Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 6 October 2010

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (4.04 pm), in reply: I thank all members for their contributions to the debate on the Justice and Other Legislation Amendment Bill. I thank the members of the government for their support. The bill includes amendments that will deliver fairer outcomes and more efficient and streamlined processes in both the justice and industrial relations systems in Queensland.

Some of the more substantial measures in the bill include providing for the permanency of the judicial registrars scheme following a successful trial; increasing the compulsory retirement age for magistrates, acting magistrates and judicial registrars to 70 years, delivering parity with other jurisdictions and the higher courts in Queensland; providing for the appropriate availability of the electoral rolls and aligning that process with the Commonwealth electoral laws in this area; improving equity in operation in relation to the State Penalties Enforcement Act; providing access to parental leave for persons in relation to children born under altruistic surrogacy arrangements; improving the administration of the Industrial Court of Queensland, the Queensland Industrial Relations Commission and the Queensland Workplace Rights Ombudsman, including by providing greater flexibility in relation to part-time employment and appointments; and providing for compliance and enforcement arrangements in relation to a mandatory code of practice for clothing outworkers. The bill includes a large number of amendments for the purpose of improving the operation of legislation, clarifying its meaning and keeping the statute book correct and up to date.

I note that the member for Burnett indicated that he sees a conspiracy in large bills containing clauses that amend many pieces of legislation. Nothing could be further from the truth in this bill. This is about the government keeping the law up to date and modernising the law to reflect a modern state. We do not seek to hide anything in legislation coming before the parliament. That is why it lays on the table of the House for two weeks and is open to full and open scrutiny by all members of the parliament and, ultimately, is subject to a debate as we have had today. Regrettably, in my view, the member for Burnett spoke tangentially to the terms of the bill, including a discussion on the buyback of fishing licences. How that is possibly relevant to the bill remains a mystery to me.

On behalf of other responsible ministers, the bill includes amendments for the improvement and clarification of the Family Responsibilities Commission Act 2008, the Payroll Tax Act 1971, the Disability Services Act 2006 and the Transport Operations (Passenger Transport) Act 1994. I will address some of the matters raised by honourable members during the course of the debate.

The member for Southern Downs asked why it was necessary to make the amendments to the Acts Interpretation Act with respect to coastal waters. I inform the honourable member that in the case of New South Wales v Commonwealth (1975) 135 CLR 337 the High Court held that state boundaries end at the low-water mark and that states had no proprietary interest in respect of the territorial seabed. Subsequently, at the request of the states, the Commonwealth enacted the Coastal Waters (State Powers) Act 1980 and the Coastal Waters (State Title) Act 1980. The combined effect of those two acts prescribed the legislative powers of each state in relation to making civil laws for application in off-shore areas.

I highlight the cooperative relationship between the states and the then Commonwealth government trying to clearly define the responsibilities of the states and the Commonwealth, including legislative responsibilities. We see a complete contrast with the Liberal-National coalition in Canberra, which is seeking to ride roughshod over the sovereignty of this parliament and the people of Queensland in unilaterally trying to overturn laws passed by a democratically elected parliament at a state level. I hope that all men and women of integrity in this House will stand against the sort of untrammelled domination that the Leader of the Opposition, Tony Abbott, would see the Commonwealth exercising over state jurisdictions.

In Jones v State of Queensland and Another [1998] 2 Qd R 385, the plaintiff argued that the Supreme Court of Queensland had no jurisdiction to deal with water beyond the low-water mark. In a single-judge decision, the court disagreed. Even though the single-judge decision confirmed that state laws apply in coastal waters, clarifying provisions relating to offshore jurisdiction have been included in legislation to provide certainty about the operation of the state's jurisdiction offshore.

Given the volume of legislation, it is considered more efficient to place an overarching provision in the Acts Interpretation Act rather than include similar provisions in each law. This belt-and-braces approach will provide for greater certainty about the application of state laws offshore as well as provide a more effective manner in which to legislate about this issue. It provides clear lines for everyone to understand. There are no matters of concern that have driven the timing of this amendment. I can assure the member for Southern Downs that it is being made out of an abundance of caution to avoid the necessity of including specific provisions in various pieces of legislation.

