



Speech by  
**Bill Byrne**

**MEMBER FOR ROCKHAMPTON**

Hansard Wednesday, 1 August 2012

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**PENALTIES AND SENTENCES AND OTHER LEGISLATION  
AMENDMENT BILL**

**Mr BYRNE** (Rockhampton—ALP) (3.32 pm): I rise to speak on the Penalties and Sentences and Other Legislation Amendment Bill 2012. As outlined by the Leader of the Opposition, we will not be opposing this bill in its entirety, but we will be raising concerns and questions about particular elements of the bill. We will be proposing amendments that will improve the outcomes of this bill.

Can I start by adding my voice to the concerns of many organisations and individuals who made submissions to the Legal Affairs and Community Safety Committee, where the grossly inadequate time for consultation was a serious problem. As the Queensland Law Society points out, the appropriate time for meaningful consultation and public debate is before the legislation is introduced. The bill deals with issues outside of election commitments and has not been the subject of broad community discussion.

Compounding this issue is the poor time frame for public submissions since the introduction of the bill. Even those who were in a position to make a submission made it very clear that they did not have adequate time to seek input from their members or to prepare a submission of a comprehensive nature that they otherwise would have done. The Law Society, for example, explained that they knew of members who were not able to make submissions within the short time frame imposed. These are members of the legal profession who have firsthand experience working in areas of law that will be significantly impacted by this bill and could have brought a wealth of experience to this debate.

Unfortunately, the LNP government has form in this area. Part of the government's strategy is to rush through legislation without proper scrutiny and with the arrogance to ignore well-informed and authoritative suggestions from those who do manage to place their concerns on the record within the short time frames.

One element of the so-called consultation that is particularly concerning is the reference in the explanatory notes to consultation with the Auditor-General. The Auditor-General made it clear in his submission that his office was not consulted on some elements of the bill and was justifiably concerned that the explanatory notes could be read to imply the Auditor-General's support for the policy objectives of the bill.

Similarly, the explanatory notes imply that unions have consented to or support key elements of the bill when submissions from unions that cover the majority of health staff affected make it very clear that they do not support this bill. Representatives of the workers impacted by this bill have pointed out in detail the detrimental impact that this bill will have on front-line workers. To suggest that workers and their representatives support these changes is most inaccurate and verges on being deliberately misleading. As the committee report states, 'It is difficult to reconcile the statement in the explanatory notes.' I urge the Attorney-General to take on board this matter and explain to the House why those statements appeared in the explanatory notes, and I invite him to correct the record.

The Leader of the Opposition covered a number of areas in some detail. I place on record my support for the position articulated by the Leader of the Opposition in relation to the Childrens Court Act

and the Civil Proceedings Act 2011. Similarly, I accept in good faith the motivation of the amendments to the Commissions of Inquiry Act 1950. I trust these changes will provide the protection required and that staff will be appropriately informed of the changes.

There are two main areas of this bill where questions need to be addressed by the Attorney-General: firstly, changes to the Industrial Relations Act 1999 that seek to allow recovery of payments without the consent of or consultation with employees; and, secondly, the imposition of a levy on offenders before the courts. The changes to the Industrial Relations Act are yet another ideological attack from this government on the rights and conditions of working Queenslanders. What makes these proposed changes so offensive is that they deliberately target employees affected by problems with the Health payroll system. We have heard in this House, in the media, in the Queensland Industrial Relations Commission and in the broader community discussion of the serious problems with the Health payroll introduction and the hardships and stress that many health workers have experienced. The difficulties these workers faced is well established and, quite simply, they should not have been put through that ordeal.

In recognising the obvious failures of the past, it is simply mind-boggling that the government would seek to deliberately impose further hurt on those same workers. This government has already got form when it comes to undermining the rights of working Queenslanders. The former government sought to address issues with workers and their representatives in a cooperative and collaborative manner, where the sensitivities in this area could be addressed and respect maintained for our front-line workers.

I would like to draw attention to some of the submissions to the committee that provide real-life examples of where workers would be unfairly hurt by the proposed LNP changes. One of the most damaging elements of these proposed changes is the reversal of the onus of proof. Giving the employer the power to recover payments unilaterally imposes a burden of proof on the employee to disprove the employer's actions. This is particularly concerning in light of the particular circumstances of health workers.

