Speech By

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MEMBER FOR INALA

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (JUSTICES OF THE PEACE) AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (3.34 pm): I rise to make a contribution to the debate on the Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013. This bill expands on the broad policy objective that the LNP announced before the 2012 state election. At the outset, I place on record the enormous admiration I have for the volunteer JPs who serve with such dedication the people of Queensland and the justice system. In my own electorate of Inala, many JPs are called on at all hours of the day and night to witness documents, wills, enduring powers of attorney and warrants for police. Some of those matters may involve complex issues that the JP has to digest and think about before deciding whether or not the specific criteria have been fulfilled.

This proposal from the government appears to be quite a moving feast. Although the opposition will be supporting the bill, we do have some issues that we would like the Attorney to address. I will raise those issues during my speech and I would be more than happy if the Attorney could address the issues at the end of this debate.

In the lead-up to the last state election, in its policy document entitled *Delivering Swift and Fair Justice,* the LNP announced—

The LNP values our Justices of the Peace and will act to improve, develop and expand the role of Justices of the Peace in the delivery of justice in Queensland.

An LNP Government will revive and expand the role of the Justice of the Peace (Magistrate Court) for minor simple court matters.

We will invest $3.5 million to trial an extension of the Justice of the Peace (Magistrate Court) program for 6 months to assist in reducing the court backlogs ...

That election commitment was couched in rather general terms and did not give any real specifics. In August last year when the Attorney-General first announced the trial scheme, he described it this way—

It is envisaged that the pilot program will assist with the fair, quick, economic and informal dispute resolution services of QCAT.

On 12 August, the *Australian* newspaper reported on the announcement, stating—

Attorney-General Jarrod Bleijie says the JPs will replace lawyers to help reduce the backlog of QCAT matters by dealing with minor civil disputes, even though they have only a few weeks' training.

This announcement met with some understandable concern from members of the legal profession, because it lacked any solid detail and people were left wondering exactly what it meant. As the *Courier-Mail* reported—

Legal professionals have labelled the JP proposal a “cut price” lawyer scheme and have expressed concern that JPs will not have the legal training to recognise rules of law and principles of evidence.

That article further states—

Queensland Law Society president John de Groot said: “The society would be supportive of initiatives to have more people with appropriate legal experience to deal with these matters.”

When asked for a comment on the proposal, I was not in a position to discuss the merits of the trial because, like everyone else, I did not know the details of how it would operate. Therefore, I acknowledged the potential of decisions to affect people’s lives and asked that consultation be held with the legal profession before any changes were made. I said that any extension of the decision-making roles of JPs should happen only after consultation with the judiciary and the legal profession. I stated—

Giving JPs greater decision-making powers on matters coming before tribunals ... could put them in charge of decisions that drastically affect people’s lives or livelihoods and need to be discussed widely.

That is called consultation and is hardly controversial, one might think. I was wrong if I thought that. The following day, the Attorney-General issued a media statement, in which essentially he had a bit of a dig at me and my comments on the government’s JP-magistrates proposal. I know the Attorney-General likes to have little digs, so today I cannot fail to mention the trial of the boot camps. The first two people to be put in a boot camp escaped. I am quite sure that this trial will do a lot better than the trial of the boot camps. However, we should wait and see because anything can happen with this government.

Mr Bleijie: I fail to see the relevance, but I will respond accordingly.

Ms PALASZCZUK: I look forward to hearing the Attorney’s response on the escape of the only two people they had. People have asked me, ‘Were there 50 people in this boot camp?’ I said, ‘No, there was only two.’ They had only two people to look after and those two people escaped.

Madam DEPUTY SPEAKER (Mrs Cunningham): Order! Could I suggest that the Leader of the Opposition return to the matter of the bill, please.

Ms PALASZCZUK: Of course, but the Attorney-General does go off on tangents and I thought it was opportune at this time when we are talking about trials to mention that. I will return to the matters at hand.

The Attorney-General was not quite that specific in his pre-election commitment. What the policy document actually said was—

An LNP Government will revive and expand the role of the Justice of the Peace (Magistrate Court) for minor simple court matters.

