Speech by

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Tuesday, 31 July 2012

PENALTIES AND SENTENCES AND OTHER LEGISLATION AMENDMENT BILL

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (4.04 pm): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Community Safety Committee for its consideration of the Penalties and Sentences and Other Legislation Amendment Bill 2012. I note that the committee tabled its report on the bill on 23 July 2012. I now table a copy of the Queensland government's response to that report.

Tabled paper: Legal Affairs and Community Safety Committee: Report No. 5—Penalties and Sentences and Other Legislation Amendment Bill, government response [618].

The committee made six recommendations. Those recommendations concern the amendments in the bill that introduce the offender levy and the amendments that help minimise and facilitate the recovery of any future overpayments to health employees. I will now address each of the committee's recommendations. The committee's first recommendation, that the Penalties and Sentences and Other Legislation Amendment Bill 2012 be passed, is certainly welcomed.

Recommendation 2 is that the bill be amended to include an amendment to schedule 1 of the Industrial Relations Act 1999 to include 'deductions to be made or proposed to be made from wages' so that disputes in relation to deductions made under the proposed amendments can proceed to conciliation and arbitration under that act. The Queensland government is confident that the definition of an 'industrial matter' in section 7 of the Industrial Relations Act 1999 is sufficiently broad that it includes 'deductions to be made or proposed to be made from wages' as a matter within the jurisdiction of the Queensland Industrial Relations Commission. Disputes in relation to deductions made under the proposed amendments can proceed to conciliation and arbitration under the Industrial Relations Act. The government will therefore not be adopting this recommendation.

Recommendation 3 is that the Attorney-General and Minister for Justice review the implementation of the amendments to the Industrial Relations Act 1999 relating to recovery of overpayments to health employees and report to parliament on its operation within 12 months from commencement. It is important that the Department of Justice and Attorney-General works with Queensland Health to review the operation of the amendments. It is intended that reporting will occur and Queensland Health will be establishing internal processes to monitor the operation of the amendments. Information arising from the review process will be shared with unions on an ongoing basis in its established consultative industrial forums. Queensland Health has committed to providing a report on the impacts of the amendments to the Attorney-General and Minister for Justice as required.

There have been suggestions that the legislation should apply for a period of 12 months only. From Queensland Health's perspective, this would not be practicable as the legislative change is necessary to support recovery of system-generated overpayments into the future, regardless of the volume of overpayments that might be occurring. Based on current advice relating to the capacity of the payroll

system, withdrawal of the proposed legislation would mean Queensland Health would not be able to implement such an overpayment recovery strategy and would need to revert to manual systems and strategies. With a workforce in excess of 84,000, this represents a significant risk to Queensland Health.

Recommendation 4 is that the Attorney-General and Minister for Justice clarify how the transition loans will be treated for taxation purposes in his reply to the committee's report. We are aware that the transition loans will incur a fringe benefits tax liability. However, employees will not be impacted, as any FBT costs arising out of the transition loans will be borne by Queensland Health. The Queensland government considered this issue and determined that the costs of the transition loan payment will be funded on a whole-of-government basis. Other taxation implications have been identified that might arise for staff who have received excess benefits from overpayments and the transition loan. In some circumstances, the excess benefit could result in an increase in the employee's reportable fringe benefit amount on future payment summaries. This could, in turn, affect income tests relating to various Australian government benefits and surcharges, such as Medicare levy surcharges, superannuation co-contributions, Higher Education Contribution Scheme and similar schemes reductions, tax offset for contributions to a spouse's superannuation, child support obligations and entitlements to certain income tested government benefits such as Centrelink.

The potential for this impact will be communicated broadly to all staff during the transition process, and employees will be advised that, to minimise the risk of this happening, they should consider not receiving the transition loan or, alternatively, they should repay the amount prior to the end of the current financial year.

The committee's fifth recommendation is that the bill be amended to allow the Special Circumstances Court to retain discretion in imposing the offender levy. This recommendation is also not supported. Providing a court with discretion to impose the levy is inconsistent with the very nature of the levy. The offender levy is an administrative levy that does not form part of the offender's sentence. Further, the State Penalties Enforcement Registry is well placed to manage disadvantaged and vulnerable offenders. The State Penalties Enforcement Registry will certainly be experiencing some change under the Queensland Treasury, in the portfolio of the honourable Treasurer.

In relation to the committee's recommendation 6 that constitutional and other legal concerns of the Queensland Council for Civil Liberties be addressed, crown law advice has been obtained. I am satisfied that there is no legal impediment to its imposition.

I note that the committee's inquiry involved a detailed consideration of the application of fundamental legislative principles to the bill—in particular, the rights and liberties of individuals potentially impacted upon and affected by the bill. In particular, the committee noted that the proposed new section of the Industrial Relations Act 1999 allowing the unpaid balance of a health transition loan to be deducted from an employee's final payment has the potential to cause significant hardship to the employee. It is important to distinguish these deductions from the deductions allowed by the other new provisions to recover overpaid wages.