The member for Southern Downs also asked why it was necessary to amend the Bail Act to allow watch-house bail to be granted to an offender who has been arrested for failing to appear in court. I would first note and make it very clear to all members of the opposition that this was a request of the Queensland Police Service. The Queensland Police Service asked for this amendment to the law. We have the opposition, often in this House, criticising the government and standing supposedly in support of the Queensland Police Service. I hope those opposite have the courage of their convictions and, instead of their all round condemnation of this amendment to the Bail Act, they recognise where this amendment came from. It was a request from the Queensland Police Service that the government is delivering. Why? To make the Queensland Police Service a more efficient Police Service in this state.

I think it is incumbent on all members of this House to listen to the Queensland Police Service when they come forward with sensible statutory amendments, as we have seen put forward here. I note the member for Kawana in the House, who also sought to decry these amendments to the Bail Act, somehow equating them to a 'soft on law and order' approach. Again, this is another disconnection between the truth of what the Queensland Police Service seek and the fantasy world that the member for Kawana and other members of the LNP live in, perpetrating deliberate mistruths in this House about law and order and about crime. We will have a debate on that later today, and what an interesting debate that will be, particularly given the contribution of people like the member for Mudgeeraba.

I refer to the comments from the member for Toowoomba North in the debate about the member for Southern Downs. It was implicit in the comments of the member for Southern Downs; and the member for Mudgeeraba ripped the facade apart when she said, 'There should be a reason for removing judicial officers, namely magistrates, from office if we don't agree with what they are doing. If we don't like the decision, we think we need another way to remove them from office.' That is one of the most scandalous things that I have heard in this House since my election and, frankly, it is one of the more scandalous things that has probably ever been said about the judiciary in Queensland in this parliament. It is about time the LNP were honest about what they want with their judicial commission. Judicial commissions have worked in other places in Australia. But I can say this now: a Queensland Labor government will never accept a judicial commission put forward by the Liberal National Party. What did we hear from the Leader of the Opposition yesterday? 'It is a mechanism to discipline magistrates.'

Mr Hoolihan: 'Do as I tell you or I'll sack you.'

Mr DICK: I take the interjection from the member for Keppel: 'Do as we say or we will remove you from office.' That is exactly what they seek to do with the judicial commission. If they do not like the decisions of magistrates, if they do not agree with magistrates, they will remove them from office. That is a scandalous attack on the doctrine of the separation of powers and, again, an illustration of the inability of the Liberal National Party in this state to understand the fundamental importance in a democracy of having a judiciary separate from the executive and the legislature. They stand condemned for their policy, which we have shown up and which has been demonstrated by the comments made by the member for Mudgeeraba as a way to attack judicial officers. We will never support any sort of judicial commission promoted by the Liberal National Party, the opposition in this parliament.

In relation to the amendments to the Bail Act, the Justice and Other Legislation Amendment Act 2005 inserted a note into section 28A(3)(c) of the Bail Act to allow police officers to grant a defendant watch-house bail if the offender had been arrested for failing to appear in court. However, it has since

come to the government's attention that section 16(3) of the Bail Act only allows a police officer to grant bail if the 'defendant is charged' with an offence. If a person is either arrested on or surrenders to a warrant for failing to appear, the defendant is not charged with the offence until they appear in court. Anyone with a rudimentary understanding of criminal procedure in Queensland would know that. Therefore, a police officer may not grant the person bail under section 16(3). This is contrary to the intention of the note that was inserted into the Bail Act in 2005.

This government takes the obligations of a person on bail to appear in court seriously. Section 16(1) of the Bail Act requires a court or officer to refuse to grant bail when they are satisfied that there is an unacceptable risk that the defendant will fail to appear in court or will commit another offence while on bail. In deciding whether an offender is an unacceptable risk, officers may consider the seriousness of the original offence and whether the offender has previously breached any bail condition. Unlike the members opposite, I trust the good judgement of officers of the Queensland Police Service. I trust the good judgement of judicial officers in this state to determine when and in what circumstances individuals should be admitted bail in this state.

