Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 9 December 1999

CRIMINAL LAW AMENDMENT BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (5.49 p.m.): Generally, the Opposition will support this legislation. However, during the Committee stage of the debate we will move an amendment to one clause that we object to. We believe that that amendment will make the legislation a little better.

Generally, the legislation before the Parliament enhances the current reporting provisions under sections 19, 20 and 21 of the Criminal Law Amendment Act 1945. For the benefit of the House and honourable members, I take this opportunity to read into Hansard extracts from the very excellent research report prepared for parliamentarians by Karen Sampford of the Parliamentary Library. She has done an absolutely magnificent job in outlining the reasons for the legislation, the historic situation in Queensland and also how that compares with other jurisdictions around the world. When discussing the current legislation, under the heading "Reporting Requirements", the report states—

> "Section 19(1) of the Criminal Law Amendment Act 1945 provides that, where someone has been convicted on indictment of an offence of a sexual nature in relation to a child under 16, the trial court, or another court of like jurisdiction, upon application by a Crown law officer, may order that the offender:
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> > is to report the offender's address to the officer in charge of Police at any place specified in the order within 48 hours after being released from custody, and
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> > thereafter, for as long as is specified in the order, is to report any change of address, within 48 hours of that change, to the officer in charge of Police at that place or at another place approved by the Commissioner of Police.
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> An order will not be made unless the court is satisfied that 'a substantial risk' exists that the offender will commit another offence of a sexual nature upon or in relation to a child under 16: s 19(2).
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> ...
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> 'Offence of a sexual nature' is defined in s 2A(1) of the Criminal Law Amendment Act 1945, inserted by the Criminal Law Amendment Act 1946 (Qld), as:
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> > including] any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender's sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender's sexual instincts and includes an assault of a sexual nature."

It is important to outline the current disclosure provisions as well, because they are very important. That section of the Act gives the Attorney-General a degree of discretion with regard to disclosing information about a person to whom a naming order applies—

> "Section 20(1) of the 1945 Act gives the Attorney-General the discretion to inform any person that a person is subject to a reporting order, and give details of any offence of a sexual nature of which the person subject to the order has been convicted. However, the Attorney-

General must be satisfied that the person to be given the information has 'a legitimate and sufficient interest' in obtaining it.

According to advice received by the Attorney-General and Minister for Justice, Hon MJ Foley MLA, from the Crown Solicitor, the provision does not enable the Attorney-General to volunteer to certain people information about the convictions for sexual offences of a person subject to a reporting order. Rather, a request is said to be necessary ie the provision allows the Attorney-General to answer queries from persons whom the Attorney-General is satisfied have a legitimate and sufficient interest as to whether a person has convictions for sexual offences and to provide details of those offences and of the fact that the person is subject to a s 19 reporting order.

The Attorney-General may release the information subject to such conditions as he or she thinks fit ... Failing to comply with any such condition attracts a maximum penalty of 10 penalty units ($750) ... The offence is dealt with summarily."

I wish to outline some of the significant history behind these sections in the Criminal Law Amendment Act 1945. The report states—

"Sections 19, 20 and 21 of the Criminal Law Amendment Act 1945 were inserted in 1989 by the Criminal Code, Evidence Act and Other Acts Amendment Act 1989, introduced by the National Party Government following recommendations made by the then Director of Public Prosecutions Mr Des Sturgess QC in his 1985 report. In relation to his recommendations that reporting conditions should be imposed on offenders convicted of sexual offences against children, and that such information should be able to be disclosed in certain circumstances, Mr Sturgess had said:

'Paedophiles, in particular, are driven by a strong compulsion to seek children; they actually hunt for them; many will be, or will act as, single men and are not tied to one place by the demands of home and a family. Some are constantly on the move ... Many paedophiles, also, seem to dedicate much of their lives to insinuating their way into places and occupations where they will have ready contact with children and they become very good at it. So it is clear, from time to time, there will be parents and organisations who need to be informed a person with whom they have, or may be about to have, dealings has a history of interfering sexually with children.

There is, of course, another side to this and offenders who have reformed are entitled to live down their past. That view is acknowledged by the defamation laws of this State where truth is not a defence to the publication of defamatory matter; it must be both true and for the public benefit.

