



Speech by

**JACK PAFF**

**MEMBER FOR IPSWICH WEST**

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Hansard 18 August 1999

### **CRIMINAL CODE AMENDMENT BILL**

**Mr PAFF** (Ipswich West—ONP) (10.18 a.m.): I move—

"That the Bill be now read a second time."

I am proud to deliver this Queensland Criminal Code Amendment Bill today. It is another step towards a more balanced legal system.

Problems with the judicial system are many and varied and I doubt if there is one member in this House who has not experienced or had a constituent complain in relation to the unfairness of the system and the sometimes seeming lack of justice. Many times I have heard this complaint and have myself questioned the fairness of certain laws.

Section 29(2) of the Queensland Criminal Code is one such law. This section determines that children under 14 years who commit an illegal act or omission basically did not know that they ought not do the act or make the omission—in other words, did not know that what they were doing was wrong. It is up to the prosecution to prove that this is not the case and that the child certainly knew that what he or she was doing was not right.

This law is known as the *doli incapax* rule and has been under scrutiny for some time in Australia and overseas. It appears that there is general agreement that the *doli incapax* rule needs to be amended. How this occurs, however, is still debatable. The two most popular options are either to remove the *doli incapax* rule altogether or to simply reverse the presumption.

Judge McGuire, President of the Children's Court of Queensland, has for many years expressed discontent with the *doli incapax* rule in the Children's Court of Queensland annual reports. In his report for 1997-98, Judge McGuire goes into some of the arguments for and against the rule. It is clear that those against are based on realistic and commonsense ideas and observations. I quote from this report, page 6—

"The rule has come under severe criticism by academic writers and certain members of the judiciary. Laws J. who sat on the Divisional Court in the C case described the rule as 'unreal and contrary to commonsense'. Professor Glanville Williams in an article in (1954) *Crim.L.R.* 493 said:

'Thus at the present day the "knowledge of wrong" test stands in the way not of punishment, but of educational treatment. It saves the child not from prison, transportation, or the gallows, but from the probation officer, the foster-parent or the approved school. The paradoxical result is that, the more warped the child's moral standards, the safer he is from the correctional treatment of the criminal law.' "

Judge McGuire goes into several other criticisms of the *doli incapax* rule, which all generally agree that either the rule needs to be abolished altogether or that it should remain but that the onus of proof should be reversed.

In 1996, the Connolly Criminal Code advisory working group recommended that section 29(2) of Queensland's Criminal Code be amended to reverse the presumption and put the onus of proof upon the accused. In 1990, the Review of Commonwealth Law Committee recommended that the "absence of awareness should rest on the child defendant." Judge McGuire himself recommends that the rule be

amended so that the "evidential onus of proving the absence of awareness rests on the person charged".

The test of whether a child knew what was right or wrong is based upon the standards of ordinary people. The current law presumes that children of that age do not have the necessary knowledge. I believe it would be a difficult task to find a child aged 10 to 14 years who does not know the difference between right and wrong according to what the community would find reasonable, especially in a time when it is clear that the incidences of children, sometimes younger than 10, being involved in serious crime are definitely on the increase. If a child commits a crime, they should be held accountable for their actions. Yes, they deserve a fair trial and a presumption of innocence unless proven guilty, but if no action is taken simply because the victim is unable to prove that the child knew that they ought not to do the act, then that child walks away with no responsibility for their actions and no regard for the law.

The message the *doli incapax* rule sends to the community is not one of justice, nor is it one of responsibility. It also allows adults that use children for crime to escape having responsibility for their involvement and inhibits children in those circumstances from receiving help. There are far too many excuses and loopholes in the law that allow avoidance of criminal responsibility. It has to end. Victims having already suffered unfairly, through no fault of their own, require a legal system that reduces that suffering rather than enhancing it. Victims want and deserve justice. We all do. It is about time these excuses were no longer acceptable and the loopholes closed.

Today's society has rapidly become a society of too many rights, little responsibility and little justice. Children know what is right and wrong from an early age and they need to be held accountable for their actions. Simply because a child is between the age of 10 and 14 years should not mean that they can get away with committing a criminal act, and nor should they. This Bill amends this injustice. It turns it around. This Bill puts the onus on the child offender to prove that they did not know that what they were doing was wrong and it takes that burden of proof away from the victim.

This Bill is part of One Nation's continuing pursuit to introduce more fairness and responsibility into the judicial system. It is a good Bill, it is a necessary Bill and it is a Bill that the people of Queensland want and deserve. I commend this Bill to the House.

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