Speech By

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MEMBER FOR CLAYFIELD

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

Mr NICHOLLS (Clayfield—LNP) (11.37 am): Debate on this bill, I am sure, will be worthy and, in some respects, it might even be exciting, but I am sure for most people the word 'dull' will come to mind as we barrel through amendments to the Oaths Act and various aspects of the law of agency, partnerships, deeds and all those things. There will, of course, be a few highlights in relation to the takeaway liquor reforms that have been proposed. I am sure everyone will be thinking of that in the lead-up to Christmas and Christmas parties coming on. Importantly, there are some very worthwhile amendments around the domestic violence field that the LNP will be supporting.

Of course we have, as always at Christmastime, a few little surprise amendments that have just been announced in relation to this government's ongoing inability to sort out the superannuation arrangements for the Governor. Despite having had many months to get the arrangements in place, and despite last sitting week making amendments to the superannuation legislation, we are now back again moving another amendment outside the long title of the bill to facilitate the appointment of the Governor and the option in relation to superannuation entitlements and benefits. How many times will it take for this government to get it right? After all, they have only had six months to make sure they know what they are doing.

It is absolutely an interesting debate. Let me say that the Liberal National Party welcomes debate on the subject matter of the bill, particularly the bill in its original form but not necessarily the amendments which have been proposed. It is often said that necessity is the mother of invention—and that could certainly be considered to be the case with this bill that we are debating today—and, perhaps a little more unkindly, the phrase 'needs must' or, as it was known in earlier times, 'needs must when the devil drives'. Certainly the devil has been driving over the past two years or so given the genesis of this legislation was a response to the COVID-19 pandemic. In reaching a position to support this bill, the opposition is aware that it changes some longstanding accepted practices in courts and commerce.

It is also the case that upon assuming my role in the first debate of this parliament on the extension of the temporary measures that were introduced in 2020, I expressed our desire to see some of the responses to the COVID pandemic that made practical sense made permanent. That was a year ago. This legislation does that in respect of the making, signing and witnessing of important legal and commercial documents. It introduces the capacity for the electronic execution of certain documents in a technology neutral way. It also preserves the option for paper documents to continue to be used. It does this by, amongst other actions, amending the venerable and well-known in legal circles Oaths Act of 1867. This affects the signing and witnessing of common legal documents including affidavits, statutory declarations and oaths. These are indeed the common currency of the legal system and of commerce.

In this day and age of email, e-signatures, apps and commerce on the go, the insistence on relying on and using paper based documents signed in the physical presence of a witness would seem anachronistic. I am sure many members in this place have experience of using documents transmitted

and signed electronically. They are now used in all facets of commerce from obtaining a personal loan to signing a mortgage agreement and everything in between. In fact, my colleague the good doctor and member for Moggill tells me that even prescriptions are issued electronically straight away these days by doctors. We see it happening everywhere. Because I do not get sick and I do not go to doctors, I do not know about these things, but I am told they happen. In our everyday lives we know that e-commerce and the use of apps is exploding.

There may be those with some misgivings about these changes. In particular, in the event of a dispute over the correct execution of a document there may well be questions raised. In fact, oftentimes we read about cases of forgeries of signatures on mortgages or deeds. They make the headlines and they are the subject of controversy. There will be those who will say the best way to validate the execution of a document is to call the witnesses who were all together at the time to witness the signing of that document. However, we believe that the safeguards included in the bill are sufficient to ensure questions about the signing of these documents can be resolved, especially as we note now there is an ability to track versions of documents and follow a chain of electronic communications through commonly applied IT and address protocols. If one reads the submission made by Allens Linklaters and King & Wood Mallesons, they give some examples of how that could be done and how it is done and potentially how there is greater security and safety over documents by using electronic methods rather than paper methods.

There is no doubt in my mind that these changes will be of benefit to the community and the legal profession. I note the comments made by the Queensland Law Society in its submissions to the inquiry and, in particular, the statement—

... 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 ... cost savings.

