Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 23 May 2017

COURT AND CIVIL LEGISLATION AMENDMENT BILL

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (9.08 pm), in reply: I am not sure how I follow that.

Honourable members interjected.

Mrs D'ATH: With a history lesson? No. At the outset I would like to thank all of the members who have contributed to the debate on the Court and Civil Legislation Amendment Bill. As I have indicated in my earlier speeches, the bill proposes miscellaneous amendments to over 30 acts within the Justice portfolio and across a broad spectrum of subject matter. The significant focus of the bill is on strengthening the administration of justice, improving the efficiency and effectiveness of the courts and agencies, and otherwise clarifying, improving and updating the diverse Justice portfolio legislation.

A substantial part of the bill relates to amendments to the Classification of Computer Games and Images Act 1995, the Classification of Films Act 1991 and the Classification of Publications Act 1991, updating each of these acts to align with corresponding Commonwealth legislation. The bill also includes amendments to the legislation governing various statutory offices and entities and regulatory schemes within the Justice portfolio. This includes strengthening the Ombudsman Act 2001 through implementing recommendations from the last strategic review of Queensland's Ombudsman Office, improved governance arrangements for the Prostitution Licensing Authority and the modernisation of the eligibility requirements for the chief executive officer of Legal Aid Queensland.

The bill clarifies the operation of various provisions across the statute book. Importantly, the bill amends the Public Guardian Act 2014 to clarify that the functions and powers of the Public Guardian in relation to a relevant child can be exercised from the time an application for an order under the Child Protection Act 1999 is filed until the application is finalised and arrangements are no longer in place for that child.

Amendments to the Right to Information Act 2009 ensure that the Information Privacy Act 2009 does not restrict the disclosure of personal information to the Australian Security Intelligence Organisation—ASIO—in appropriate cases. The bill also includes amendments directed to clarifying and streamlining aspects of Queensland's succession, trust and property legislation—for example, amendments to the Succession Act 1981 to clarify for family provision applications that the relationship of stepchild and step-parent stops when the civil partnership or de facto relationship between the deceased and the stepchild's parent ends and to provide for the effect of the end of a de facto relationship on a will.

I would like to now address comments made in the second reading debate and particularly the two clauses that members of the opposition have gone to. As I already stated, in relation to clause 150 dealing with the chief executive officer of Legal Aid Queensland, the bill removes the current requirement for the Legal Aid Queensland CEO to be a lawyer with at least five years experience and provides instead for the eligibility of a person who has qualifications, experience or standing appropriate to perform the role of the CEO. This criteria of course would not per se preclude a lawyer from eligibility

for the role. The removal of the mandatory requirement for a person to be legally qualified in order to be considered by the Legal Aid board for nomination for appointment as CEO was sought by the former chair of the Legal Aid board, Mr Brian Stewart. As the committee heard, the current CEO, Mr Anthony Reilly, in his evidence to the committee's public hearing on the bill, advised that the proposed amendments are supported by the Legal Aid board. I take the point made by the member for Mansfield that this is one of those issues that law firms deal with and there are differing views right across the legal profession on this. However, it is one that has been put forward by the Legal Aid board and the CEO and one that we believe is worthy of putting forward.

The proposed amendment is directed to providing the Legal Aid board with the flexibility to draw from a wider range of candidates for the CEO position, in particular, given the size and scope of Legal Aid Queensland's contemporary budget and service delivery program. The proposed amendment will also serve to keep pace with current practice and standards in respect of senior executive appointments for government and statutory agencies. As already stated in my second reading speech, the change will be consistent with the position in the other two major Legal Aid jurisdictions, being New South Wales and Victoria, where the CEO is not required to be a lawyer.

The government of course acknowledges the importance of the legal and ethical obligations and expertise of duly qualified and experienced lawyers in providing legal assistance to financially disadvantaged Queenslanders. Significantly in this regard, as already canvassed in my second reading speech, the bill also makes consequential amendments to the Legal Aid Queensland Act to ensure that if a non-lawyer CEO is appointed his or her functions in relation to the provision of legal services and as holder of Legal Aid Queensland's principal's practising certificate are the responsibility of a Legal Aid lawyer with appropriate experience and qualifications and who is nominated by the Legal Aid Queensland Board and approved by the Attorney-General. There is also provision in part 17 of the bill for nomination and approval of a person to hold the requisite practising certificate as reserve holders where the chief executive officer is not a lawyer and the primary holder ceases to be a Legal Aid lawyer. A CEO who is not a lawyer will still have an overarching obligation to ensure that the legal services responsibilities of the role are met.

