in the Magistrates Court. There are a number of undesirable consequences of the current framework, including that pleas of guilty are not made at the earliest opportunity. Mr Moynihan found that there is no clear rationale as to why certain offences attract a prosecution election and others a defence election. He considered that this is evidence that there is a genuine need for modification with regard to who has the right to elect and the types of offences that can be dealt with summarily to provide a coherent system with clarity and certainty for all involved.

Under the amendments in the bill, all Criminal Code offences carrying a maximum penalty of three years or less, as well as most property offences, must be dealt with summarily. The defendant's right to a trial by jury is safeguarded by the amendments to section 552D in the bill which allow the defendant to apply to a magistrate to have a matter referred to a higher court where exceptional circumstances exist. As is currently provided for under section 552D, magistrates will also be required to abstain from dealing with a matter summarily where the magistrate considers that the defendant will not be able to be adequately punished on summary conviction. In addition, the bill amends the Drugs Misuse Act 1986 to expand the current prosecution election for summary disposition of possession offences to those offences carrying a maximum penalty of more than 15 years where no commercial element is alleged. Under section 118 of the Drugs Misuse Act, a magistrate must, however, abstain from dealing with a matter summarily if the magistrate forms the view that the charge ought to be prosecuted on indictment.

The bill's reforms to the summary disposition regimes in the Criminal Code and the Drugs Misuse Act seek to balance the rights and interests of all parties in a way that is fair, equitable and efficient. Defendants, as well as witnesses, victims and the broader community will benefit from the expeditious disposal of appropriate matters in the Magistrates Court. Defendants can expect to spend less time on remand and will be able to access specialist services such as the Murri Court, the Queensland Indigenous Alcohol Diversion Program, the Special Circumstances Court and Drug Court services which are not available in the higher courts.

In appropriate cases, however, defendants will continue to be able to have their matters heard in the higher courts. I would note for the benefit of honourable members opposite that one of the objectives of the reforms to summary disposition proposed by Mr Moynihan was to bring Queensland into line with other Australian jurisdictions. Mr Moynihan noted that there were more cases dealt with in the Queensland District and Supreme Courts than in higher courts in any other Australian jurisdiction. The Office of the Director of Public Prosecutions noted that matters that would be dealt with in the Magistrates Court in other states, such as minor assault, minor drug possession, petty theft, motor vehicle crime, minor fraud and lesser property offences, are required to be dealt with in the District or Supreme Court.

What was surprising during the course of the debate was the lack of analysis by those members opposite. There has been a significant process involved here: the report from Mr Moynihan, the response by the government, a draft bill put out for consultation, a final bill coming before the parliament. There has been no comment until today by the state opposition on any matters relevant to this important reform process. There has been no acknowledgement of the changes implemented by the government as we moved forward on this, after consulting closely with legal stakeholders and other stakeholders in the community who had an interest in this. We have listened to the community and we have modified our position to ensure that these reforms are effective, that they will take hold and that they will be subject to review in the future. We will proceed down this path in a staged fashion to ensure the reforms take hold and are effective.

The member for Southern Downs also included in his address a misguided effort at muddying the debate with allegations and suspicions of conspiracies concerning amendments to the Public Trustee Act. I would note for the benefit of the member that, until recently, all unclaimed money held by the state was paid into the Treasurer's Unclaimed Moneys Fund. On 1 July 2010 the Treasurer's unclaimed moneys fund closed due to the operation of section 97 of the Financial Accountability Act 2009.

The amendments to the Public Trustee Act 1978 that are contained in this bill will ensure that all unclaimed money in Queensland, both public and private, is paid to the Public Trustee Office's unclaimed moneys fund. As a result of the amendments, Queenslanders will be able to search a single online database for all unclaimed money in Queensland. The amendments will allow the Public Trustee to move unclaimed money that has been in the unclaimed moneys fund for more than 25 years from the public register of unclaimed moneys. This amendment is being made due to operational reasons. Given that it is reasonable to presume that a person who has not made a claim in more than 25 years will more than likely never make a claim, the amendment will ensure that the public register does not become clogged with obsolete information.

I would note most importantly for the member for Southern Downs—and I hope this assuages his concerns—that removal of a person's name from the register will not prevent the person from later claiming any money that they are owed. Further, the proposed amendments will remove my discretion to direct that moneys remaining unclaimed for 20 years or more be credited to the Consolidated Fund and will instead require me to direct that moneys remaining unclaimed for six years or more be paid to the

Consolidated Fund. I am advised that as at 1 July 2010 approximately $36.152 million in the unclaimed moneys fund qualified to be remitted to consolidated revenue as a result of these amendments where it will be held for individuals to claim if they so desire. There will be no restrictions on individuals making claims on those unclaimed moneys. Transfer to the Consolidated Fund will not prevent a person from claiming the money.

