Speech By

Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 17 November 2021

JUSTICE LEGISLATION (COVID-19 EMERGENCY RESPONSE—PERMANENCY) AMENDMENT BILL

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.19 am): I move—

That the bill be now read a second time.

On 15 September 2021 the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021 was introduced into parliament and referred to the State Development and Regional Industries Committee. The committee tabled its report on 1 November 2021 making six recommendations. Many aspects of this bill are very complex and I thank the committee members for their thorough consideration of the different reforms in this bill. I would also like to thank those stakeholders, organisations and individuals who made submissions to the committee and participated in the public hearing. The first recommendation was that the bill be passed. I thank the committee for its support for the bill. I formally table the government response to the State Development and Regional Industries Committee's report.

Tabled paper: State Development and Regional Industries Committee: Report No. 14, 57th Parliament—Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill 2021, government response 1950.

I will shortly address the other recommendations in the committee's report, and I foreshadow that I will be moving amendments to the bill during consideration in detail in response to some of these recommendations and other issues raised by stakeholders during the committee's inquiry into the bill.

The bill permanently implements, and builds upon, four key temporary measures that the government put in place during COVID-19 to support Queensland businesses and the community and which are due to expire on 30 April 2022. These include modified arrangements for the way in which certain documents are made and the way in which civil proceedings for protection from domestic and family violence are conducted in certain circumstances.

The bill will also amend the Liquor Act to allow licensed restaurant operators to apply for a permanent condition of licence authorising the sale of 1.5 litres of wine—that is, two bottles—with a takeaway meal up to 10 pm. The bill also extends the expiry of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020.

The first key area of reform in the bill relates to the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020, which was made in May last year. Before then, important legal documents needed to be made on paper and in person. The regulation allowed technology to be used to make certain documents, allowing court and tribunal proceedings, business and commerce to continue, despite lockdowns and social distancing. The bill makes permanent a number of these reforms in relation to: affidavits, statutory declarations and oaths; powers of attorney, other than an enduring power of attorney; deeds; certain mortgages; and advance health directives.

Submitters to the committee strongly support the documents reforms in the bill. The Queensland Law Society commented that the temporary measures—

> … have been of great assistance to our members and their clients. In addition to the need for these measures during the course of the pandemic, the legal profession and the community at large have derived significant benefit from the modernisation of legislation which has led to increased access to justice, increased certainty and reliability as well as time and cost savings.

I would like to address a number of issues raised through the committee inquiry, some of which are also the subject of recommendations in the committee's report. Recommendation 2 of the committee's report was that the minister, in the second reading speech, explain the benefits of utilising regulations to determine standards of accepted methods of electronic signature. The bill adopts a technology-neutral approach to give the legislation maximum flexibility as technology changes, and it is intended to translate the main characteristics of a physical signature in a digital environment.

For affidavits and statutory declarations, the bill allows, but does not require, for a regulation to be made under the Oaths Act 1867, and for rules of court or practice directions to be made about affidavits and statutory declarations filed or admitted into evidence in a proceeding, to specify the methods of electronic signature that can or cannot be used. The bill similarly allows a regulation to be made under the Powers of Attorney Act 1998 to specify or limit the acceptable methods of electronic signature for general powers of attorney made for businesses. Such regulations, if made in the future, would allow government to respond to any issues that may emerge given that these reforms are a radical departure from traditional legal practice and introduce new risks. This regulation-making facility allows necessary flexibility as technology changes over time and to maintain consistency with reforms in other jurisdictions.

The bill does not allow a regulation to be made about acceptable methods for electronically signing a deed. Instead, the bill respects party autonomy by replicating the requirement in the Electronic Transactions (Queensland) Act for signatories to consent to the method used by other signatories. Extensive consultation was undertaken with stakeholders on this issue and the majority of stakeholders support the proposed approach. I do not propose to move any amendments with respect to these provisions in the bill. I will be moving amendments during consideration in detail to further clarify the modified arrangements for making statutory declarations and affidavits. These are clarifying amendments to give expression to the policy intent of the bill.

Recommendation 3 of the committee's report was that further reforms be considered to address the execution of deeds by the state. The policy intention of the bill is to enable government, as well as businesses and the community, to benefit from the reforms so that a lawfully authorised person for a government department, agency or statutory body can execute deeds in the same way as other entities. Therefore, I foreshadow that I will be moving amendments to clarify that the state of Queensland can execute deeds under the new modernised framework, and to validate any deeds that may have been executed by the state under the temporary modified arrangements in the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020. I will also be moving amendments during consideration in detail to clarify the application of the modified arrangements for deeds to corporations sole. This again is all about giving expression to the policy intent of the bill.