What is the policy response from the Liberal National Party policy? We are still waiting. There is no policy response. It is another cheap attack on the Police Service and on the courts in this state in relation to bail. That is all it is. They do not have a policy response. Perhaps we should remove bail. Perhaps everyone who is arrested in Queensland should remain incarcerated until the matter is properly dealt with in court. Perhaps that is the policy response. Perhaps we should have mandatory imprisonment for anyone appearing in a court on any occasion. Maybe we should limit it to one or two exceptions. Maybe only people with very minor offences should be released on bail, but everybody else who is charged should not. We do not know what the opposition proposes, because it is another way to run their spurious lines in the community, to run their falsehoods about government and their falsehoods in relation to law and order.

Mr Wallace: That want to use tasers all the time.

Mr DICK: But they are spending time working on policies such as tasers for teachers. That is the focus of the opposition. If they are not working on that, they are either playing solitaire or going to sleep in their offices. The best paid opposition in the nation's history is unable to deliver solid policy alternatives for Queensland.

Additionally, in order to grant bail, under the law as it currently exists, when an offender has failed to appear in court, the police officer must be satisfied that the defendant has shown cause why their detention is not justified. Where a person is arrested or surrenders on a weekday in a place where the court is sitting, there may be no delay in bringing them before a court. However, in some regional centres—and presumably the Liberal National Party are concerned about Queenslanders living in regional and remote parts of Queensland, but that was unclear and in fact was not demonstrated by any members of the opposition during the debate—the inability to grant bail may result in persons being held in custody for a number of days. Perhaps that is fine. Perhaps we should have watch-houses full of people, locked up because of the policy position put forward, as far as it could be understood, by the Liberal National Party and not released, as this provision will allow, on the good judgement of Queensland police officers. Also, if a person is arrested or surrenders on a Friday night, they may be held all weekend. I leave it to the judgement of the courts and police officers to determine whether people should be released on bail. This amendment to the law facilitates that so they can make proper decisions under the law.

The honourable member for Southern Downs asked whether there was an issue that had arisen with respect to the appointment of drug analysts pursuant to the Drugs Misuse Act. Drug analysts analyse drug material and other drug material seized during criminal investigations. Their task is to identify the type and quantity of drugs that have been seized. This information forms the basis of the offence with which the defendant may be charged. I can inform the member for Southern Downs that there has been no single catalyst triggering this amendment. However, section 4C of the Drugs Misuse Act 1986 requires the minister to appoint drug analysts. That is an act that was passed by the parliament in 1986; it is a very old act.

I, as the minister responsible at the moment, must be satisfied that the person has the qualifications, standing and experience necessary to be an analyst under the Drugs Misuse Act. This function is administrative in nature and based on objective criteria. It is a function that can be appropriately carried out by the chief executive or another suitably qualified officer of the department to whom the power has been delegated and is not a function that needs ministerial involvement. This is tidying up the law. These sorts of appointments are made in other capacities, and it is appropriate that the chief executive or delegate make that employment decision, not a minister.

The member for Southern Downs asked how many organisations were non-compliant with respect to restrictive practices, and it was a matter taken up by the member for Hinchinbrook. I am advised that the efforts of the department, service providers and staff to achieve compliance with the legislation have been remarkable and are appreciated.

In relation to a number of other matters, I have been advised as follows: as at 30 September 2010, progress of approvals was steady and service providers advise that the vast bulk of plans were competed and approved by 30 September. All plans or short-term plans for people residing in supported accommodation provided directly by government were to be completed. All plans or short-term approvals for the use of the most restrictive practices of seclusion and containment were complete.

There are 606 plans requiring approval by 30 September. As at 4 October 2010, 504 plans have already been approved or consented to and 72 have been completed and are awaiting approval. Of those 606 plans, there are 30 plans which are not completed or approved. The majority of those 30 cases relate to the chemical restraint of clients through medication prescribed by a general practitioner over a long term where the service provider is currently undertaking medication reviews to determine whether the continued use of this medication is necessary. That is a very significant thing. But I can assure the member for Southern Downs and the member for Hinchinbrook that the plans are well on the way to being completed and approved.

