Speech By

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MEMBER FOR INALA

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (12.50 pm): I rise to make a contribution to the debate on the Justice and Other Legislation Amendment Bill 2013. From the outset might I say that the opposition will be supporting the bill. I would like to take the opportunity to thank the Attorney for allowing my office to have a briefing on the amendments that he has foreshadowed and we will not be opposing any of those amendments.

Mr Bleijie: Aren't I a nice guy!

Ms PALASZCZUK: This is a very rare occurrence. I do not want the Attorney to make anything of that. But we will definitely be supporting this bill.

This bill makes amendments to 30 pieces of legislation. Many of the provisions in this bill were included in the Law Reform Amendment Bill 2011, introduced by the previous government, which lapsed when parliament was prorogued. I will not be commenting on all of the provisions in the bill. Many are of a technical or administrative nature and, as I have said, many were included in the previously lapsed bill. This bill also includes additional provisions to the previous bill and some of the amendments included previously have been omitted. I would like to commence by commenting on some of the provisions which have been omitted.

Of particular note is the omission of the proposed amendment to the Criminal Code to insert a new offence, carrying up to 10 years imprisonment, of dangerous management of a dog resulting in death or grievous bodily harm to a person through an attack. I would like the Attorney to explain why this amendment has been abandoned by the government. This amendment made it clear that there would be serious criminal sanctions for a person who manages a dog dangerously and as a result a person is killed or suffers grievous bodily harm. As I said, the proposed penalty was 10 years.

Also of note is the omission of the amendment of section 99A of the Manufactured Homes (Residential Parks) Act 2003 to prohibit a park owner from charging more for the on-supply of a utility than they are charged by the relevant supply authority. The amendment provided clarity in relation to the existing section and provided certainty to industry and further protection to homeowners. Residents of manufactured homes have been raising concerns for some time about owners of manufactured home parks who on-sell utilities such as electricity and charge a commission on that service.

The proposed amendment allowed a legitimate charge by a park owner of an administration fee to cover the actual cost of providing the utility but did not allow profiteering. This is of ongoing concern to owners of manufactured homes, and it is an issue that does still need to be resolved. If the Attorney could please provide some information to the House about where these amendments are at, that would be most appreciated. I understand that the Attorney is not responsible for the administration of the act, but if he has any knowledge I would ask that he pass it on.

A further concern has been raised in relation to solar panels. Owners of manufactured homes who often, with the encouragement of the park owner, installed solar panels to be fed back into the park's grid find that the park owners are being paid for the electricity generated but are not passing that on to the owner of the solar panels. The park owner is therefore pocketing the money received for the electricity fed back into the grid. That is my understanding. If the previous amendments are still under consideration, perhaps the relevant minister, who I understand is the Minister for Housing and Public Works, might also be able to consider that issue. I know it is a concern out there in the community.

I now turn to the specific provisions of the bill. The amendments to the Acts Interpretation Act insert a definition of 'lawyer' into schedule 1 of the act. However, there is no schedule 1 currently in the act. This is contained in the Treasury and Trade and Other Legislation Amendment Bill, which may be debated later in the week, but I note that it is listed as No. 5 on the *Notice Paper*. There is no concern with this amendment. However, it is difficult to see how it will work if it amends something that does not exist. The committee made reference to this in the fundamental legislative principles section of the report. It says that the Treasury and Trade and Other Legislation Amendment Bill must be passed before this bill for this amendment to operate. I invite the Attorney to explain how this will operate in practice if this bill is passed first. Another concern with this amendment is that it also pre-empts the passage of the Treasury and Trade and Other Legislation Amendment Bill, which is also a breach of the fundamental legislative principles.

The amendments to the Child Employment Act 2006 and the Child Employment Regulation 2006 were included in the previous government's lapsed bill. They include amendments to prohibit an employer from requiring or permitting a child to work in an inappropriate role or situation. An objective of this provision is to prohibit work by children from 16 up to the age of 18 years in adult entertainment type activities where that work is deemed inappropriate.

