Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 23 May 2017

COURT AND CIVIL LEGISLATION AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (8.12 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 Court and Civil Legislation Amendment Bill 2017. The committee's report No. 55, tabled on 15 May 2017, made a single recommendation: that the bill be passed. I also take this opportunity to thank those who made submissions to the committee and those who appeared as witnesses as part of the committee's inquiry.

The bill proposes amendments to over 30 acts. As I outlined in my introductory speech, its objectives are to improve the efficiency and effectiveness of the courts and justice agencies and otherwise clarify, strengthen and update Justice portfolio legislation. Some of the proposals were previously included in the lapsed Justice and Other Legislation Amendment Bill 2014.

Some key amendments are to the Appeal Costs Fund Act 1973 to clarify the basis on which costs are recoverable from the Appeal Costs Fund and that a person convicted of an indictment is entitled to payment from the fund if an appeal succeeds on the grounds that there was a miscarriage of justice; the Classification of Computer Games and Images Act 1995, the Classification of Films Act 1991 and the Classification of Publications Act 1991 to align with corresponding Commonwealth legislation and remove all references to classification officers; the Information Privacy Act 2009 to not restrict the disclosure of personal information to the Australian Security Intelligence Organisation in appropriate cases; the Invasion of Privacy Act 1971 to provide appropriate protections from prosecution for police or emergency services communications centre operators who record private conversations in circumstances associated with risk to the safety and wellbeing of a public safety entity officer; the Land Court Act 2000 to clarify its operation in relation to the Land Appeal Court, strengthen the alternative dispute resolution processes in the Land Court and incorporate the provisions of the Land Court (Transitional) Regulation 2017 in relation to the application of the act to the exercise by the court of its administrative functions; the Legal Aid Queensland Act 1997 to modernise the eligibility requirements for the chief executive officer of Legal Aid Queensland and strengthen its secrecy provisions; the Ombudsman Act 2001 to implement the recommendations of the 2011-12 strategic review of the Office of the Queensland Ombudsman, subsequently supported by the then Legal Affairs and Community Safety Committee report No. 15 of 2012, and to increase the interval between strategic reviews from five to seven years; the Penalties and Sentences Act 1992 to allow domestic violence notations to be automatically made on a person's criminal history or a formal record of conviction, subject to a contrary court order, and to clarify that the prosecution bears the onus of proving that an offence is a domestic violence offence and that domestic violence notations do not apply to a person's traffic history; the Property Law Act 1974 to prohibit statutory instruments other than prescribed subordinate legislation from rendering void, unenforceable or subject to termination contracts or dealings concerning property

that are made, entered into or effected contrary to the statutory instrument; the Prostitution Act 1999 to make improvements to the governance arrangements for the Prostitution Licensing Authority; 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; the Retail Shop Leases Act 1994 to give permanent effect to a transitional regulation and correct an inadvertent omission effected when the act was last amended; the Right to Information Act 2009 to prevent the release of documents associated with the administration of the judicial appointments protocol; 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 provide for the effect of the end of a de facto relationship on a will in line with the current provisions for revocation of a will on the ending of a marriage or civil partnership; the Trusts Act 1973 to remove the requirement for a delegation of the administration of a trust to be made by power of attorney executed as a deed and provide transactional certainty by retrospectively validating any delegations of trusteeship made using the approved form for a general power of attorney under the Powers of Attorney Act 1998 and provide that where a notice of a proposed distribution of trust property or an estate is included in a notice of intention to apply for a grant of probate it will be sufficient for the trustee to obtain statutory protection if the notice is published in a publication approved by the Chief Justice under a practice direction and provide that a trustee will otherwise be afforded statutory protection if the notice is published in a newspaper circulating throughout the state and sold at least once each week; and various statutes to allow for website notification of notices in place of or as an alternative to gazettal.

I take this opportunity to clarify that the amendment to the Magistrates Act 1991 to increase the age limit for acting magistrates to 75 years only applies to acting magistrates who are retired magistrates. The explanatory notes to the bill did not make this clear; however, clause 167 of the bill clearly refers to a retired magistrate. This amendment will allow the Chief Magistrate increased flexibility in the management of the heavy workloads of the Magistrates Courts across the state by drawing on the valuable expertise and experience of retired magistrates who have not reached the age of 75 years but wish to continue working.

I will now turn to reservations expressed in relation to some of these amendments by opposition committee members. Opposition members have noted the Queensland Law Society's concern regarding the proposed changes to the eligibility requirements for the role of the chief executive officer of Legal Aid Queensland in clause 150 of the bill. The bill removes the current requirement for the CEO of Legal Aid 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 CEO. This, of course, would not preclude a lawyer from eligibility for the role.