I turn now to clause 220, the retail shop leases rider provision. As I outlined in my second reading speech, clause 220 of the bill will simply reinstate a rider provision inadvertently omitted by the Retail Shop Leases Amendment Act 2016 which qualifies a lessee's statutory entitlement to terminate a lease based on defective lessor disclosure. I just want to clarify this because I heard the member for Beaudesert also saying that there is concern that this somehow weakens the protections of small business. The fact is: this is simply seeking to reinstate a rider that has been in there since 2006 and was inadvertently omitted from the 2016 act and was not raised by any of the stakeholders other than the Queensland Law Society. All of the lessee or lessor representatives over many, many years, including the time that the LNP was in government—in fact, as I understand it, this rider appeared in the LNP's retail bill. It was in there from 2006; it was in the LNP's bill. It was inadvertently omitted from the 2016 bill, so I am very surprised that there are concerns about this rider being there. I should say that if the Queensland Law Society submits, which it has, that the rider provision should not be reinstated as it is problematic for lessees—and there has not been the evidence put forward to show that it is problematic and it is in just about all other jurisdictions. As I was saying, New South Wales has just gone through a significant statutory review as well and has left the rider in there, so it has not been shown to be problematic in other jurisdictions.

The society's submission is technical and in our view requires clarification and detailed consideration including in consultation with retail industry stakeholders and other interested professional stakeholders. To not reinstate this provision creates more problems than to leave it out. Leaving it out would require significant consultation with all those stakeholders who were more than comfortable and never raised this as a concern all the way through the review. It is a lot more problematic to leave it out when it was simply an inadvertent omission.

If we were to consider the Law Society's views going forward, what we would say to the Queensland Law Society is matters for consultation would include whether the broader review, experience and practice in Queensland and in other jurisdictions support the society's concerns that the rider provision leaves lessees without a remedy except in cases of blatant fraudulent behaviour; the existing safeguards in the Retail Shop Leases Act for small business lessees who are required to obtain both a professional legal advice report and a professional financial advice report before entering into a lease; and consideration of appropriate alternative provisions to address the society's concerns around protecting lessees from adverse wrongful termination outcomes and matters of statutory and legal interpretation while balancing the commercial rights and interests of lessees and lessors and narrowing termination disputes including minimising associated legal and business costs for the benefit of both lease parties. I say that because the parties actually asked for these particular changes around the

disputes to actually minimise associated legal and business costs. Not supporting this amendment will have consequences that are worthy of going back to the lessee and lessor representatives to have that consultation.

Those are all the issues that would need to be considered if this amendment does not go through this evening and if the opposition opposes it. As I say, it is simply seeking to rectify an omission that occurred back in 2016. It formed part of the LNP's bill. It has been in the act since 2006. It is in line with many other jurisdictions and for that reason we believe that the LNP should support our amendment as it is outlined in the bill.

The member for Beaudesert talked about courthouses. I understand his frustration. We have many courthouses across this state that are very old buildings. It is difficult to try to retrofit them—and some of them are heritage listed. They were purpose-built for their time, but they are not purpose-built for the needs we have today. Especially in the domestic and family violence space, we know that that is an issue. We cannot retrofit or rebuild every courthouse at once. It is a significant job and it comes at a significant cost. It is a challenge for whomever is in government. It is work we are undertaking progressively, and we are looking at those busiest courts where we have the largest increase in domestic and family violence work. I can understand that the member for Beaudesert is wanting to look after his local courthouse in his local community. I certainly acknowledge his comments on that and I understand that there are frustrations out there with these challenges of trying to retrofit our courthouses. I will continue to do what I can to work through our auditing of our courthouses and see what we can do, whether it is minor changes, temporary structures—whatever we can do—to try to make it that little bit easier for victims coming into courthouses. It is a challenge and it comes at a great cost to the budget.

In conclusion, the amendments in this bill are expected to improve the efficiency and effectiveness of the courts and justice agencies and clarify, update, modernise and improve diverse legislation across the Justice portfolio. I commend the bill to the House.