The bill allows an individual to sign a deed on behalf of a partnership or unincorporated association without a witness. The common law provides that a person authorised to sign a deed on behalf of a partnership needs to be appointed by a deed signed by all of the partners in the partnership. Some legal stakeholders suggested that the bill should be amended to allow an individual to sign a deed for a partnership, whether or not that individual was appointed by deed.

Recommendation 4 of the committee's report was that further reforms be considered to address the execution of deeds by partnership in cases where an individual is not appointed by a deed. I do not propose to make any amendments to this bill in relation to this recommendation because it would substantially alter the way that deeds are ordinarily executed within a partnership framework. The common law rule ensures that a person acting on behalf of a partnership in executing a deed is duly authorised to do so. The removal of that particular requirement could introduce significant risks for partnership. Such a change is beyond the scope of the bill, which is to make permanent certain temporary measures that were put in place during COVID-19. However, the government will further explore whether changes should be made to address this issue in the future.

The bill restricts who can witness statutory declarations and affidavits over audiovisual link to a narrow cohort of special witnesses. Special witnesses are Australian legal practitioners, notary publics and certain justices of the peace. Only JPs and commissioners for declarations employed by a law practice or employed by the Public Trustee are special witnesses, in addition to a small number who are approved by the director-general of my department.

Some questions were raised during the examination of the bill by the committee about the restricted category of special witnesses. Again, we consulted widely with legal stakeholders in developing this list of special witnesses and this list is deliberately more narrow than those who can witness a document in person. This is the key safeguard against the risks of using electronic signature and witnessing over audiovisual link. This is because special witnesses are more likely to have access to and be more familiar with using audiovisual technology and will be more astute to the risks of fraud and more likely to have the appropriate training and experience to verify identity and assess capacity and duress in an online environment.

The committee's report commented that training would be beneficial for these JPs to ensure consistent and appropriate witnessing practices. I am pleased to report that the Department of Justice and Attorney-General already has a training program in place for the approved JPs who are special witnesses and that training will be reviewed following passage of the bill.

The development of these reforms has been a complex task that could not have been achieved without the cooperation and expertise of key stakeholders. I want to particularly acknowledge and express my appreciation to the Queensland Law Society and the Bar Association of Queensland for their valuable input into the development of the bill.

In my role as Minister for the Prevention of Domestic and Family Violence, I am acutely aware of the terrible impact domestic and family violence has had on the lives of Queenslanders, particularly as a result of the pandemic. Sadly, almost one in 10 Australian women in a relationship experienced domestic violence during the pandemic, with two-thirds saying it started or became worse. The government responded to ensure ongoing access and flexibility for those seeking protection from domestic and family violence by introducing temporary measures to reduce physical contact between persons seeking protection or responding to an application for a domestic violence order. These measures have been useful in facilitating access to justice in these matters.

The bill proposes to continue accessibility in domestic and family violence proceedings by making permanent measures largely based on the temporary arrangements to allow for domestic and family violence matters to be heard via video or audio link at the court's discretion, alternative verification processes for temporary protection orders in urgent situations, and electronic filing, where approved by the Principal Registrar.

The bill will also amend the COVID-19 Emergency Response Act 2020 to extend the operation of the Retail Shop Leases and Other Commercial (COVID-19 Emergency Response) Regulation 2020 until 30 April 2024, unless it is ended sooner. This will allow the Queensland Small Business Commissioner to continue to provide crucial mediation services in commercial leasing disputes.

The bill also amends the Liquor Act 1992 to allow licensed restaurants to apply for a permanent licence condition authorising the sale of 1.5 litres of takeaway wine with a takeaway meal. Transitional arrangements provide that the application fee for the new permanent licence condition will be waived until 1 July 2022 for any restaurant operator who was eligible for the temporary COVID-19 takeaway liquor authority prior to the commencement of the amendments. The provisions arise from concessions the government initially introduced as temporary measures in response to the extraordinary circumstances of COVID-19. Certain aspects of the temporary measures are proposed to be made permanent to the extent that they do not expand the current permanent takeaway liquor framework for restaurants.

For decades, restaurant licensees have had the ability to sell one opened and one unopened bottle of takeaway wine to adults dining on premises. Allowing restaurant licensees to sell 1.5 litres of takeaway wine—that is, two bottles—with a meal to customers dining off-premises is consistent with the existing permanent takeaway framework, as it does not expand the type or amount of takeaway liquor able to be sold.

