Speech By

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (12.37 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 Justice and Other Legislation Amendment Bill 2013. I also thank the stakeholders who lodged written submissions as part of the committee's examination of the bill. The purpose of the bill is to amend court and tribunal related legislation and other statutes related to the administration of justice, fair trading, and workplace health and safety. I cannot say that in the House this afternoon we are going to have the most entertaining debate on these subject matters, but they are all important to delivering justice.

The bill proposes amendments to over 30 acts. These amendments are necessary to clarify or otherwise improve the operation of various statutes within the Justice portfolio, including to clarify and improve provisions concerning the operation of various commission, court, tribunal and registry processes; implement model provisions to allow for accession to international conventions; implement red-tape reduction measures concerning boards and the mechanisms for particular appointments; clarify that the Information Commissioner may publish the name of a declared vexatious applicant; and update or clarify definitions and references.

The bill also includes two important amendments to improve safeguards for victims of domestic violence and supports standardised court procedures. The first is to the Domestic and Family Violence Protection Act 2012 to remove uncertainty about which orders respondents must comply with when an application to vary a domestic violence order is made. The second is to the Domestic and Family Violence Protection Act 2012 and the Magistrates Courts Act 1921 to provide authority to make stand-alone rules of court for domestic and family violence proceedings.

As part of its report, the committee made seven recommendations in relation to the bill. I table a copy of the Queensland government's response to the committee's report and I thank the committee for its investigation into the bill.

Tabled paper: Legal Affairs and Community Safety Committee: Report No. 39—Justice and Other Legislation Amendment Bill 2013, government response [3252].

Recommendation 1 made by the committee is that the bill be passed. I thank the committee for its timely consideration of the bill and I appreciate the committee's recommendation that the bill be passed. Recommendation 2 is that further consideration be given to including an editor's note or example in relation to the amendments to the Domestic and Family Violence Protection Act 2012 to improve the clarity of how the processes relating to temporary protection orders are to operate.

Further consideration has been given to including a note or example to clarify that temporary protection orders can be varied, but it has been concluded that it is unnecessary.

The Domestic and Family Violence Protection Act 2012 includes a division called 'Overview'—part 2, division 4—that sets out some of the ideas that are important in understanding the act. Examples dealing with the variation of protection orders, including temporary protection orders, are provided in section 29. This section explains that domestic violence orders can be varied if circumstances change and provides that a person can apply under section 86 for a variation of the order.

Recommendation 3 is that an additional provision be included in the bill to amend the Legal Profession Act 2007 to provide the Queensland Law Society with discretion as to whether a matter should be reported under section 706(2) of that act. This recommendation addresses concerns raised by the Queensland Law Society that it is currently under an obligation to report inadvertent or minor breaches of the act to the commissioner of police, the Crime and Misconduct Commission and the Director of Public Prosecutions.

According to the society, it would be preferable for the society to have discretion as to whether a matter should be reported based on an assessment of the severity of the suspected offence and the surrounding circumstances. I agree with the committee that an amendment is appropriate to assist the society in carrying out its duties under the provision. I will be moving an amendment during consideration in detail for this purpose.

Recommendation 4 is that, prior to the development of the domestic and family violence protection rules, further consultation take place with stakeholders, such as the Queensland Law Society, to ensure the new rules operate as intended, without inconsistency. The Queensland government supports this recommendation and will ensure that consultation with legal stakeholders, including the Queensland Law Society, is undertaken during the development of the domestic and family violence protection rules.

Recommendation 5 is that I consult further with Queensland Association of Independent Legal Services Inc., QAILS, and other community legal service organisations prior to the second reading debate of the bill to ensure that the proposed definition of 'community legal service' in the Personal Injuries Proceedings Act 2002 is workable and includes all organisations that it is intended to include. Several of the submissions to the committee concerned the definition of 'community legal service' currently contained in section 67A of the Personal Injuries Proceedings Act 2002.

In light of these submissions, and also the recommendation made by the committee, I have reconsidered this amendment and will be moving an amendment during consideration in detail to transfer the definition of 'community legal service' to the Legal Profession Act 2007. I consider it more appropriate for the definition to be housed in this act rather than in the Personal Injuries Proceedings Act 2002.

In response to the committee's recommendation and submissions to the committee from QAILS and the Queensland Law Society, the amendment recognises a family violence prevention legal service as a community legal service and will allow for the definition to be supplemented by regulation if clarification is needed. I will consult further with QAILS and the Queensland Law Society on this matter following the passage of the bill.

Recommendation 6 is that clause 146 of the bill be amended to include applications or referrals made under the Child Protection Act 1999 in the list of exceptions contained in section 46(2) of the Queensland Civil and Administrative Tribunal Act 2009. This issue was raised by the Queensland Law Society. I appreciate the concerns raised and will be moving an amendment during consideration in detail in line with the committee's recommendation to ensure that the interests of the child are protected.

The final recommendation, recommendation 7, made by the committee is that clause 150 of the bill, which inserts a new section 122(4) into the Queensland Civil and Administrative Tribunal Act 2009, be amended to omit sections 51, 57 and 62(1) from the list of sections with which a request for written reasons is not required to be complied. This recommendation is not supported. The bill provides the Queensland Civil and Administrative Tribunal, QCAT, with discretion as to whether or not to provide written reasons in relation to decisions of a procedural nature under stated sections.

Decisions of the tribunal under sections 51, 57 and 62(1), mentioned in the committee's recommendation, are such sections. Section 51 provides for the setting aside of a decision by default. Section 57 provides for taking evidence on oath, acting in the absence of a party and adjourning proceedings. Section 62(1) provides for the giving of directions in a proceeding.