There are currently similar provisions governing work by children in licensed premises under the Liquor Act 1992 and under the Criminal Code. However, in unregulated live adult entertainment venues children who are of the age of consent, who are 16 but yet not 18, are not protected by these laws. These are very similar in nature and effect to the amendments made by the previous government to preclude children who were 16, and of the age of consent, but not yet 18 from employment in the prostitution industry. The opposition is committed to the protection of children particularly when they could be exploited in a workplace, and we wholeheartedly support these amendments.

The Civil Proceedings Bill 2011 inserted a new section 35A into the Justices of the Peace and Commissioners for Declarations Act 1991 which allowed JPs to take copies of certain proof of identity documents. The section imposed an obligation on the JP or the commissioner for declarations to 'take reasonable steps to ensure the information is kept in a secure way'. This section has not yet commenced. There were some concerns raised about the operation of this section. These amendments address the concerns raised by the previous committee in consideration of that bill.

Protection of identity documents is a very important issue and the previous government did not commence the operation of the section until concerns could be addressed. This amendment removes the rights of JPs and commissioners for declarations to take copies but will instead allow for the recording of all or partial personal identification information. This should address the security issues while still allowing JPs and commissioners for declarations to carry out their vital role.

The amendments to the Coroners Act 2003 allow coroners to order a doctor to take a urine sample for any type of autopsy ordered. Previously such orders could not be made when an external autopsy was conducted. The power already exists in relation to blood tests. This was considered inadequate in certain circumstances as some substances are not detected in blood and the process for taking urine samples is no more invasive than for blood tests. The change is justifiable and necessary.

The amendments also allow for the publication of inquest findings and comments and non-inquest findings on the Coroner's website. In practice, this already occurs, although there is no legislative basis for this. However, these amendments provide that in the case of inquest findings and comments there is a presumption in favour of publication unless the coroner orders otherwise. All findings shall be published unless the coroner makes an order to the contrary.

In the case of non-inquest findings—so in cases where an investigation was held but no inquest conducted—a Coroner must be satisfied that publication is in the public interest. They must also

consult with and have regard to the views of a family member of the deceased person before ordering publication. There are also amendments allowing coroners to grant access to investigation documents and physical evidence tendered at an inquest. Again, there is a requirement, where practicable, to consult with a family member of the deceased. Access must also be in the public interest.

There were a number of amendments contained in the previous bill relating to the District Court that have not been retained in this bill relating to the outdated writs and prerogative writs. Perhaps the Attorney-General could explain during consideration in detail why these amendments have not been included in this bill.

The bill also contains new amendments relating to the appointment of retired District Court judges as acting judges from the age of 70 to 78. There are similar amendments in the bill relating to acting Supreme Court judges. Currently acting judges may be appointed provided they are eligible for appointment as a District Court judge. Judges can retire at 60 and receive a full pension if they have been on the bench for 10 years.

Sitting suspended from 1.00 pm to 2.30 pm.

 **Ms PALASZCZUK:** Currently, acting judges may be appointed provided they are eligible for appointment as a District Court judge. Judges can retire at 60 and receive a full pension if they have been on the bench for 10 years. Therefore, retired judges between 60 and 70 are already eligible. Also eligible is a person who is or has been a judge of a Supreme Court, and for the District Court, the district court or county court of another state or of the Federal Court of Australia. There does not appear to be an age limit of 78 for these persons either in the bill or in the act as it stands. Perhaps the Attorney could explain if that is the case and, if so, why there is a distinction.

As a retired judge receives a pension of 60 per cent of a judge's salary, these amendments provide that the remuneration paid to a retired judge who is appointed an acting judge shall be the judge's salary less the pension they would have received. This prevents double dipping of both a pension and a salary, which has been an issue in recent years and certainly in respect of retired judges conducting inquiries and the like. The taxpayers of Queensland have been very clear in their views on remuneration of persons paid from their tax dollars, and they certainly would not accept a person receiving both a pension and a taxpayer funded salary at the same time for essentially the same work. These are indeed very sensible provisions.

I now move to the Domestic and Family Violence Protection Act. These amendments were not included in the previous bill. They provide that, where a domestic violence order has been made and an application is made to vary that order, where a magistrate makes a temporary protection order the original order is suspended. They also provide that the court may only make the temporary protection order if it is satisfied that it is necessary or desirable to protect the aggrieved or another person named in the first domestic violence order.

