

LAID UPON THE TABLE OF THE HOUSE	
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MP:	Hon. Bleijie
Clerk's Signature:	

31.7.12

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

**Report No. 5 on the
Penalties and Sentences and Other Legislation Amendment Bill 2012
QUEENSLAND GOVERNMENT RESPONSE**

INTRODUCTION

On 11 July 2012 the Penalties and Sentences and Other Legislation Amendment Bill 2012 (the Bill) was introduced to Parliament.

The Bill was subsequently referred to the Legal Affairs and Community Safety Committee (the Committee) with a report back date of 23 July 2012.

On 23 July 2012, the Committee tabled Report No.5 in relation to the Bill (the Report).

The Queensland Government response to the Report's recommendations on matters raised by the Committee and key fundamental legislative principles is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 –

The Committee recommends that the Penalties and Sentences and Other Legislation Amendment Bill 2012 be passed.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

Recommendation 2 –

The Committee recommends that the Bill be amended to include an amendment to Schedule 1 of the *Industrial Relations Act 1999* to include "deductions to be made or proposed to be made from wages", so that disputes in relation to deductions made under the proposed amendments can proceed to conciliation and arbitration under that Act.

Queensland Government response:

The Queensland Government is confident that the definition of an "industrial matter" contained in section 7 of the *Industrial Relations Act 1999* (the Act) is sufficiently

broad to capture “deductions to be made or proposed to be made from wages”. Therefore disputes in relation to deductions made under the proposed amendments can proceed to conciliation and arbitration with the Queensland Industrial Relations Commission under the Act. To list this matter in Schedule 1 of the Act is therefore considered unnecessary.

Recommendation 3 –

The Committee recommends that the Attorney-General and Minister for Justice review the implementation of the amendments to the *Industrial Relations Act 1999* relating to recovery of overpayments to health employees and report to Parliament on its operation within 12 months from commencement.

Queensland Government response:

The Department of Justice and the Attorney-General will work with Queensland Health to review the operation of the amendment within 12 months.

As already noted in the Department’s feedback to the Committee reflected in the Report at page 28, it is intended that reporting will be occurring in any event:

‘Queensland Health will be establishing internal processes to monitor this process and this information will be shared with unions on an ongoing basis in its established consultative industrial forums.’

This commitment can again be reinforced. Queensland Health will provide a report on the impacts of the change to the Attorney-General and Minister for Justice as required.

Recommendation 4 –

The Committee recommends that the Attorney-General and Minister for Justice clarify how the transition loans will be treated for taxation purposes in his reply to the Committee’s report.

Queensland Government response:

Transition loans will incur a Fringe Benefits Tax (FBT) liability however, employees will not be impacted as FBT is paid by the employer.

The Queensland Government considered this issue and determined:

- i) the costs of the transition loan payment will be funded on a whole-of-government basis; and
- ii) any FBT costs arising out of the transition loans will be borne by Queensland Health.

Other identified taxation implications arise for staff who have received excess benefits from payments such as overpayments and transition loans.

In some circumstances, the excess benefits could result in an increase in the employee's Reportable Fringe Benefit Amount (RFBA) on future payment summaries. This could, in turn, affect income tests relating to various Australian Government benefits and surcharges, such as:

- Medicare levy surcharge;
- superannuation co-contribution;
- Higher Education Contribution Scheme (HECS)/Higher Education Loan Program (HELP) and Student Financial Supplement Scheme (SFSS) reductions;
- tax offset for contributions to a spouse's superannuation;
- child support obligations; and
- entitlements to certain income-tested government benefits such as Centrelink.

This potential impact will be communicated broadly to all staff during the transition process. Employees will be advised that, to mitigate any risk of these impacts and depending on their personal circumstances, they could decide not to receive the transition loan or alternatively, repay the amount prior to the end of the current financial year.

Recommendation 5 –

The Committee recommends that the Bill be amended to allow the Special Circumstances Court to retain discretion in imposing the offender levy.

Queensland Government response:

The Queensland Government does not support this recommendation.

Providing a court with discretion to impose the offender levy is inconsistent with the nature of the levy. The offender levy is an administrative levy and does not form part of the sentence.

The State Penalties Enforcement Registry has a community engagement team which specialises in dealing with identified disadvantaged and vulnerable debtors. There is also provision in the *State Penalties Enforcement Act 1999* for debtors to enter into a payment plan in the event of financial hardship.

Recommendation 6 –

The Committee recommends that the Attorney-General and Minister for Justice address the Constitutional and other legal concerns of the Queensland Council for Civil Liberties in his reply to the Committee's report.

Queensland Government response:

Crown Law advice has been sought on the issue. The Queensland Government is satisfied there is no constitutional impediment to the levy.

Fundamental legislative principles

The Queensland Government notes that the Committee gave detailed consideration to the application of fundamental legislative principles to the Bill. In particular the Committee's report brings to the attention of the House aspects of the Bill that may impact on the rights and liberties of individuals potentially affected by the Bill; and whether the Bill had sufficient regard to the institution of Parliament.

In particular the Committee noted that the proposed new section 396B of the *Industrial Relations Act 1999*, as currently drafted, has the potential to cause significant hardship to an employee who has the unpaid balance of a health transition loan deducted from their final payment. It is important to distinguish the deductions allowed by the new section 396A to recover overpaid wages, from the deductions under 396B, to recover an unpaid loan. Like the existing provisions enabling deductions to recover wages overpaid due to an employee's absence, the new provisions enabling deductions to recover absence and non-absence related overpayments from health employees are limited by the *Industrial Relations Regulation 2011*. The Regulation stipulates that the amounts paid at any time must not be reduced to less than three quarters of the amount otherwise payable at the time. The deduction from a final payment to recover the unpaid balance of a transition loan is not limited by the Regulation.

The transition loan is like any other loan, entered into voluntarily by and with the consent of the employee. The employee will be made fully aware that the loan must be paid in full by the end of their employment as a health employee. Employees will be encouraged to enter into a repayment agreement prior to the end of their employment, so the employee will have appropriate control as to the impact of repayment of the loan on any payments received.

The Queensland Government thanks the Committee for its consideration of the application of fundamental legislative principles to the Bill.

Other

The Queensland Government notes the Committee's advice about the Auditor-General's comments that a reference to the Auditor-General in explanatory memorandum and supporting documentation may give the perception that he is endorsing government policy objectives when he does not have a role in that regard.