One of the challenges experienced by employees after the introduction of the payroll system was the inability of pay slips to clearly and accurately report exactly what shifts and allowances were being reported. The government's proposed changes further destroy faith in the system and trust between the employer and employees where employees can have payments recovered without their consent, even in circumstances where they are not confident of the calculations of the initial payments, the payment recovery and/or the outstanding payments due.

United Voice made the point in its submission that the lack of clarity and ability of the employer to recover payment unilaterally removes the requirement to consult with employees. This means that simple misunderstandings or mistakes will not be fixed in the first instance. Instead, mistakes could be compounded by a unilateral recovery of payments when they should not have occurred.

The Queensland Nurses Union pointed out in its submission that a large percentage of the so-called overpayments relate to absence and roster changes at the very end of the roster timetable. The Queensland Nurses Union has been working cooperatively with Queensland Health and the former government to work through these difficulties faced by Queensland nurses. It is baffling that a new government would turn its back on this cooperative approach including alternative solutions to absence based overpayments—solutions that would not unilaterally strip the rights of front-line health staff.

If the government refuses to take advice from the many organisations and stakeholders who vehemently disagree with the changes and insists on progressing these hurtful elements of the bill, I draw the Attorney-General's attention to the suggestions of the Queensland Law Society. The Law Society makes the suggestion that, if the government is going to remove rights of workers to allow a recovery payment to be unilateral, then the recovery of the payment should be included as an industrial matter for the purposes of the act which would ensure that employees can access conciliation and arbitration provisions.

Another suggestion the Attorney-General should consider is a submission from the Australian Workers Union. The novelty of this act—to remove the rights of particular workers within government—means that a sunset clause should be included. The lack of consultation and misleading explanatory notes did not build trust in the government's consideration of the real issues involved in these changes nor their implementation on the ground. To ensure that unintended consequences are not entrenched and that the changes are not implemented in a way that further removes the rights of workers, a sunset provision could be included.

I would like to move to the second main area of concern with this bill—the proposed imposition of an offender levy. This section was strongly criticised in many submissions to the committee. This was even the case despite the grossly inadequate time frame of the consultation period. As submitted by the Queensland Law Society, the Queensland Council for Civil Liberties, Queensland Advocacy Inc., the Bar Association of Queensland and the Caxton Legal Service, the proposed imposition of an offender levy has the real potential to impact most drastically and disproportionately on the most vulnerable in our community. Those most at risk by the government's proposals include people in lower socioeconomic circumstances, Aboriginal and Torres Strait Islanders, homeless people and people suffering from mental

illness. There is no explanation by the government as to what mechanisms will be in place to deal with these obvious and very real concerns.

Other submissions raised the issue that the LNP's levy could give the impression of incentivising the Police Service to charge more people with minor offences in order to secure more funding. This is not the intent of the Police Service but, rather, the appearance of poor public policy of this LNP government. Surely we can all agree on the long-held principle that not only should justice be done but justice should be seen to be done. Not only could the LNP changes be seen to encourage the Police Service to charge more people; the Queensland Council for Civil Liberties also points out that it places the courts themselves in a difficult position. If the levy is to be spent on court administration, it gives the perceived incentive to courts to convict more people. Again, this is not to suggest that individual members of the judiciary would think along these lines or make decisions based on these considerations, but I go back to the fundamental strength of an independent justice system. The courts need to be seen as above reproach. Putting in place perverse incentives to raise funds for administration does not strengthen the court system; it weakens the independent standing of the judiciary. An independent legal system is a key hallmark of a modern democracy, and governments should not walk away from their responsibility to provide and fund a system that is open, transparent, accessible and fair.

It was also raised in submissions that the imposition of a levy is not allowed to be considered by the judiciary in sentencing. It was submitted it is inappropriate to restrict the discretion of the judiciary to take into account the individual circumstances of the matter before them. This is just another example of the LNP government's approach to the judicial arm of government. The Attorney-General should explain to the House why he refuses to accept sensible and well-represented submissions from a range of respected legal organisations.

In conclusion, as I set out earlier, the opposition will not be opposing this bill in its entirety. There are, however, serious concerns with elements of the bill, and the opposition will be discussing those elements in further detail in the consideration in detail stage.