Existing provisions enabling deduction to be made to recover wages overpaid due to an employee's absence and the new provisions enabling deductions to recover absence and non-absence related overpayments from health employees are all limited by the Industrial Relations Regulation 2011. The regulation stipulates that the amounts paid at any time must not be reduced to less than three-quarters of the amount otherwise payable at the time. The deduction from a final payment to recover the unpaid balance of a transition loan is not limited by the regulation.

The transition loan is like any other loan, entered into voluntarily by and with the consent of the employee. The employee will be made fully aware that the loan must be paid in full by the end of their employment as a health employee. Employees will be encouraged to enter into a repayment agreement prior to the end of their employment, so the employee will have appropriate control as to the impact of repayment of the loan on any payments received.

I note the committee's comments in relation to a reference to the Auditor-General in the explanatory memorandum and supporting documentation may give the perception that he is endorsing government policy objectives when he does not have a role in that regard. I also table an erratum to the explanatory notes which removes the reference to the Queensland Audit Office from the explanatory notes 'Consultation' section.

Tabled paper: Penalties and Sentences and Other Legislation Amendment Bill, erratum to explanatory notes [619].

I would like to acknowledge those who have made submissions on the bill to the committee and to address the key issues raised. I note that three submissions provided to the committee, including a submission by the Queensland Law Society, did not support the increase in the value of the penalty unit from $100 to $110. A further three submissions endorsed the Queensland Law Society submission. This small increase is needed so that the value of the penalty unit keeps up with the increase in the consumer

price index over time. Increasing the value of the penalty unit will ensure that monetary penalties maintain their deterrent or punishment effect.

I have noted public submissions which have opposed the introduction of the offender levy on various grounds including its impact on disadvantaged groups, its retrospective application and the absence of a waiver provision. Concerns were also raised about the higher levy applicable to superior court matters, the absence of exemptions for minor matters, the absence of judicial discretion as to the imposition of the levy, the prohibition on the court taking the levy into account when sentencing and the amount of the levy being set by regulation.

The offender levy is a modest administrative levy that does not form part of the sentence. As such, it would not be appropriate for the levy to reflect the gravity of the offence or to be subject to the exercise of judicial discretion. It would also not be appropriate for the levy to be taken into account during sentencing. The levy is based on the principle that offenders should make a contribution to the justice system in recognition of the cost of their crimes to the community. It will apply prospectively to sentencing events from commencement.

As to the setting of the levy amount by regulation, it is a common practice for monetary amounts of this kind to be prescribed so that they can be subject to ongoing review, including for movements in the consumer price index. Any regulated amount will be subject to review by a parliamentary committee and possible disallowance by the parliament in accordance with section 50 of the Statutory Instruments Act 1992.

As to the impact of the offender levy on disadvantaged groups, the State Penalties Enforcement Registry, which will collect unpaid levies, has a community engagement team which specialises in dealing with identified disadvantaged and vulnerable groups. The primary aim of the team is to assess the best options available for this cohort of debtors. The State Penalties Enforcement Act 1999 specifically provides for payment by instalments.

I would also like to specifically address the concerns raised by the Chief Justice about the impact of the levy on court resources. It is expected that this impact will be met and is able to be met from within existing resources. To the extent that it cannot be met from existing resources, it will be subject to the usual budget process.

As I mentioned at the time I introduced the bill into the Legislative Assembly, the bill delivers on two of the government's key pre-election commitments to increase the penalty unit value and to introduce an offender levy in Queensland. The bill also facilitates the recovery of any future overpayments to health employees and enables improvements to the Health payroll processes so that such overpayments are minimised in future.

In addition, the bill contains a number of other unrelated amendments. It addresses the expiry of the Childrens Court Rules 1997 and the Land Court Rules 2000. It exempts certain rules of court and tribunals from the provisions in the Statutory Instruments Act 1992 relating to automatic expiry and regulatory impact statements. It expands the definition of 'relationship' in the Civil Proceedings Act 2011 to include a 'registered relationship' as defined in section 36 of the Acts Interpretation Act 1954. It facilitates the provision of evidence to commissions of inquiry by ensuring that evidence may be given regardless of any oath taken, affirmation made or a provision in an act that may afford a reasonable excuse to a person not to comply with the request. It also makes other minor and technical amendments.

I would like to foreshadow that I intend to propose a number of amendments to the bill during consideration in detail. These amendments have been circulated in my name. Firstly I propose a minor amendment during consideration in detail to a technical amendment in the bill to the Civil Proceedings Act 2011.

In addition, I will be proposing amendments to further clarify the proposed new sections 396A and 396B of the Industrial Relations Act 1999. These new sections permit a health employer to make deductions from a health employee's wages and other amounts payable in relation to employment to recover overpayments or to recover the transition loan.

It is considered appropriate to further amend the proposed sections to make it clear that the health employer is not limited to the process set out in the amendments to recover such amounts. Like all other employers, a health employer will retain the right to recover amounts by instituting legal action other than under the act. This clarification is in line with the current section 396(2) of the Industrial Relations Act 1999, which provides that an employer's right to recover overpaid wages is not limited only to deductions from an employee's wages paid in a subsequent pay period. I commend the bill to the House.