It would not be possible to set down an exact set of rules relating to when information about a sex offender's past should be given and of whom and to whom it should be given. Consequently, it seems best to leave the matter to discretion; the discretion of the sentencing court to decide who, in a proper case, should be liable to have information about his past revealed and the discretion of the Attorney-General to decide whether, because of later circumstances, it is a proper case. Consequently, the scheme of things I recommend is, when a court sentences a person convicted of a sexual offence against a child who, in its opinion, may reoffend, the court be given the power to order him to report his whereabouts to the police; also, any person or organisation, provided it can establish a proper interest, may apply to the Attorney-General for information whether a particular person is the subject of such a reporting requirement and, if he is, for particulars of the offences of which he has been convicted. This arrangement keeps police out of the actual decisions involved in revealing the information; their duty is to keep track of the offender ...' "

When looking at the use of provisions, the following comment from the report is pertinent—

"In April 1997, following discussions between the Department of Justice and the Office of the Director of Public Prosecutions, a directive was issued by Royce Miller QC, the then Director of Public Prosecutions, in which attention was drawn to the 1989 provisions and Mr Miller stated:

'Crown Prosecutors and Counsel appearing for the Director of Public Prosecutions should make an application under section 19(1)(a) if it is considered that, having regard to the offences of which the offender has been convicted either alone or in conjunction with his or her past criminal history, the court will be satisfied that the substantial risk referred to in subsection (1) exists.

Where such an order is made it allows police to know the offender's whereabouts during the reporting period, and the Attorney-General, pursuant to section 20 ... to inform any

person of the making of the order and give the person details of any offence of a sexual nature of which the person has been convicted if the Attorney-General is satisfied that the person has a legitimate and sufficient interest in obtaining the information.

Thus neighbours or a potential employer might be supplied with this information if the Attorney-General is satisfied of the person's legitimate and sufficient interest in having the information.

Sexual offences against vulnerable young persons are prevalent. It behoves Crown Prosecutors and Counsel acting on behalf of the Director of Public Prosecutions to take advantage of these statutory provisions, where appropriate, for the protection of potential victims.'

As subsequently reported in Ministerial Statements to Parliament in June 1999, the courts had made orders in 12 cases since the amendments to the Criminal Law Amendment Act 1989. Ten of the offenders against whom reporting orders had been made remained in custody. One person had reported to police as required. The other person was in custody charged with a breach of the court order. (This offender was subsequently jailed for two months for failing to comply with the s 19 reporting requirements.)"

No application has been made to any Attorney-General for the release of information under section 20. It is pertinent to comment on that point now, because earlier in the year when I raised this matter publicly and we had some discussion about the issue of Queensland's version of Megan's law and about how we should make sure it was applied in Queensland, the Attorney-General drew the conclusion that section 20 may not necessarily be working, because no application had been made to him. I am not sure if anything has happened in the last couple of months, but the comments of the Attorney-General were quite unfortunate. At that stage, very few people who had been subject to these orders had been released. So it was a bit of a ruse on behalf of the Attorney-General to try to indicate that that section may have actually been ineffectual or was not capable of working.

I turn now to some of the proposed changes to the legislation. The report goes on to state—

"Clause 4 of the Criminal Law Amendment Bill 1999 amends s 19 of the Criminal Law Amendment Act 1945 to include the requirement that an offender subject to a reporting order must, upon release from custody, report his or her current name (as well as his or her address—ie the requirement under the existing legislation). Thereafter, an offender to whom a reporting order applies must also report any change of name (as well as any change of address, as currently required).

Clause 4 also omits s 19(5), so that if a rehabilitation period is capable of running in relation to a conviction for which a reporting order has been made, then the fact that that period has expired will no longer mean that the requirement to report will expire."

I commend the Attorney-General for bringing forward the amendment to require that such a person report a change of name. A number of months ago I issued a press release following the commitment from the New South Wales Government to go down this line. I indicated that it would be a very positive move for us to consider in Queensland. Subsequent to that, the Government has brought forward a similar amendment for consideration by this Parliament. The Attorney-General needs and deserves to be commended for that. It is a very important provision.