I note the committee's recommendation that consideration be given to amending the bill to provide the option of allowing 1.5 litres of wine, beer, cider or premixed drinks to be sold with a takeaway meal. The committee report suggests that this amendment offers 'a middle ground that meets the needs of all parties and supports small businesses as well as harm-minimisation strategies'.

I acknowledge the views of the committee and stakeholder submissions from the brewery industry that takeaway beer, in particular, can pose a low risk of alcohol related harm, particularly given the range of low- and mid-strength beers currently available. However, the government has initially adopted a very cautious approach of introducing a takeaway liquor allowance for off-premise diners that mirrors the longstanding takeaway liquor allowance for on-premise diners.

The amendments provide restauranteurs with the necessary flexibility to meet growing customer demands for greater choice and convenience in takeaway food and beverage offerings. The liquor amendments support the recovery of small businesses from COVID while providing harm-minimisation

measures to address concerns regarding the potential for alcohol related harm. Accordingly, the government will not be introducing additional amendments to the bill to allow takeaway beer and premixed alcohol drinks to be sold. However, we are very interested in seeing the uptake of takeaway liquor with takeaway meals from restaurants and the associated economic benefits to guide future policy development in this space.

The committee also recommended that further clarification be provided around the measures that will support the responsible service of alcohol by restaurant and cafe licensees selling alcohol with takeaway meals. The government shares the committee's concern that adequate safeguards need to be in place to ensure the responsible service of takeaway alcohol. That is why the bill includes several measures to minimise the risk of harm from the misuse and abuse of takeaway wine sold with takeaway meals. The bill limits eligibility for the takeaway licence condition to licences with a principal activity of providing meals that are prepared and served to be eaten on the premises. Meal service with alcohol is a known harm-minimisation measure.

To be granted the new permanent takeaway licence condition, restaurateurs must have in place systems and processes to ensure the responsible service of takeaway alcohol, such as ensuring liquor is not ordered by or supplied to minors. Any approval is subject to conditions the Commissioner for Liquor and Gaming determines necessary to ensure takeaway wine is served responsibly. While the specific conditions to be imposed is a matter for the commissioner, ensuring liquor is only delivered to the adult who ordered it and is not left with minors or unduly intoxicated persons will be central to the conditioning process. In this way the bill provides for the growth of restaurant takeaway offerings in line with market trends while retaining the necessary safeguards to ensure potential alcohol related harm is minimised. I thank the committee for their consideration on the liquor amendments.

In addition to the matters raised in the committee's report, the government proposes to move other unrelated amendments to the bill during consideration in detail. I foreshadow that I will be moving an amendment during consideration in detail to the Queensland Building and Construction Commission Act 1991 to clarify a minor technical issue relating to directions to rectify defective or incomplete building work, or remedy consequential damage, issued by the Queensland Building and Construction Commission. To remove any doubt about their validity, the amendment will retrospectively validate directions issued by QBCC since 11 November 2019 and any actions taken in reliance on those directions. This will ensure nobody's rights are prejudiced. Importantly, Queensland homeowners can continue to have confidence that any problems they may experience with defective or unfinished building work will be fixed as quickly as possible.

I also foreshadow amendments to be moved relating to the pension arrangements for Queensland governors. An individual appointed as governor often has had a distinguished career prior to their appointment and long established superannuation arrangements. Amendments progressed in the last sitting week enable an incoming governor to elect to retain their current superannuation fund, or to receive a lifetime pension at the end of their term of appointment. Building on those amendments and given the complex nature of the interrelationships between superannuation and pensions, advice was sought from the State Actuary about how best to calculate the offsetting arrangements for lump sum superannuation payments. The amendments moved in consideration in detail will provide for the offset of the state funded component of the superannuation benefit payable to a former governor under the defined benefit scheme.

The arrangements relating to superannuation benefits are complex and it requires detailed actuarial advice to ensure that the calculation of the offsetting arrangements is accurate. That is why we are progressing these further amendments this sitting week. It was important that we get the further advice for these changes to the act.

Under the Governors (Salary and Pensions) Act 2003, a governor, at the end of their term in office, may become entitled to a lifetime pension, with reversionary rights to their partner should they die. A former governor's pension is offset, including to nil, by the amount of any other pension or retiring allowance, wholly or partially payable by an Australian state or Commonwealth government. While it was always intended this offset arrangement would apply to superannuation benefits, the act does not apply as intended where such benefits are paid by lump sum, such as under the defined benefit category of the state public sector superannuation scheme.

This bill delivers real and measurable benefits and efficiencies for Queensland. I commend the bill to the House.