While many may choose not to believe it, solicitors are in fact acutely aware of the cost and difficulty of protracted legal proceedings and most are anxious to reduce both the cost and the complexity for their clients where they can. The process of preparing, signing, witnessing and filing affidavits as well as the need to read and mark hard copies is time consuming, laborious and expensive, as I am sure, Madam Deputy Speaker, you can attest to. I am sure the member for Nanango can also attest to that. Anyone who has had to go through the process of complex commercial litigation knows just how time consuming that can be.

In litigation, affidavits and exhibits can run into several hundreds of pages, and the use of electronically completed affidavits can potentially save many thousands of dollars and many hours of practitioner time. This is just in simple terms of being able to access the document, mark the document electronically and refer to the document electronically rather than having to pore over a paper document, let alone the old process of having to get deponents to sign every page, witness every page, sign the exhibit marking on every exhibit and put those through the process as well. This is something that I dare suggest the Clerk of the Parliament would be turning his eye to as well as he signs every document that comes into this place.

These changes to that part of the practice and process of the law are ultimately going to be to the benefit of clients and courts and the administration of justice. It is a welcome acknowledgement of the benefits technology can bring now that we are in the 21st century. Equally, the legislation does preserve the longstanding practice of using paper documents so that those who do not have access to the digital resources necessary to complete documents electronically are not disadvantaged. I would suggest that in the main, practices in cities and towns that carry out a lot of this business will move quite rapidly to using the e-signature proposals that are being put forward in this legislation. However, it inevitably takes a little longer to get further out into the regions and, of course, it is more difficult in more remote places.

Concerns about the use of e-signatures were raised in submissions by both the Queensland Law Society and the Crime and Corruption Commission. Those concerns were not about the actual application of e-signatures but the consistency of the form that those e-signatures have to take. In particular, the Law Society raised concerns that proposed subsection 1B provides for a rule or regulation to be made about how a document may be signed electronically and then, in effect, provides a fallback that the method outlined in the Oaths Act itself is to be used. The concern of the Law Society was that this may potentially lead to inconsistencies. Different jurisdictions make different rules in relation to the signing of documents. Those rules may well comply with the basic provisions of how an oath is to be sworn under the Oaths Act but are different in different jurisdictions, leading to inconsistency. So a document that is signed and valid in one jurisdiction may not be accepted as signed and valid in another jurisdiction, for example, the Supreme Court and QCAT or the Industrial Relations Commission.

In that sense, according to the Law Society's submission, it would make sense for the Oaths Act itself to prescribe the way that a document should be signed, as it does now. In effect, the way it prescribes for an ink or wet ink signature, as it is described, to be applied should be the format that is used rather than allowing for rules and regulations. I do note the Attorney's explanation. However, I would suggest this is something that will need to be closely monitored to ensure discrepancies do not arise, notwithstanding the requirement that to the extent possible the parties who are setting the rules and regulations must act in a way to make sure they are consistent.

This is obviously a matter of concern. It has been raised by those two parties. It is something that is important in the signing of documents in the conduct of litigation. I should also point out that from what I have been able to see that is the practice used in the electronic transactions legislation, which has been in force since 2001 and has worked without confusion successfully for many years.

The bill also updates and modernises many aspects of the law relating to the signing of deeds. People often ask, 'What is the difference between an agreement and a deed?', because they are often used interchangeably in commerce and the terms are often misunderstood. It is a fair question and it is important to understand the difference because the law treats deeds and agreements quite differently and different legal rights arise from each of those documents. As an example, an action for a breach of an agreement or what we would probably call a contract under the statute of limitations must start within six years. However, as the member for Kawana would happily inform us and confirm, for an action under a deed the limitation period is 12 years. There are actually some quite significant differences in that respect.

Most importantly, an agreement or contract requires consideration to pass between the parties whereas a deed does not. A deed is in fact a special type of promise by one party to do something and it is a public commitment of a promise that is held out to all the world as a commitment that the person signing the deed will honour, so it does not require any consideration to flow. What are some examples of that? One is a guarantee of a loan or a debt by someone other than the borrower—for example, a parent guaranteeing a child's loan. There is no consideration flowing between the parent and the lender, but the parent guarantees that loan and they do so by signing a deed. A deed of confidentiality about information is another example, as is a deed of termination ending an employment bargain or a deed settling a legal dispute.

