



Speech by


Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Wednesday, 11 July 2012

PENALTIES AND SENTENCES AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (3.31 pm): I present a bill for an act to amend the Childrens Court Act 1992, the Civil Proceedings Act 2011, the Commissions of Inquiry Act 1950, the Criminal Code, the Industrial Relations Act 1999, the Industrial Relations Regulation 2011, the Justices Act 1886, the Land Court Act 2000, the Penalties and Sentences Act 1992, the Penalties and Sentences Regulation 2005, the State Penalties Enforcement Act 1999 and the Statutory Instruments Act 1992 for particular purposes, and to make minor amendments of acts as stated in the schedule for the purposes related to those particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Penalties and Sentences and Other Legislation Amendment Bill 2012 [\[506\]](#).

Tabled paper: Penalties and Sentences and Other Legislation Amendment Bill 2012, explanatory notes [\[507\]](#).

Madam SPEAKER: Minister, before continuing I would say this: members, please show some discipline. On a number of days I have had to warn members at the close of question time about leaving the chamber quietly. There are too many conversations while people are leaving the chamber.

Mr BLEIJIE: The Penalties and Sentences and Other Legislation Amendment Bill 2012 delivers on two of the government's key pre-election commitments. It will increase the value of a penalty unit under the Penalties and Sentences Act 1992 by 10 per cent from \$100 to \$110. It will also introduce an offender levy. This offender levy will apply to criminal justice matters where an offender is found guilty. The amount of the levy for Supreme Court and District Court matters will be \$300, and \$100 for Magistrates Court matters. This initiative will ensure that offenders contribute to the justice system and to addressing the harm that their crimes cause.

The bill also includes a number of unrelated amendments that should be made as soon as possible. It will preserve the operation of expired rules under the Land Court Act 2000, the Childrens Court Act 1992 and exclude certain court and tribunal rules from expiry and regulatory impact statement requirements under the Statutory Instruments Act 1992; expand the definition of 'relationship' in section 67(7) of the Civil Proceedings Act 2011 to include a 'registered relationship', as defined in section 36 of the Acts Interpretation Act 1954; facilitate the recovery of any future wages that might be overpaid to Queensland Health staff by amendments to the Industrial Relations Act 1999; and streamline the process under the Commissions of Inquiry Act 1950 for the chairperson of a commission of inquiry to obtain evidence regardless of any oath taken, affirmation made or a provision in any act that may afford a reasonable excuse to a person not to comply with the request.

I will now address each of the individual amendments in further detail. As promised during the recent election, the value of a penalty unit under the Penalties and Sentences Act 1992 will increase from \$100 to \$110. It is estimated that this measure will raise additional revenue of \$22.6 million in a full financial year. The significance of this amendment is that the penalty unit is the base value for most fines and penalty

infringement notices, commonly called tickets. Where legislation provides for an offence, it will also prescribe the penalty for the offence. In most cases, the penalty is set as a certain number of penalty units.

Under section 5 of the Penalties and Sentences Act 1992, the value of a penalty unit is generally around \$100. For example, the maximum penalty for an offence may be 20 penalty units, which equates to a \$2,000 fine. When the penalty unit value is increased to \$110, this will be a \$2,200 fine. Using penalty units provides a convenient way of updating the level of fines and infringement notices without having to individually amend the fines in offences across the entire statute book. The penalty unit also applies to offences under local laws. However, this amendment to the Penalties and Sentences Act 1992 will not automatically increase the penalty amounts under local laws because the penalty unit amount for local laws is stated in the Penalties and Sentences Regulation 2005. The Minister for Local Government will consult now with all local governments to decide how the increase in the penalty unit value will apply to local government laws.

The bill amends the Penalties and Sentences Act 1992 to introduce a nominal administration fee on criminal justice matters where an offender is found guilty. As indicated earlier, this levy will be \$300 for matters dealt with in the Supreme and District courts and \$100 for matters dealt with in the Magistrates Court. This offender levy will be automatically imposed at the point of sentencing and will not form part of the sentence. It will be payable per sentencing proceeding, regardless of the number of offences dealt with by the court and whether or not a conviction is recorded. It will apply to offences prosecuted in the Supreme, District and Magistrates courts, including those involving non-state government prosecutors. It will not apply to resentences. It will be refunded if an offender is found not guilty on appeal. It will not apply to juveniles and it will not apply where the only offence committed involves a breach of bail. To ensure that the levy does not result in fewer and smaller court imposed fines, the bill amends section 48 of the Penalties and Sentences Act 1992 to provide that a court must not take the levy into account when determining the amount of a fine.

The bill also amends the State Penalties Enforcement Act 1999 to allow the State Penalties Enforcement Registry, which is currently responsible for the collection of court imposed fines, to collect the levy. Collection of the levy will be prioritised after the collection of reparation but before the collection of fines. Given that the offender levy is not a court imposed penalty, fine option orders and imprisonment have been excluded as enforcement options. However, the State Penalties Enforcement Registry will still be able to utilise fine collection notices—which enable the registry to garnishee wages and monies held in financial institutions—enforcement warrants and driver licence suspensions to recover amounts which remain outstanding. This initiative will ensure that offenders contribute to the administration of justice in Queensland.