The Attorney-General and, indeed, all honourable members know that there has been considerable concern in the community recently in regard to cases of heinous crimes involving children, to the extent of murder in some instances, in which the perpetrators have set about changing their names. Whilst a person convicted of such a crime has a right to be able to start a new life, there is also an expectation that the community will be made aware of that person and the crime that they committed. It is important that they be so informed because they might want to take some action to avoid that person. In this case, when a person is the subject of one of these orders, the requirement to report that person's change of name is very welcome. It removes the opportunity for that person to hide their identity and to continue to be a general threat to the community. That is a very important provision and it is an enhancement of the current laws.

Looking at comparative situations in other jurisdictions around the world, the one that comes to mind is Megan's law in the United States. A lot of people in this country are probably aware of it. We have dubbed our law here Megan's law as well. Whilst not being strictly true, our law is an easy way of being able to respond to certain situations which arose in the United States in most unfortunate circumstances. The report goes on to state—

"In October 1994, the New Jersey legislature, responding to public pressure created by the murder of seven-year old Megan Kanka by a neighbour with two previous convictions for sex offences, passed legislation providing for the registration of released sex offenders and community notification of their presence within the community. Under the New Jersey statute,

which has come to be known as Megan's Law, county prosecutors classify released sex offenders according to their risk status. In accordance with guidelines prepared pursuant to the legislation:

. for a Tier 1 or low-risk offender, only law enforcement agencies within the community into which the offender is to be released are provided with warnings

. for a Tier 2 or moderate risk offender, school and community organisations must also be notified

. for a Tier 3 or high-risk offender, notice, by distributing flyers or mailings, is to be given to the entire community, in addition to notice to law enforcement agencies and school and community organisations."

Obviously, with regard to the extent of notification provisions, what they were dealing with in the United States is a lot more than our law in Queensland. Our law in Queensland is a reasonable balance and ensures that we do not have the situation of flyers and mailings going out in the local community. The report continues—

"Under the 1996 federal Megan's Law amendment to the Jacob Wetterling Act, all American states are required to enact legislation which allows public access to, or dissemination of information about, persons required to register where that is necessary to protect the public (or forfeit 10% of their federal crime control grant). The requirements set down by the amendment to the Jacob Wetterling Act are baseline requirements which do not preclude the states from imposing extra or more stringent requirements, for example, by establishing a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, requires offenders to verify their address at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period than that specified in the Jacob Wetterling Act.

In the United Kingdom, Part 1 of the Sex Offenders Act 1997 requires prescribed categories of sex offenders to notify the police of their name and home address within 14 days of their conviction or the commencement of the legislation. Subsequent changes of name and address must also be notified within 14 days. Persons subject to the legislation must also advise police of any address in the United Kingdom where the person has stayed for a period or periods totalling 14 days in any 12 months. The period of time for which an offender must provide notification details depends upon the sentence which has been imposed. For example, an indefinite period of notification is imposed upon offenders sentenced to a term of imprisonment of 30 months or more. Sentences of six months imprisonment or less are subject to the notification requirements for a period of seven years.

During the parliamentary debates prior to the passage of the legislation, it was anticipated that the information collected would be stored on the police national computer database and thus instantly accessible to all police forces and by the National Criminal Intelligence Service. The Act makes no reference to the disclosure of the information required to be notified. However, during the debates on the legislation, the Association of Chief Police Officers expressed the view that, to maintain maximum flexibility in the arrangements for exchange and use of information, the most effective option would be a Home Office Circular. Under guidelines issued by the Home Office in August 1997, and reflecting current practice, communities will only be notified of the presence of sex offenders in exceptional circumstances and a decision to name an offender must be 'justified on the basis of the likelihood of the harm which non-disclosure might otherwise cause'."

In my consideration of this legislation, I had an opportunity to send a copy of this report to the Bar Association of Queensland. I think it is very important that we get the perspective of that association. I also have a habit of seeking the advice of the Queensland Council for Civil Liberties. Whilst we might not necessarily agree with the council's viewpoint, it is very important that we consider the issues that it puts forward. There may be a degree of relevance and there may very well have been something which we overlooked.

In response to my representations to the Bar Association, the following letter, which was the position of the association, came back to me. It was written from the perspective of the first person. The letter states—

"I think it is legislation which creates the potential for witch hunts but I make the submissions on the basis that it is obviously accepted as necessary by both sides of the political system.

...

Clause 4.5 is in my personal view, objectionable. What is the point, one asks, of having a rehabilitation period for offenders but requiring them to report their personal details after that

period has expired? It will make rehabilitation on their part very difficult as it will make it impossible for them to put behind them their prior offending."