There was no mention of QCAT. There was no mention of minor civil disputes just minor simple court matters. He then went on—

It would seem the Opposition Leader is again talking on matters she clearly knows nothing about ...

I would recommend that the Opposition Leader get her facts right before she publicly denigrates Queensland JPs by suggesting they are not up to a job in QCAT.

I would like to take this opportunity to correct the record. I did not say any such thing. I would never criticise JPs in Queensland. As I said from the outset, they do an extraordinarily good job. I did not say that they were not up to the job or any of the other things attributed to me by the Attorney-General. I merely called for something called consultation.

Mr Bleijie interjected.

Ms PALASZCZUK: They did not. I did write to you, Attorney-General, about holding a further JP seminar in my electorate. I am still waiting to hear your response on that.

Mr Bleijie: I am coming to it.

Ms PALASZCZUK: Are you coming to it? When is it? Have you written back to me?

Mr Bleijie: I assume so.

Ms PALASZCZUK: We look forward to you coming to Inala.

Mrs Miller: You'll need a passport to come into Inala.

Mr Bleijie: I have been to Inala. Your community legal centre in the dongas—I have been there.

Ms PALASZCZUK: They do an excellent job there. I return to the topic at hand. I do look forward to the Attorney-General's visit to Inala. I am quite sure the constituents will have a few other issues to raise with him.

Even my comment that decisions made in tribunals such as QCAT are 'decisions that drastically affect people's lives or livelihoods' cannot be classed as controversial. In fact, when discussing what matters are excluded from this scheme, the explanatory notes to the bill explain—

Urgent residential tenancy applications are also excluded because most of these disputes seek the termination of a tenancy and the issue of a warrant of possession which is usually executed by police within two to three weeks of the decision. These decisions can have a significant detrimental and rapid impact upon the housing of the respondent.

So they would be decisions that drastically affect people's lives. I do not think I would get any argument about that from members opposite. I would like to know whether the Attorney-General was denigrating the JPs of Queensland in the explanatory notes. The Attorney also announced at that stage—

The pilot program will utilise the skills of JP ... to come up with common sense solutions to minor disputes of less than $3,000 in QCAT.

In October, when the Attorney spoke at the annual state conference of the Queensland Justices Association, the monetary limit was still envisaged to be $3,000. He said—

The pilot program will utilise the skills of JP ... and JP (Qual) to come up with common sense solutions to minor civil disputes of less than $3,000 ...

The first real detail the Queensland public got of the proposed scheme was in November when the Attorney-General released a media statement that advised—

The pilot program will utilise the skills of JPs to come up with common sense solutions to minor disputes of less than $5,000 ...

So we have gone from $3,000 to $5,000. I would ask the Attorney-General to please explain, during his speech in reply, what caused him to make this change. Could he outline to the House what the original advice was that he received in relation to this aspect of the trial and what further advice prompted the change of heart? In that same release the Attorney went on to say—

The trial will be used to assess whether the use of JPs in QCAT helps to reduce backlogs by freeing up magistrates and QCAT adjudicators to deal with more complex matters.

To be eligible for the legal positions and preside over the panel, JPs must have been a lawyer with at least three years' standing in Australia.

Applicants for the non-legal positions must have held an appointment for at least five years.

The announcement about the experience required of JPs to participate in the scheme was reassuring. In fact, this was what was contained in the draft bill that the stakeholders were consulted on.

Whilst I am on that subject, I would like to congratulate the Attorney on the level of consultation conducted in relation to this bill. For once the committee report does not need to contain notations as to the lack of adequate opportunity for consultation, truncated time periods and consultation on a framework rather than a draft bill. Stakeholders actually received a draft copy of the bill to consider. Under the heading 'Consultation' in the explanatory notes, it says—

Submissions were received from the QJA, the GCJA, three legally qualified justices of the peace, the REIQ, the QLS and the TUQ. Where possible, concerns related to the draft Bill have been addressed in the final Bill. These changes included increasing and equalising the sitting fee for justices of the peace appointed to QCAT.