The Queensland Law Society in its submission raised the issue that, from the advice of its members, there appears to be some confusion in the minds of magistrates as to whether a temporary protection order can be varied, either in an oral or written submission. It is therefore recommended an editor's note be included to clarify this position. The department in its response to the committee did not believe it was necessary, but the committee has recommended such a note be included for greater clarity. I note that no such amendment has been included in the amendments circulated by the Attorney. When solicitors in practice have provided advice that a provision is not operating to maximum effect, the Attorney should give due consideration to their concerns. The committee has seen fit to endorse the proposed amendment, and this is disappointing.

The amendments also provide for the making of rules which will apply to applications under the act. The Uniform Civil Procedure Rules are considered too complex and might dissuade persons from making an application. Also, not all rules apply. This might add to the complexity so stand-alone rules are considered more appropriate in this jurisdiction. The bill also makes provision for rules to be made. Recommendation 4 of the committee is to ensure that in the development of such rules further consultation take place with stakeholders to ensure the rules operate as intended. This is a sound recommendation and the opposition supports it.

I now move to the Electronic Transactions (Queensland) Act. These amendments implement model provisions relating to electronic transactions that allow for accession to international conventions. They provide a set of internationally accepted rules relating to contracts and other commercial transactions involving electronic communications. These amendments will bring Queensland business into line with other international business partners when transacting

international business, which is so necessary in this electronic age. The former Standing Committee of Attorneys-General considered the model rules, and similar provisions have already been adopted by all other states and territories and the Commonwealth. These amendments implement the UN Convention on the Use of Electronic Communications in International Contracts. The opposition supports the amendments, which are integral to future business in Queensland.

I now move to the Evidence Act. Section 7 of the Evidence Act provides that, except for criminal proceedings, a party to the proceedings and their husband or wife are both competent and compellable to give evidence. There are similar provisions in section 8 of the act relating to criminal proceedings. These amendments clarify that a proceeding for the purpose of section 7 includes an inquiry, reference or examination. This is merely a clarification, and the opposition supports this amendment, which was included in the lapsed bill.

I turn to the Information Privacy Act and the Right to Information Act. These amendments provide that the Information Commissioner may publish a declaration that a named person is a vexatious applicant under each act, and the decision and reasons for that decision. They may also publish a decision to not make a declaration and the reasons for that decision, but no similar provision is included in relation to publication of the name. It is not appropriate in those circumstances that the person be named, and it is imperative that their privacy be protected. Whilst these provisions necessarily impact on the rights of the person so declared vexatious, there have long been similar provisions for courts to declare a vexatious litigant. Such a decision will not be made lightly and, of course, is subject to review. The usual rules of administrative law will apply. These amendments implement a recommendation of the committee in its report No. 7, *Oversight of the Office of the Information Commissioner*.

I move to the Justices Act. The first amendment to this act replaces 'crown solicitor' with 'Director of Public Prosecutions'. This was an oversight when the director of prosecutions, as was then the designation, assumed responsibility for prosecution in a trial on indictment in 1984. The second amendment was also included in the lapsed bill. It allows the Attorney-General to delegate to the chief executive, who can also subdelegate, a decision to release copies of records in certain proceedings such as Children's Court proceedings or proceedings where a person has been excluded from a courtroom or proceedings were heard in closed court.

The opposition supports the amendments. However, I note the committee report claims that this is 'another example of the government's commitment to reducing red tape'. With all due respect, these amendments were included in the lapsed bill introduced by the previous government. I just wanted to make that observation. The Attorney in his explanatory speech also claimed credit for this and a number of red-tape reduction measures that were almost all included in the previous bill.

I turn to the Land Court Act. Most of these amendments were included in the previous lapsed bill. The amendments include a provision removing the requirement for the registrar of the Land Court to be appointed by Governor in Council, which is not opposed. Other amendments relate to the jurisdiction of the court, the imposition of time limits on applications for rehearing of a judicial registrar's decision, and providing that the uniform civil procedure rules will apply to record management procedures and policies in the Land Court. This means that the enforcement procedures of the Supreme Court can be used to enforce orders of the Land Court and will provide for consistency of practice with other courts.