Traditionally under the common law a deed had to be on paper, parchment or vellum. As one of the submissions said, parchment and vellum now are really only used by scrapbookers. No-one else publishes in that form. I am not sure whether the Parliament of Queensland still uses parchment for certain things. I see a nod from the Deputy Clerk that we still do.

Mr Bleijie: I use it in my office.

Mr NICHOLLS: The member for Kawana, as he sits at his wooden desk with an inkwell, a feather pen, a hot candle and the ring on his finger, continues to perform in that way; however, we are talking about those who operate in the 21st century.

Mr Hinchliffe: Not to the mention the pantaloons!

Mr NICHOLLS: I think that is going a little far! Traditionally, a deed did have to be on paper, parchment or vellum and a personal seal was placed on the document—obviously that was at a time when seals were used, rather than signatures, because people were illiterate—and the document had to be delivered to the party to whom it was meant to be given. It led to the well-known phrase that I am sure many people hear these days of 'signed, sealed and delivered'.

Part 6 of the Property Law Act 1974 updated these procedures. That act was a visionary piece of legislation that changed hundreds of years of antiquated procedures and brought things up to date at that time, but it is probably well out of date by now. Now a deed has to be signed by the individual making the promise. It need no longer be expressed as a deed or indenture or be sealed. Finally, it must be witnessed by someone who is not a party to the document. That is still the case.

Just by way of a brief stroll down memory lane, when I first started working as an articled clerk I had to sign my articles of clerkship, in effect, to be apprenticed as a trainee solicitor. However, as I was only 17 at the time, my dad had to also execute those articles and he had to execute them as a deed to ensure that I faithfully and honestly carried out my duties and that in the event of any loss, damage or other significant failing on my part he would indemnify my master for any of that loss or damage.

Mr Hinchliffe: With trepidation.

Mr NICHOLLS: You got there ahead of me! To his great credit, he did so with barely any hesitation or question, despite potentially being on the hook for any malfeasance I may have engaged in. I can say that, five years later, those articles were discharged satisfactorily without a cent being paid. That is a long way of saying that deeds are very common documents.

Despite being the common currency of very many commercial and legal transactions, deeds are subject to some pretty ancient and arcane rules and it is well past time that the rules about executing those documents were updated. This bill does that effectively, by replacing current sections 44 to 46 in part 8 of the Property Law Act. New section 44 defines an accepted method for electronically signing a document. It sets out a number of subsections as to what that must constitute.

New section 46C sets out the new rules for deeds generally, including the requirements for execution: that the deed be in writing—it must be in writing but it does not need to be on paper, so it can be electronically stored or recorded; that it is clearly stated to be a deed—so you say at the top of the document 'This is a deed' or 'This deed is made on', so that you give a clear indication that it is done that way; and that it is delivered in accordance with section 47 of the Property Law Act, which sets out some specific rules around delivery of that document. That is what makes it a binding deed. It also makes it clear that a deed takes effect even if it is not on paper or parchment and if it is not sealed or stated to be sealed. We are finally getting away from those arcane practices.

Some concerns were raised by various submitters to the committee, and the departmental responses are contained in the committee report presented to the House. These submissions and the committee report indicate that there may be a bit of a lost opportunity to simplify the process for signing deeds in the area of regular and substantial commercial activity, in particular deeds executed by attorneys for corporations, corporations sole and deeds to be signed by an individual on behalf of a partnership. I note the comments made by the Attorney-General in respect to the partnership but also the submissions in that respect by the Law Society and by Allens Linklaters and King & Wood Mallesons that highlight the very real benefits of what would be relatively minor changes to the bill. We would certainly support further consideration of those changes being made.