The amendment is intended to ensure that QCAT's limited resources are not expended on providing written reasons for decisions which do not determine the merits of the parties' claims. QCAT will still be able to provide reasons for these decisions where, in the interests of transparency or having regard to the rights of the parties, it is preferable to do so.

I would like to briefly address a number of other issues raised by the committee and stakeholders as part of their written submissions to the committee. The committee has raised as irregular amendments to the Acts Interpretation Act 1954 in clause 6 which presume the passage of amendments to that act proposed in the Treasury and Trade and Other Legislation Amendment Bill 2013, the Treasury bill, also currently before the House. The committee's concern is that the clause 6 amendment does not have sufficient regard to the institution of parliament. No disregard for the institution of parliament is intended.

The issue arises because amendments to the same provisions need to be included in bills contemporaneously before the House. The amendment in the Treasury bill on which the clause 6 amendment depends—the relocation of the relevant definitions to a schedule—is not an amendment of substance. In any event, the clause 6 amendment could not of course be proclaimed unless the related amendments from the Treasury bill are assented to. Should parliament not pass the related amendments in the Treasury bill, the clause 6 amendment would need to return to parliament for amendment.

In relation to the amendments to the Anti-Discrimination Act 1991 which create new grounds for rejecting or staying a complaint, the Queensland Law Society suggested that it should be the complainant's choice what avenue of complaint they pursue. Similar grounds for rejecting or staying a complaint are to be found in antidiscrimination legislation in a number of other Australian jurisdictions. The power to reject a complaint because it has been adequately dealt with elsewhere or can be effectively or conveniently dealt with elsewhere will reduce unnecessary duplication of effort and will be particularly useful when a complaint has been made to a number of entities simultaneously. The new grounds are discretionary and the commissioner will consider a range of relevant factors in making a decision, including the availability of comparable remedies.

The International Commission of Jurists Queensland Inc. made a submission in relation to amendments to allow for the appointment of acting retired judges to the supreme and district courts, voicing concern that such a reform is inconsistent with judicial tenure and the independence of the judiciary. I would like to assure the House that the amendments in question were developed in consultation with the relevant heads of jurisdiction. The amendments, which reflect similar schemes currently operating in New South Wales and Victoria, will provide access to a pool of experienced judicial officers to overcome issues related to court backlogs and heavy court calendars.

I note that the proposed appointment of acting retired judges by the Governor in Council is consistent with the usual approach to judicial appointments in Queensland. Additionally, the proposed Queensland provisions require consultation with the relevant head of jurisdiction. I consider that the limiting of an appointment of an acting retired judge to one term is not desirable, as this would limit the available pool of available judicial officers.

The committee has questioned whether a proposed subdelegation of power under section 154(2) of the Justices Act 1886 is appropriate. Currently, the section allows the minister to permit access to a copy of a generally restricted type of record of proceeding—for example, from the Children's Court—to a person who would otherwise not be entitled to a copy of it. The amendment provides for delegation of that power to the chief executive and permits the chief executive to subdelegate that power to an appropriately qualified departmental officer or employee. I have considered the issue and am satisfied the provision is appropriate where only officers having the qualifications, experience or standing appropriate to the exercise of the power would be qualified to receive the subdelegation. In practice, this subdelegation would be confined to very senior officers such as a deputy director-general.

A submission was also made concerning clause 118 of the bill seeking retrospective operation of this provision. Clause 118 amends section 65 of the Land Court Act 2000 to allow the court to extend the time for serving a notice of appeal. I strongly agree with the committee that it is not the role of the parliament to enact retrospective legislation in the case where litigants and/or their legal advisors fail to properly comply with court processes. For this reason, retrospective operation of this provision is not proposed.

The Queensland Law Society submission raised several issues. For example, as part of its submission, the Queensland Law Society queried the amendment to section 17 of the Peaceful Assembly Act 1992 insofar as it permits delegation of the commissioner's functions under that act to a

police officer who is the rank of sergeant or higher. On the basis of advice received from the Queensland Police Service, I am satisfied that a police officer of the rank of sergeant has the necessary experience and expertise to perform their delegated functions under the Peaceful Assembly Act 1992. I also note that this amendment reflects Queensland Police Service policy which allows a police officer of the rank of sergeant who is an officer in charge of a station or any police officers who are required as a function of their normal duties to act as a superintendent of traffic to be delegated the powers, functions or duties of a superintendent of traffic. The act currently provides for delegation of the commissioner's functions to a superintendent of traffic.

In relation to the amendments to the Succession Act 1981, which provides for international wills, the Queensland Law Society recommended that further clarification be provided about which provisions apply in relation to international wills. I consider that the amendments, which are consistent with corresponding amendments made in the other jurisdictions, are sufficiently clear in their application.

I would like to foreshadow some further amendments that I intend to move during the consideration in detail stage of the bill. First, it is proposed that a note be inserted into section 23(1)(b) of the Criminal Code to confirm and to put beyond doubt that the provision, as amended in 2011, enshrines the common law test for the excuse of accident and that the provision, as amended in 2011, did not change the law in this regard. Secondly, following further consultation with the Chief Magistrate, it is proposed to clarify that the Chief Magistrate's powers under section 12 of the Magistrates Act 1991 for ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts are confined to administrative functions and do not in any way fetter the judicial functions of any magistrate.

Thirdly, amendments are proposed to the Penalties and Sentences Act 1992 and the Corrective Services Act 2006, as recently amended by the Criminal Law and Other Legislation Amendment Act 2013, which established a new 80 per cent non-parole period regime for drug traffickers. The amendments, which include an amendment to the Drugs Misuse Act 1986, will ensure that the stated policy objective of the prospective application of this regime is realised and prevent any unintended fettering of sentencing options in relation to drug traffickers. I commend the bill to the House.