One provision not included in the previous bill is clause 118, which amends section 65—notice of appeal—to provide the Land Appeal Court with the power to extend the time for serving a notice of appeal. It is suggested that this amendment was included at the request of the Land Court after a decision in a recent case. The act currently provides that, when an appeal is filed, it must be served on all other parties to the proceeding and the registrar within 42 days of the decision. The time limit for filing the notice of appeal and serving the notice are the same.

In most other courts there is a time within which the appeal must be filed and a longer period for service of a notice. The unusual requirement meant that the appeal was struck out by the Land Appeal Court. The decision was upheld by the Court of Appeal. Solicitors in the matter have asked that the amendment allowing discretion to extend the time period be made retrospective to allow the appeal to be heard. Whilst the different practice in the matter made this an unusual case, it is only in exceptional circumstances that legislation should be made retrospective. In this case it would aid one party's litigation over the other because they did not comply with the rules. Two appeal courts have found that the rules were clear in their meaning even if being different from other court procedures may have made them confusing. It would not be appropriate for legislation to be made retrospective in this case.

I turn now to the Legal Profession Act. The Queensland Law Society provides administrative and secretariat support to the Legal Practitioners Admissions Board pursuant to the Legal Profession Act. The solicitor employed by the Queensland Law Society to carry out this function has a practising certificate which is conditional upon them not providing any other legal services than in-house legal services. When providing support to the board, this person is technically in breach of this requirement. This amendment seeks to alleviate this and will operate retrospectively to protect all past actions.

In addition to this amendment, the Law Society requested the committee to consider a further amendment to allow the Law Society a discretion as to when it reports breaches of the practising certificate requirements. It noted that, in some instances, in-house legal officers employed by statutory authorities and corporations may technically be in breach of the act. The Queensland Law Society is obliged under the act to report even technical or minor breaches to the Commissioner of Police, the CMC and the DPP. Whilst no amendment to this effect was included in the bill, the committee has recommended that an additional provision be included in the bill to give effect to this request. I note that the amendments to the bill circulated by the Attorney have indeed included the suggested amendment. Whilst there may be some merit in this course, I am concerned as to whether there has been consultation on this recommendation including with the Police Commissioner, the chair of the CMC and the DPP. It is important that consultation be undertaken in these circumstances in case the proposed amendment might have unintended consequences. I ask the Attorney to please advise in relation to this matter.

I turn now to the Personal Injuries Proceedings Act. These amendments provide for a new definition of 'community legal service' for the purposes of the Personal Injuries Proceedings Act. Community legal services are exempted under the act from the provisions prohibiting touting at the scene of an accident or at a hospital after an accident. Certainly the definition is restricted to those services prescribed under a regulation. Schedule 1 to the regulation currently includes 35 named organisations. The proposed amendment seeks to abolish the need for a list and provide a definition that would be inclusive in nature. However, several organisations expressed concern with the proposed definition including QAILS and a variety of community legal services. They felt that the definition was too narrow and excluded legitimate organisations it was designed to cover. The committee recommended further consultation before the bill is debated to find a workable definition that would cover all organisations intended to be covered.

I note that an amended definition of 'community legal service' has been included in the amendment circulated by the Attorney-General. The Attorney has taken into account concerns raised by the Queensland Indigenous Family Violence Legal Service and the proposed definition would operate to specifically exclude their service. It also includes an ability to prescribe an organisation under a regulation as a community legal service, which was previously provided for. It is important that the appropriate organisations be consulted in the drafting of such a regulation, and I seek the Attorney's assurance that this will occur.

I now move on to the Queensland Civil and Administrative Tribunal Act. The majority of these amendments were included in the previous bill. A number of submissions received expressed some concern about aspects of the amendments. The submission by the Queensland Law Society referred to the amendments allowing persons to withdraw applications without leave of the tribunal. The Law Society submitted that there may be some instances, such as child protection matters, where an applicant such as a parent wishes to withdraw an application for various reasons, but it may be in the best interests of the child that the application remain on foot. The section provides a number of exemptions from this provision where leave is still required of the tribunal to withdraw an application. The Law Society suggested that child protection matters be included in this list. The suggestion has considerable merit and the committee recommended that amendment be made to allow for this. I note that an amendment to this effect is included in the amendments circulated by the Attorney-General so that applications under the Child Protection Act are included in the applications requiring leave of the tribunal to be withdrawn.