Having had a look at it, though, and having heard the Attorney's explanation, I think there is much more to the explanation than we have heard today, particularly in relation to the law of agency and the ostensible agency of one partner or signatory to represent themselves as signing on behalf of all partners in a partnership and whether this is a matter that the government ought to be regulating or whether this is a matter for parties themselves to ensure they are checking the appropriate authority and the status of the authority for a signatory to execute. I would argue strongly that these are matters that are in the purview of the parties to the agreement and are not matters where the state acts as a guarantor in relation to the authority of the person signing the deed. That is a matter of 'buyer beware'. That is a normal standard commercial practice in terms of the execution of any documents and I would expect some slight changes would be necessary to do that. Again, that would facilitate business and commerce occurring far more regularly.

I was going to say that it is also difficult to understand why the state government continues to be excluded from the ability to execute deeds electronically, but the Attorney has indicated that she will be moving amendments to ensure that departments of state can execute deeds electronically where it is properly authorised and those proper authorisations are in process with the appropriate delegations. In this regard I also note that the Law Society helpfully provided the example of New Zealand, where the state can execute deeds electronically. I am glad to see that we can implement a provision if the New Zealand national government can do it! We are supportive of that change.

While there may be further fine-tuning required, particularly in respect of some of those finer points regarding the execution of deeds by partnerships and by corporations sole, I am actually quite supportive of the provision around personal powers of attorney. We hear about instances of elder abuse more and more, and there is some value to be had in maintaining the requirements for people to sign personally in the presence of a witness.

I turn now to the reforms to the Liquor Act and in particular—

Mr McDonald: This is the most exciting part.

Mr NICHOLLS: Well, that says more about you than I think it does about anyone else in this place, member for Lockyer. The problem for the member for Lockyer is that 1.5 litres is not enough and 2.25 litres may never be enough!

The particular change is to sell up to 1½ litres of wine with takeaway meals. That is equivalent to two standard 750-millilitre bottles of wine. We note that at the height of the pandemic temporary measures were put in place to allow licensed restaurants and cafes as of right the ability to sell up to 2.25 litres of liquor, excluding straight spirits, with takeaway meals up to 10 pm. This proposal reduces both the quantity and the type of liquor that can be sold with takeaway meals and imposes some requirements about responsible service and delivery of alcohol.

This is one of those types of changes that we may not have seen had we not had to deal with the COVID-19 pandemic. Introduced to provide a lifeline and support for thousands of restaurants and cafes during severe and often sudden lockdowns and border closures, this measure has become in many

ways an accepted part of ordering a takeaway meal. Many in the community will welcome this proposal and see it as just another commonsense step that aligns with things like Deliveroo, Uber Eats and Menulog; alcohol delivery operations like Jimmy Brings; and the online delivery offerings of the major chains like Dan Murphy's and BWS and a growing list of independents including a new one I discovered with the apt name BoozeBud operating here in Brisbane.

This is the reality of life these days and what was once an emergency measure has now become an accepted part of society. In this respect, Wes Lambert of Restaurant & Catering Australia hit the nail on the head when he said—

The desires of consumers and the desires of businesses change over time, and COVID has accelerated both consumer behaviour and technology by a decade.

He went on to say—

Ultimately, we can never go back to the way things used to be.

I think that in fact is spot on the money. This is a reaction to one of the immutable laws of nature, almost like E=mc2, and that is the law of unintended consequences. Lawmakers and policy makers are all too familiar with this law and nothing we or any other parliament can do is going to change that law. That is not to discount the concerns of organisations like the QHA and its members who have invested substantially in licences and in responsible service of alcohol training for their staff and nor does it detract from issues surrounding the appropriate overview of the online ordering of alcohol and its associated delivery business, and I note a wider examination into that part of the alcohol and liquor industry is proposed for 2022.