The Statutory Instruments Act 1992 automatically expires subordinate legislation such as regulations and rules on 1 September in the year occurring after the 10th anniversary of the making of such subordinate legislation. To illustrate the effect of this, subordinate legislation made in January 2002 will expire on 1 September 2012. Section 118B of the Supreme Court of Queensland Act 1991 provides an exemption from the automatic expiry provisions for the rules of court. It had previously been thought that this exemption also applied to the Childrens Court Rules 1997 and the Land Court Rules 2000. However, it has recently come to our attention that this is not the case and the Childrens Court Rules 1997 expired on 1 September 2008 and the Land Court Rules 2000 expired on 1 September 2010. The Land Court Rules 2000 prescribe the procedures for the conduct of proceedings from commencement to conclusion. In addition, the Land Court Act 2000 also delegates power to judicial registrars to hear and decide matters prescribed under the rules. The Childrens Court Rules 1997 govern the conduct of a child protection or adoption proceeding from commencement to conclusion.

The bill addresses the expiry of the rules by amending the Childrens Court Act 1992 and the Land Court Act 2000 to: retrospectively apply the expired rules for the period from when they expired; and, to remove doubt, validate anything done or purported to be done under the rules after the dates of expiry, including providing that the rules should always be taken to have applied since the dates of expiry in relation to a decision made or action taken by a judicial registrar.

Further, the bill amends the Statutory Instruments Act 1992 to exempt the Childrens Court Rules 1997, the Land Court Rules 2000, the Industrial Relations (Tribunals) Rules 2011 and rules made under the Mental Health Act 2000 and the Sustainable Planning Act 2009 from future automatic expiry. The bill also provides for certain court and tribunal rules to be exempt from the requirements of part 5 of the Statutory Instruments Act 1992 in relation to regulatory impact statements.

Section 67(7) of the Civil Proceedings Act 2011 refers to claims by a spouse of a deceased person in dependency claims. This section provides that if the spouse enters into a subsequent relationship the financial benefits received by the spouse from that relationship are to be taken into account when assessing the spouse's claim for damages. Subsection (7) then defines relationship to be (a) a marriage or (b) a de facto relationship within the meaning of the Acts Interpretation Act 1954.

The Civil Proceedings Act 2011 was passed immediately before the Relationships Act 2011 and was overlooked when making consequential amendments for the later act. The bill corrects this by providing for the section 67(7) definition of 'relationship' to include a reference to a 'registered relationship'. The bill also corrects an amendment to section 63(8) of the State Penalties Enforcement Act 2000 included in the Civil Proceedings Act 2011 because the subsection has since been renumbered as section 63(11) by the Local Government Electoral Act 2011.

The bill introduces new provisions to the Industrial Relations Act 1999 which will enable Queensland Health to recover any wages overpaid to its employees in the future. The bill will also assist Queensland Health to make improvements to its payroll and rostering processes so that the department and its employees can have confidence in the future payment of wages and salaries. Since the new Queensland Health payroll system commenced in March 2010, there have been significant issues associated with wage payments to Queensland Health staff. The majority of systems errors have since been rectified, but new overpayments continue to be generated through the payroll system at an average rate of \$1.7 million every fortnight.

Back in July 2011 the former government suspended the recovery process, creating a difficult financial position for Queensland Health. A process for recovery of any new overpayments needs to start as soon as possible. On 30 May 2012 this government lifted the moratorium on the recovery of overpayments, and Queensland Health intends to recover future overpayments.

As it is, the IR Act only allows an employer to automatically recover wages overpaid due to absence from work. The IR Act also prohibits an employer from making deductions from wages unless the deduction is authorised by an award or agreement, by the IR Act or by the employee's written consent. The amendments in the bill will permit Queensland Health to begin the automatic recovery of non-absence related overpayments as soon as possible.

We also need to make sure the errors stop. To provide a more achievable time frame to process roster and pay adjustments prior to pay day, Queensland Health will change its pay date from three days to 10 days in arrears. The department will make a once-only transitional loan to its employees to help them to honour their financial commitments over the time of the transition to the new pay date. The new section of the Industrial Relations Act empowers Queensland Health to automatically recover this loan at the time that the employee ceases their employment.

On 1 July 2012 the commission of inquiry into Queensland's child protection system was established. This inquiry is a vital part of this government's commitment to the Strengthening Queensland Families policy and to make Queensland the safest place to raise a child. The inquiry will investigate the child protection system to ensure that children are afforded the level of protection expected by the community and, in doing so, public confidence in the child protection system in Queensland can be restored. It is imperative that this inquiry is able to call witnesses and obtain evidence unhindered by provisions in legislation that may otherwise prevent this being achieved.

Currently, section 5(2A) of the Commissions of Inquiry Act 1950 provides that a regulation may be made that will override any oath taken, affirmation made or provision of an act that might afford a reasonable excuse for not attending before or providing records or documents to the commission. The bill addresses the concerns about a regulation effectively overriding another act of parliament—what we as legislators know as a Henry VIII clause—by inserting new provisions that will streamline the process for the chairperson of a commission obtaining evidence at an inquiry and remove the power to make such regulations. The bill provides the chairperson with the power to summons a person as a witness and request the provision of documents and records regardless of any oath taken, affirmation made or provision of an act that may afford a reasonable excuse to a person not to comply with the request of the chairperson.

The bill also inserts two confidentiality provisions that moderate the disclosure of information that is obtained in the course of an inquiry. This provides an appropriate balance between protecting an individual's right to privacy without impacting on the important work of the inquiry. I commend the bill to the House.

First Reading



Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.45 pm): I move—
That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Dr Robinson): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.