The proposed eligibility amendment is directed to allowing the Legal Aid board flexibility to draw from a wider field of candidates for the CEO position including with regard to the size and scope of Legal Aid Queensland's contemporary budget and service delivery program. The amendment is consistent with the position in New South Wales and Victoria, where the legal aid agency legislation does not require the CEO to be a lawyer.

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.

The change to the eligibility requirement was requested by the former chair of the Legal Aid board, Mr Brian Stewart and, as stated by the current CEO, Mr Anthony Reilly, in his evidence to the committee, the amendments are supported by the Legal Aid board.

The Queensland Law Society is also concerned that, if the proposed amendments proceed, there needs to be a clear delineation between the CEO and the person nominated as holder of Legal Aid Queensland's principal practising certificate to avoid compromising privilege or the integrity of the work that Legal Aid performs along with proper oversight and consideration of who appears publicly on behalf of Legal Aid Queensland. Clearly, these are operational matters for Legal Aid Queensland rather than legislatively prescriptive.

The statement of reservation by the opposition members of the committee also indicates support for concerns raised by the Queensland Law Society in its submission to the committee on clause 220 of the bill. That clause amends section 21F of the Retail Shop Leases Act 1994 to reinstate a rider provision that was omitted inadvertently by the Retail Shop Leases Amendment Act 2016, which qualifies a lessee's statutory entitlement to terminate a lease based on defective lessor disclosure.

Before turning to the concerns stated by the Queensland Law Society and the opposition members of the committee, it is instructive to outline briefly to the House the context of clause 220. The rider provision to be reinstated by clause 220 is in the same terms as former section 22(5) of the Retail Shop Leases Act, which had been in operation since 2006—that is, the lessee cannot terminate based on defective lessor disclosure if the lessor acted honestly and reasonably in giving the disclosure statement and the lessee is in substantially as good a position as they would be if the disclosure statement was not defective. This pre-existing rider provision was not identified as problematic for lessees throughout the reference group consultation process for the statutory review that preceded the introduction of the Retail Shop Leases Amendment Bill 2015. The Queensland Law Society was a key contributor and reference group stakeholder for that review, as were lessee stakeholder representatives.

Section 21F of the act was amended during the consideration in detail of the Retail Shop Leases Amendment Bill 2015 to remove the proposed new lessor objection and dispute provisions based on the Queensland Law Society's concerns about prescribing an objection process that were raised at the committee deliberation stage of that bill. The proposed objection and dispute provisions, which included the rider provision and which were based on a similar process in other state jurisdictions, were supported by key industry stakeholders representing both lessee and lessor interests. The same provisions were also included in the former government's lapsed Retail Shop Leases Amendment Bill 2014.

As stated in the government's response to recommendation 6 of the Education, Tourism and Small Business Committee report No. 9 on the Retail Shop Leases Amendment Bill 2015, and in my second reading speech and speech in reply, the intention in removing the lessor objection and dispute provisions was to maintain the status quo under the act. To maintain the status quo, the rider provision in connection with a lessee's entitlement to terminate based on defective disclosure needs to be retained. Contrary to the indication contained in the statement of reservation by the opposition members of the committee, neither this intent nor issue with the operation or effect of the rider provision itself were the subject of debate before the House where bipartisan support was given for the Retail Shop Leases Amendment Bill in May 2016.

I also draw to the attention of the House that an equivalent or similar rider provision has been and is included in retail leases legislation in most other jurisdictions, including New South Wales, Western Australia and Victoria. It is perhaps notable that no change was made to the same rider provision in the New South Wales Retail Leases Act following a recent statutory review process that commenced in 2013 and culminated in the passage of amending legislation earlier this year. Given the like position of other jurisdictions and that the retention of the rider provision was an outcome—with the support of the lessee and lessor reference group representatives—of the recent statutory review of the Retail Shop Leases Act, which was completed under the previous government, the government is not persuaded that a case has been made for its removal.

Another concern that was raised by the Queensland Law Society, and which is the subject of reservation by opposition members of the committee, relates to clause 160 of the bill, which amends section 330(7) of the Legal Profession Act 2007 to enable a law practice to give a bill electronically if the client consents. The society has requested an amendment to allow for the electronic conveyance of bills as of right. This has not been accepted. Consent to receive bills electronically is an important safeguard for clients of law practices from both a cost recovery and privacy perspective, particularly where processes for disputed bills are time sensitive. This should be the choice of the client, as opposed to any individual law firm.

Finally, I foreshadow that, in response to the submission to the committee by the Anti-Discrimination Commission Queensland, I intend to move an amendment to the Anti-Discrimination Act 1991 during consideration in detail to clarify that an agreement filed with QCAT under sections 164(2) or 189(2) of the Anti-Discrimination Act is enforceable as if the agreement were a final decision of QCAT. I commend the bill to the House.