There are many and valid competing interests in this area, as any quick read of the committee report and the submissions reveals, but in accepting this change proposed by the government we do need to be very mindful of the many small hotel operators who may be affected by this change, especially in rural and regional areas. These licensees pay substantial fees and have a complex regulatory environment and understandably will be concerned that their investment may be diminished as a result of these changes. Of some comfort is the evidence to the committee that 73 per cent of respondents to a departmental survey in regional areas indicated they bought some or all of their liquor from hotels or bottle shops, so they are effectively buying from their local pub or their local pub's bottle shop to sell in their restaurants.

It is also important to note the evidence to the committee that turnover for liquor sales between March 2020 and February 2021—and I cannot ascribe all of this to the member for Lockyer—was $16.06 billion, an increase of almost 30 per cent from $12.43 billion the previous year. That would indicate that there is some room for limited sales from restaurants without significant detriment to the bottle shop industry. I acknowledge the committee's recommendation to expand the types of liquor to be offered for sale and I have noted the Attorney's comments in relation to those suggestions for change, but given it is a reasonably substantial change and unexpected I think where it has landed on to date is satisfactory. What the future may hold, only time will tell.

Other changes in the bill include important changes to enshrine some procedures in the domestic and family violence act that were also part of the emergency COVID response legislation. The bill increases accessibility to the court for applicants in urgent situations and where it is not possible to locate a qualified witness to verify an application to a magistrate for a domestic violence offence. In this bill procedures are provided to allow the applicant to verify the application directly before the magistrate, so in effect instead of having to swear a complaint in front of a justice of the peace or another person authorised to take a complaint and then file that paper complaint in the court the matter can proceed directly to the magistrate and the magistrate can hear the applicant make their verification of the events leading to the application straightaway. This takes out that step in urgent matters of having to find someone to witness a document and filing another piece of paper, and in urgent circumstances we think that is worthwhile and we will be supporting it.

There are also provisions in relation to a magistrate's discretion to conduct hearings by audiovisual means or audio link and we support the magistrate having the discretion in that regard, not mandating it as to a particular course of action. I note that these changes are supported by both the Law Society and the Women's Legal Service. There is some concern in relation to the ability to test the veracity of the evidence being provided by witnesses by having people appear in person in court, but, again, this is something that is best left to the discretion of the magistrate.

Finally, the proposals in relation to leases preserve the operation of the regulation under section 23 of the emergency response act 2020. It provides for mediation of retail shop lease disputes which are disputes about rent relief. The rent relief provisions were introduced last year for the period from March 2020 to 31 December 2020 and relate to unresolved disputes, and also disputes about a small business lease or the use or occupation of leased premises.

We will look at the amendments, which have only just been announced—and I am yet to see them being circulated. As I say, it is somewhat concerning that with very late notice we are seeing some substantial amendments being proposed. One is obviously to rectify the failings in the QBCC which we have been hearing about in question time and other matters. We now read—I think it was last week or 10 days ago—that there is a deficiency in the legislation in respect of notices to rectify, so we will have a look at that and deal with that during the consideration in detail stage. Of course, there is the second bite at the cherry in relation to the Governor's pension and not being able to—

Mr Bleijie interjected.

Mr NICHOLLS: Yes, member for Kawana, we have been through that already, so we appreciate it. I am sure you will have a welcome opportunity to contribute during the consideration in detail stage, so we will deal with those at that stage.

There is no doubt that COVID-19 changed many facets of our life almost two years ago. Actions once considered unthinkable have not only happened but will continue to emerge as we as a community move on from the pandemic. Moving parts of the legal system, as this bill mainly does, from old and accepted practices into the 21st century might have been thought a herculean task 24 months ago, but here we are. I acknowledge how businesses and the community have accepted and indeed encouraged these changes.

These reforms are, in the main, welcomed, especially around the signing and execution of documents. The issues around the sale of limited amounts of liquor are obviously more contentious. The domestic violence changes are welcomed and appropriate. We now look forward to the Attorney bringing forward the balance of reforms that have been pending for far too long on her predecessor's watch, including the body corporate and community management reforms and the balance of the Property Law Act reforms from reviews that were commenced some six and seven years ago. In conclusion, I feel sure that the Attorney relishes the challenges of reform in these areas of importance to so many Queenslanders.