Another concern raised by the Law Society was in relation to amendments which remove the requirements for the tribunal to give reasons for its decisions. The giving of reasons is an important element of natural justice and should not be ignored, especially in certain circumstances. Most of the provisions where this occurs are in relation to minor procedural matters and the removal of this requirement, whilst not ideal, could be justified in those circumstances. However, there are some matters which are more than just procedural or administrative in nature and reasons should be required to be given. These include a decision to set aside or amend a decision by default on terms including terms about costs and the giving of security the tribunal considers appropriate; general powers of the tribunal, including power to take evidence on oath, act in the absence of a party who has had reasonable notice of a proceedings or adjourn a proceeding, or various other powers under

that section; and giving a direction at any time in a proceeding and doing whatever is necessary for the speedy and fair conduct of the proceeding.

Because these are not minor procedural matters, the committee has accepted the submission of the Law Society and recommended that these provisions not be included in the general provision to exempt the tribunal from being required to give reasons. This is a sound recommendation. I note that the Attorney-General has chosen not to take on board the recommendations of the committee in this respect and no such amendments have been circulated. When important stakeholders such as the Law Society point out possible concerns in the way the legislation will operate, they should be given serious consideration, particularly when the committee endorses those proposals.

Finally, I turn to the Recording of Evidence Act. When amendments were passed earlier this year to provide for outsourcing of court transcription services, the Queensland Bar Association recommended that arbitration hearings be excluded from the act. They felt that, as they are of a private nature and it was the practice of parties to engage their own recorders, it was not necessary for such proceedings to be covered. This was, in fact, the case for commercial arbitration hearings. One of the unintended consequences of the amendment, though, was that it also covered arbitration hearings in the QIRC. The practical effect of having hearings covered by the act is that the transcriptions and recordings can be tendered in later proceedings as evidence without having to tender evidence as to who recorded or transcribed the proceedings and also laws relating to retention and destruction of records. This will be of benefit in certain circumstances to both sides in a dispute and should be supported.

The former Standing Committee of Attorneys-General agreed that all Australian states and territories would adopt the uniform law contained in the Convention Providing a Uniform Law on the Form of an International Will 1973. The introduction of the uniform law means that Australia can formally accede to the convention. This means that there will be a more uniform approach to the recognitions of international wills across all Australian states and territories. The model laws mean that Australians will now be able to make an international will and it will not be necessary for courts to look to the laws of the jurisdiction where the will was made to determine whether it was made in accordance with those laws. For Australia to accede to the convention, the model rules must be passed without amendment by all jurisdictions. The Queensland Law Society has expressed some concern with the drafting of the section which will give effect to the convention. However, the examination of the committee has been thorough and there does not appear to be a need for any amendment. It is important that the rules be passed as proposed without amendment so that Australia can accede to the convention and Queensland can fulfil its obligations under the SCAG agreement. In a world where there is increasing travel and increasing international commerce, it is imperative that Queenslanders who own property overseas or who have a family living abroad or, in fact, may have any international aspect to their lives should be able to make a will that has effect internationally. It is a simple case of business, and these amendments are the culmination of the work undertaken by previous ministers.

I note that the amendments circulated by the Attorney-General also include some amendments to the Penalties and Sentences Act. These amendments correct some issues created by amendments made last sitting in relation to drug trafficking offences. The opposition supports these amendments.

The bill makes many and varied amendments to a multitude of acts. The submissions received by the committee were extremely helpful, and I would like to take the opportunity to thank those people who made submissions for the obvious time and thoughtful consideration that went into that process. I am reluctant to single out any particular organisation, but as usual the submission by the Queensland Law Society alerted the committee to quite a number of unintended consequences of the legislation and they were, of course, of valuable assistance. The staff of the department has also undertaken quite a lot of work over a number of years in bringing this bill together, and they are also to be commended. They bear the brunt of the legislative program of this parliament, and they should know that their work is appreciated by all members of this House.