The mandatory transfer to the Consolidated Fund is consistent with the approach previously taken under the Financial Administration and Audit Act 1977. This is also consistent with the approach taken in other jurisdictions, again bringing Queensland into line with what happens around the rest of Australia where unclaimed moneys are accepted by the state as part of consolidated revenue. I consider that the Consolidated Fund is the most appropriate place for this money to be held.

The member for Southern Downs queried the summary disposition of the electoral offences in section 96E to 96G of the Criminal Code. While it may suit the honourable member's penchant for the paranoid to suggest some dark and mysterious reason for dealing with these offences summarily, I would note for the benefit of the honourable member that these offences are already capable of being dealt with summarily. A cursory reading of the law would have demonstrated that. As each are punishable by a maximum sentence of three years, there is no possibility of a diminution of penalty by hearing them in the Magistrates Court.

The member for Southern Downs concluded his address with a broadside at the Office of the Director of Public Prosecutions, drawing a tenuous connection between the capacities of the DPP and the validity of the reforms in question. I will not glorify the member's comments with a lengthy reply beyond stating that, unlike the member opposite, I remain an unwavering supporter of the Director of Public Prosecutions, his office and his staff, confident in the quality and professionalism of the advice I receive and the work that they undertake each and every day and am staunchly opposed to any interference in the independence of the office, unlike the member for Southern Downs, who has sought to pass a motion in this parliament that would apply direct political pressure to the DPP on issues of his choosing.

As usual, the member for Kawana made a sterling contribution to the debate and dismissed the most significant reforms to criminal and civil justice in Queensland in a generation as unworthy of his precious time in this parliament. As ever with the member for Kawana, there is no beginning to his talents when contributing to the debate and yet further evidence of his delusions of adequacy with respect to an understanding of the law.

The honourable member for Toowoomba North asked about the adoption of further case conferencing and the strengthened committal test. I thank the honourable member for his question. With respect to the implementation of a strengthened committal test—recommendation 55 of the report—Mr Moynihan was of the view that this would help to dispose of more cases at an earlier stage. Given that case conferencing is also focused on narrowing the issues and filtering out weak cases before reaching committal, the government considers it important that these recommendations are implemented together. The government will give further consideration to the implementation of both these recommendations following the evaluation of the reforms. This will allow a consideration of the outcomes of the mandatory case conferencing trial held in New South Wales. This was outlined in the initial government response to the report.

Agencies including the Queensland Police Service are currently examining the introduction of a case conferencing system as part of a development of administrative arrangements to support the new committal process. The amendment ensures that police prosecutors will be able to be delegated sufficient authority to participate in the proposed voluntary case conferences. The government has determined to delay the implementation of compulsory case conferencing until the initial reforms to the committal process contained in the bill have been implemented. This will also allow the new voluntary case conferencing regime to be formalised and its effectiveness to be assessed prior to consideration being given to the implementation of a formal and compulsory case conferencing process. The outcomes of the New South Wales case conferencing trial, published recently by the New South Wales Bureau of Crime Statistics and Research, show that the trial had only a limited effect in reducing the number of late guilty pleas.

In conclusion, I would like to place on record my sincere appreciation for all of the work undertaken by a large number of people in bringing this substantial reform body of work before the House—firstly to Mr Moynihan, whose dedication to the project is evidenced by his comprehensive report. I would like to acknowledge the stakeholders, who have improved the quality of the bill by their generosity in the consultation process, including the Bar Association of Queensland, the Queensland Law Society, the Queensland Police Service, Legal Aid Queensland and the Office of the Director of Public Prosecutions. I also want to thank the judiciary, particularly the Chief Justice, the Chief Judge and, more particularly, the Chief Magistrate, who has been conducting a round table in relation to implementing the reforms. I thank them for their ongoing leadership in the justice system in Queensland.

I also want to acknowledge the officers of the Department of Justice and Attorney-General who have played such a significant role in developing this reform bill. In particular, I want to thank the Acting Director-

General, Phil Clarke; the Acting Director of Strategic Policy, Jenny Lang; the Acting Deputy Director-General, Terry Ryan; and the court staff who have been involved. There are many officers in the Department of Justice and Attorney-General who have been involved in this project. One I would like to mention is Julie Harvey, who has committed a very large part of the last two years to the comprehensive consultation process and preparation of this legislation. Without her dedication we would not be debating this legislation today. It is rare to work with an officer in the Public Service who is so dedicated, enthusiastic and thorough as Julie Harvey. I want to thank her particularly for her contribution to this important reform.