As I understand it, the Attorney-General's amendment will address that issue. I believe that his amendment is worthy. I must admit that, when I read the Bill, I thought that what is in the Bill is probably an aspirational thing which many people would support. I must admit that I was supportive of it myself. But I ask members to consider the Criminal Law (Rehabilitation of Offenders) Act, which includes a particular time frame. After a period, a person can be expected to be free of any encumbrances. The Attorney-General's amendment basically is to lift that, as I understand it.

I think the amendment brings it back to a reasonable level. It involves community responsibility. It is probably stronger than the current legislation, because it allows a court to make the determination. So a person who is the subject of an order can go before a court and apply to have that particular order lifted or varied. I believe that recognises those sorts of concerns. The letter continues—

"The provision relating to other persons claiming a legitimate and sufficient interest in the information is dangerously loose—who is intended to be covered by such a provision? Some criteria should be legislatively established to indicate just what group or groups are intended to be within this coverage."

The final point made is—

"The Attorney General claims the amendment achieves a balance, and to a significant degree relies upon the punishment provisions of the legislation for this claim. He says that they help to safeguard the interests of a convicted child sex offender. However, a person who breaches the conditions applied to an order to release information is subject to the risk of a maximum penalty of 10 penalty units—no imprisonment is available. If there is to be a deterrent to improper use of information ordered to be released, a substantial term of imprisonment should be available, so that those who flout the law (as some surely will) can be properly punished and they and others can be deterred from repeated offences. The remedy is further limited because it can only be taken with the consent of the Attorney General—and one can imagine the reluctance to approve a prosecution if the offender is a media outlet."

I would now like to make some general comments and talk briefly about an amendment that I intend to move before I conclude my contribution. As I said at the outset, the Opposition is generally supportive of the legislation before the Parliament. We believe that it is an enhancement—an improvement—on the Act which has operated in Queensland—or failed to operate—for a long time. The opportunity cannot pass by without providing some brickbats as well as bouquets.

This legislation was passed in 1989 by the then National Party Government and, basically, it lay on the statute books of this State for a period of about seven years without actually being acted upon. I am sure that the former Attorney-General, Mr Beanland, would agree with that. I understand that, in April 1997 or thereabouts, Mr Beanland had some discussions with the Director of Public Prosecutions about this particular issue, and the Director of Public Prosecutions subsequently issued a directive to his prosecutors around the State that they should look at this particular protective mechanism that is available to protect our children from recidivist paedophiles and to ensure that the mechanism is then in place for reporting and for the release of information.

This really begs the question: why did it take so long for that to come to pass? I think I know some of the reasons, probably including the reluctance of the then Goss Labor Government, which might have been concerned about some of the civil liberties issues. Nevertheless, in the end, it was acted upon and, I believe, acted upon fairly successfully. Notwithstanding that, as I indicated, we recognise that there were ways of enhancing sections 19 and 20, and I believe that those sorts of things have happened.

I believe that part of the reason this legislation came before the Parliament was that, earlier this year, the Police Minister made a comment to the Sunday Mail that we should be considering having a Megan's law-type mechanism here in Queensland. It was subsequently pointed out by the Opposition that we actually did have a Megan's law-type mechanism, which was sections 19 and 20 of the Criminal Law Amendment Act 1945; that that had not been used by the Goss Government previously, and it was only us who put it into place. Subsequent to that, the Attorney-General indicated his concern about having a Megan's law-type mechanism. And to play a bit of catch-up, the Government then promised to review the operation of sections 19 and 20 of the Criminal Law Amendment Act 1945 to try to recover some of that ground and maybe to exact a bit of kudos for itself.

One thing that I am concerned about, though, is that the Attorney-General seems to be committed to abrogating his responsibilities insofar as the release of information under section 20. The Attorney-General is the chief law officer of this State and, therefore, I believe, the guardian of the public interest. Maybe it is the Attorney-General's natural civil libertarian reticence—in not wanting to oversee the provision which enables him to release information—or maybe he is generally concerned and secretly opposed to this particular provision, but I cannot understand why he wishes to transfer to the

Queensland Community Corrections Board responsibility for providing information to those people in the community who are concerned under section 20 of the Criminal Law Amendment Act.