The member for Southern Downs raised an issue with the retirement age of magistrates, suggesting the need for further oversight of the qualifications of magistrates. The decision to change the retirement age for magistrates and judicial registrars from 65 to 70 years and to provide for a retirement age for acting magistrates will bring them into alignment with the retirement age for Supreme and District Court judges. The retirement age of 70 more closely aligns Queensland magistrates with those in other states such as Victoria, where the retirement age is 70 years, and New South Wales and Tasmania, where retirement is compulsory at 72.

The decision to lift the retirement age in Queensland is a mark of the government's confidence in the professionalism and capacity of the modern magistracy. While magistrates were once lay justices and public servants who lacked complete independence, they are now true independent judicial officers with substantial legal training and experience. These changes recognise the quality and professionalism of their appointments and their work.

I say again that the contribution by the member for Mudgeeraba was deeply disturbing and, frankly, demonstrated the real agenda of the Liberal National Party in respect of judicial officers. There is no other way of understanding the member's contribution on the issue of magistrates than to say it was a blatant threat to members of the judiciary that if the LNP does not agree with your decision, if it does not like your view and if you do not follow its views, then you will be reviewed and you will be removed from office. This is the return to the National Party which governed Queensland for 32 years until 1989. This is rank political corruption and interference in the judicial process that the LNP seeks to exercise over the judiciary in Queensland. If the LNP ever achieved government in this state, it would ring the death knell of the doctrine of the separation of powers. Make no mistake, the member for Mudgeeraba has stripped away the spin and fabrication of her leader and deputy leader and has laid bare the raw and real intent of the Liberal National Party.

To suggest that this was some manner of cronyism, that it was an attempt to protect Labor judges, is not only ridiculous—given that many of the magistrates who have enjoyed an extended stay were in fact appointed by the previous Liberal and National Party coalition government both before 1989 and during the period of the Borbidge government—but it reveals the inability of the LNP to disassociate the political from the judicial. Lines must be drawn somewhere. At some time, at some place, politics must stop. In relation to the judiciary, there once was a bipartisan consensus in this state that the judiciary was beyond political controversy. Sadly, that has been ripped away and that is the political legacy of the Liberal and National parties in this state. The bottom line is that the Liberal National Party has put the judiciary on notice in Queensland—toe the line or you are out.

The member for Southern Downs has raised a concern that to amend the Industrial Relations Act to provide for members of the Queensland Industrial Relations Commission to be able to work on a part-time basis may devalue the office of a member of the QIRC and lead to a situation where the office of a member is merely an add-on to some other role. I can assure the honourable member and the House that there are safeguards in the bill to prevent such a result. Any conversion by a current member working on a full-time basis to working on a part-time basis may only be achieved by agreement with me, and any member working on a part-time basis who wants to take up another position may only do so if I am satisfied that the other position is compatible with and does not involve any conflict of interest issues in relation to the office of the member. We are reflecting what happens in the general community when people work on a part-time basis, and the Queensland Industrial Relations Commission should be no different, but there are safeguards to ensure that it is appropriate in all circumstances.

I believe the amendments will help attract the highest calibre of appointees—for example, a person who holds an honorary office that takes up little of the person's time and who does not wish to relinquish that office upon being appointed as a member of the Industrial Relations Commission. I think that is

appropriate. It will also help to retain an existing member who wishes to take up another role which is compatible with the office of a member.

The member for Southern Downs finally took issue and criticised amendments to the State Penalties Enforcement Registry legislation, asserting that the scheme was 'badly managed' and 'out of control'. I would like to take this opportunity to correct the record and inject some truth into this debate. The member for Southern Downs has constantly sought to propagate the misleading assertion that SPER is not working. Nothing could be further from the truth. His argument was taken up by other members of the Liberal National Party, almost uniformly. I am pleased to announce that in August 2010 SPER collected a record $15.99 million in unpaid fines and lodgement fees—an achievement for which I pay the very highest compliment to the hardworking staff of the State Penalties Enforcement Registry. These results are a testament to the hard work undertaken by that workforce. They often deal with very difficult people who historically have never sought to engage with the criminal justice system and who have not repaid their fines and have adamantly refused to do so. I thank the staff for bringing many of those debtors into compliance.