In its submission to the committee on this bill, the Queensland Association of Independent Legal Services, or QAILS, made special note of the removal of the proposed provisions relating to experience between the draft and final bills. As they said—

QAILS understood the original proposal to have JPs constitute QCAT would require legally qualified JPs to have five years' experience as a JP and three years' post-admission experience (see s 32 of the Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013 ... In our view, these protections would ensure that QCAT would continue to have experienced members with exposure to legal practice, statutory interpretation, procedural fairness and the rule of law.

The Queensland Law Society also holds similar concerns. As they submitted—

We are particularly concerned that the trial now removes the number of years of experience for a JP (legally qualified) and JP (qualified) to sit and determine minor civil disputes.

In our view this undermines the public's confidence that the matter heard by persons with adequate experience and understanding of the law and Tribunal processes.

It is important to note that legal qualifications and the practice of law are, more times than not, at different ends of the spectrum, which is why it is critical that persons presiding in QCAT for these matters have sufficient legal experience.

Another concern expressed by the Law Society was that—

… appointing persons with no or very limited experience may result in inconsistent decision making and further cost and time expended by an increase in appeals.

The recommendation of the QLS is that only legally qualified and experienced JPs, with a minimum of three years experience, are to sit. Alternatively, they suggest the original proposal be adopted—that is, if two JPs are to sit, a minimum of three years and five years experience be reinstated for JP (legally qualified) and JP (Qualified) respectively.

I would ask if the Attorney-General could please explain in his speech in reply whether any of the submissions he received on the draft legislation suggested he remove this qualification. Having such a qualification cannot be seen to be a reflection on the hardworking JPs who are participating in the trial. In fact, the restriction was the Attorney-General's own idea.

I am just concerned that the reason for the change of heart has not been adequately explained and wanted to ensure that there was a sound policy basis for the reversal of this decision. The only explanation given by the Attorney-General to date was in his media statement dated 19 March 2013. The release stated—

Attorney-General Jarrod Bleijie said based on feedback received during consultation, the original criteria had been amended to make more JP's eligible for the trial.

The provision for legally qualified JPs to have five years' experience as a JP and three years' post-admission experience has been removed.

As I have said before, the explanatory notes state that the submission on the draft bill were received from the QJA, the GCJA, three legally qualified justices of the peace et cetera. So could the Attorney please advise from which of these people he received feedback during consultation that caused him to change the criteria?

I wanted to make some brief comments on training. For all of the participants, taking on a quasi-judicial role will be an entirely new experience and may prove to be a little daunting. It is therefore necessary that full and adequate training be provided before they take up these positions to ensure they have the necessary knowledge, skill and confidence to perform the role.

The monetary limit will be $5,000. To most people that is a considerable sum of money. I certainly do not know many people in my electorate for whom $5,000 would be regarded as pocket change. It is important that decisions are accurate and consistent. People should not have to rely on appeal mechanisms to any great extent, although it is reassuring to know that they are there.

There appears to be some contradiction in different documents accompanying this legislation in relation to the complexity of the issue. With all due respect to the Attorney-General, the complexity of a legal issue relates to the subject matter of the dispute and the particular circumstances relating thereto, not the monetary value of the claim. A $2,500 small claim may involve more complex legal issues than a $25,000 contractual matter. This is reflected in the letter sent by the Department of Justice and Attorney-General dated 26 March 2013, which said—

... although the matters will have a low monetary limit, these disputes can involve legal issues of some complexity.

The letter also states—

- justices of the peace will hear and decide contested matters that are often accompanied by a high degree of conflict between the parties;
- justices of the peace will be required to make findings of fact and law, apply the relevant law, make enforceable decisions and give oral reasons for decisions at the time of the hearing;

These are not matters with which those participating JPs would have had much experience. Training in all of these matters would be crucial for the success of the trial.

With that in mind, I would just like to say in conclusion that the bill was originally intended to implement the LNP election commitment, a commitment that lacked sufficient detail at the time. However, that has evolved, and I do take on board that the Attorney has said today that there will be an evaluation of the trial and that those results will be made public. I just hope that there will be enough participation in the trial to make sure that we can see those statistics. As I said previously, I hope that this trial goes a lot better for the Attorney than the boot camp trial. With those few words, I commend the bill to the House.