The Attorney-General would argue that there is less opportunity for political interference. That is also a point which was advanced by the Bar Association in its letter to me. However, there is an important point which honourable members need to consider, that is, who is to say that the Queensland Community Corrections Board is going to be any less politically considerate of these issues than the Attorney-General would be? The Queensland Community Corrections Board is actually recommended by the Minister, as I understand it, and appointed by the Governor in Council. So the opportunity exists for a political consideration, as well. If members are concerned about the Attorney-General looking at it from a political point of view, they should be far more concerned about the Queensland Community Corrections Board operating in a political way insofar as the release of information regarding a particular offender who is the subject of a naming order, together with the other concerns which I pointed out earlier in my contribution.

Last year, in one of his first acts of legislation in this Parliament, the Attorney-General brought forward the notion of enshrining an independent Attorney-General in this State. I think that was a bit of nonsense because, in actual fact, we have a system which ensures that our Attorney-General can be as independent as he or she possibly can be, given that they belong to a political party, that they belong to a Government that is made up of a political party, that they sit in a Cabinet that is made up of a political party, that they are a member of Executive Council which is made up of a political party, and that they are generally guided by the policies of that particular political party. That is fine. At the end of the day, whilst the Attorney-General can act independently—and I am sure that most Attorneys-General do—there will always be a degree of political consideration in any sort of decision which may be made. We know that.

The only way that we can possibly do away with the possibility of that is by appointing an outside Attorney-General— taking them outside the Cabinet process and outside the political process—so that they have no political input and are not bound by the dogma of a political party. But under our system in this State, and in the tradition of our Westminster system, that is not the way that it operates. Therefore, we have to be aware that there will always be some degree of political consideration in anything that the Attorney-General does. The important point, of course, is that, at the end of the day, the law is applied as per the statute and that the considerations are done justly and fairly. That is all I am saying.

By transferring that responsibility to the Queensland Community Corrections Board, it is the one that has the responsibility for assessing the community interests and the application that might come to it for release of information regarding an offender who is subject to one of these orders, and it knows their name, whereabouts and those sorts of things. But we know full well that some of these boards last no longer than the term of the Government and, depending upon some of the things that might happen in between, do not last even the term of the Government and are made up of people who have had political connections.

A lot of those people are probably very good, decent citizens who do their job and consider the matter to the best of their ability. Of course, in those particular positions they also have to look at the community interests; they have to look at some of the community pressures and probably some of the political issues as well. I think that the Attorney-General, in handing over responsibility to the Queensland Community Corrections Board, is abrogating his responsibility as first law officer of this State. He is abrogating his responsibility to the people of Queensland as the upholder of justice as we know it. It is as though he is saying, "I do not want to do this. It is just too much of a problem, and I do not agree with it necessarily. I am too scared of it." I do not think that that is right. I think that the Attorney-General and this Parliament should support the amendment which I am moving because it preserves the very excellent aspects of this legislation—and they are many—but ensures that the Attorney-General has the ability to act upon the additional disclosure information in section 19 with regard to name changes and that sort of thing without turning that over to the Queensland Community Corrections Board.

In addition, there is a certain historical prestige and expectation that the Attorney-General should be the person who is in charge and responsible for those sorts of things. I would implore the Attorney-General to reconsider this and to consider supporting the amendment that is going to be moved by the Opposition in this Parliament later on this evening.

Finally, I think that Queenslanders have an expectation that their Government by statute will do all it possibly can to protect the most vulnerable members of our community— and that is our children—from the actions of recidivist sex offenders in particular. That is something with which everybody in the community agrees and it is something with which I think all members of Parliament agree. The only thing that might divide us from time to time is the mechanism that we may use to do that, and that is open to the democratic debate and democratic vote in this Parliament.

We should never close our mind to amendments; we should never close our mind to suggestions from the community. However, if we can go about putting in place legislation such as this without the removal of the Attorney-General's responsibility, I think we would build on an existing Act of Parliament which was very good and which achieved the expectations of the community in general. Unfortunately, it existed for about six or seven years without being implemented in this State.

I do believe that if we can omit the section which removes the responsibility for passing on information to the Queensland Community Corrections Board, we can have legislation of which this State can be justifiably proud and which will certainly do much in the future to protect our children, who are the most vulnerable members of our community, from the actions of repeat child sex offenders.