Debtors have a range of flexible payment arrangements, including paying their fine by instalments. Again, this was criticised by the Liberal National Party, but what is the policy alternative? We know the principle underpinning the justice policy for the Liberal National Party is justice equals jail. That is what lies at the very core of what the Liberal National Party seeks to do in this state—that is, send more people to jail. That is its view of the justice system—regardless of the facts and regardless of the 20 per cent reduction in crime since the Labor government was first elected in 1998. We have achieved a reduction in the crime rate across Queensland of 20 per cent. That is something I am proud to be a part of, but it is something that is never acknowledged by those members opposite. Law and order stand at the centre of Labor's mission to ensure a safe community and to protect vulnerable people, many of whom we represent in this parliament.

We say that SPER is an appropriate mechanism to pursue people who have been fined or who have otherwise been ordered by a court to pay money to another Queenslander, or generally, to the state. That is an effective mechanism. I look forward to the policy response from the opposition about what it would do with the State Penalties Enforcement Act—whether it wishes to repeal it, abolish it altogether or say that jail is the only alternative, which it says on so many occasions.

In relation to flexible repayments including repayment plans, as at 31 August this year SPER had payment arrangements covering more than 816,000 debts. What is the total sum being repaid by instalments in Queensland? It is over $190 million. That is the system working. That is money coming back into the state. It is not our money—it is not the government's money—it belongs to the people of Queensland. That money is used to build better roads, build better hospitals, put more police on the beat, build a better justice system, deliver better schools and build a better health system—and that is what Labor governments do. I thank the SPER team for their considerable work.

Another issue raised was the registration of interests over motor vehicles. Currently, an interest can be registered on motor vehicles. This was condemned by some members opposite as another indication of a flaw in SPER rather than as an appropriate tool to recover money. Currently, an interest can be registered on vehicles if the debtor owes a debt of at least $1,000. This registration of interest has proven to be an effective tool for encouraging debtors to either pay their debts in full or enter into an instalment plan. All it does is register an interest which then encourages those people to come into compliance. In the 2007-08 and 2008-09 financial years, approximately one-quarter of all debtors entered into compliance after an interest was registered over their vehicle.

This has been a success story and it is why we are lowering the threshold from $1,000 to $500. This will ensure that people know that if you have got enough money to own a motor vehicle and run a motor vehicle then you have got enough money to repay your debt—even if it is by instalments, in the smallest amount possible. The State Penalties Enforcement Registry happily accepts instalment payments of the lowest amount, particularly for people who fall on hard times, but it is a way for people to make a commitment and to recognise that they owe a debt to society and they need to repay it. On the advice I have received, it is believed that the amendment to the threshold will increase the pool of eligible debtors by 19,800 individuals, with the combined value of outstanding debts capable of being recovered at $14 million. I think that is a good thing for Queensland.

The member for Glass House raised a couple of other points, including a question about the role of the Queensland Workplace Rights Ombudsman. In particular, he was concerned about breaches of the Ombudsman Act 2001. I note for the member that the Queensland Workplace Rights Ombudsman is not appointed under the Ombudsman Act and as such there is no issue or breach of the Queensland Workplace Rights Ombudsman in relation to that particular act. The Ombudsman Act governs the functions that relate to investigating administrative actions of local government authorities, government departments and public authorities. In comparison, the Queensland Workplace Rights Ombudsman is

appointed under the Industrial Relations Act 1999 and has functions under that act. I wanted to allay the member's concerns in that regard.

In conclusion, I thank all honourable members for their contributions and I also thank all stakeholders for their valuable contributions and input during the development of the legislation. There were many departmental officers across a number of departments and agencies who were involved in preparing this bill, not just from the Department of Justice and Attorney-General. I want to thank all of the officers involved but I particularly acknowledge Susan Masotti, a very hardworking policy officer in the Department of Justice and Attorney-General, who was tasked with coordinating this important bill. I commend the bill to the House.