Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 3 March 1999

CORRECTIVE SERVICES AND PENALTIES AND SENTENCES AMENDMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (8.30 p.m.): This legislation ranks amongst the most patently ill-conceived ever presented to this House. It is also a cynical attempt to appeal to the community's real concern about crime but without the substance to deliver what it promises. When the citizens of Queensland look at this legislation for workable solutions, how many will they find? None! When they ask, "Just how much consultation did the Opposition carry out before producing these outlandish proposals?", what will the answer be? None! When they ask, "How many ideas does this legislation contain to reduce the crime rate and make the community safer?", what will the answer be? None!

This legislation contains a considerable amount of posturing by the Opposition, but curiously none of that posturing reflects actions that the coalition was prepared to take when it had the chance when it was in Government. What we have seen is an attempt by the member for Warwick to cobble together a proposal with indecent haste. Why? Was this designed to attack crime or to attack the causes of crime? No! It was designed to prop up the public image of the coalition at a time when the temporary Leader of the Opposition found himself in a politically parlous state and in a policy vacuum. It is the old National Party tactic: when in doubt rattle the law and order can, try to pretend to be as tough as tough can be without making a serious attempt to do the hard policy homework necessary to attack crime or to attack the causes of crime. If this was such a great idea, why did the member for Indooroopilly, the former Attorney-General, not introduce it? Why? Because he well knows that this will do nothing to attack crime! This will do nothing to attack the serious violent offences against which our community must take every possible action.

By comparison, the Beattie Labor Government's position is clear. We are tough on crime and tough on the causes of crime. We are taking meaningful, workable and practical steps to try to reduce the crime rate in Queensland.

Mr Paff: You are doing nothing.

Mr FOLEY: I note the interjection from either the members of One Nation or five nations or however many they may be just at the moment. It is precisely because of the insidious influence of One Nation in the lead-up to the last election and in the period straight afterwards that the member for Warwick produced this; not as a result of any serious attempt to attack crime or to attack the causes of crime, but because the National Party was desperate to make a political ploy to deal with what it saw as a political threat from One Nation.

The member for Warwick's excuse for lack of consultation on this Bill was breathtaking. He said that the consultation can take place after it has been introduced. This is a novel approach to the business of law making. The honourable member for Warwick simply——

Dr WATSON: I rise to a point of order. Madam Deputy Speaker, the Minister is misleading the House, because his colleague the Treasurer did exactly that with respect to the amendments to the Gaming Machine Bill before the House.

Madam DEPUTY SPEAKER (Ms Nelson-Carr): Order! There is no point of order.

Mr FOLEY: Madam Deputy Speaker, how far the standards of parliamentary debate have sunk when the Deputy Leader of the Opposition takes a frivolous point of order in order to interrupt debate upon what his own coalition held out to be the most important piece of legislation that it was bringing

forward. The frivolous approach taken by the honourable member demonstrates what this is all about. They are not prepared to do the homework. They are not prepared to put in the work. They simply want to create a political flourish. They can run, but they cannot hide. When they come into this Chamber, their actions will be exposed to critical analysis.

Let us have a look at some of the flaws in this legislation. In his second-reading speech, the member for Warwick said—

> "The Corrective Services and Penalties and Sentences Amendment Bill 1998 provides for 100% custodial sentences for specified classes of violent offenders. It also provides for certain flow-on changes that are required as a consequence of this."

Isn't that interesting? Those flow-on changes began flowing only after the member for Warwick's original proposal was put forward. He will come to eat his words. I take the House to the article which he wrote on 15 July 1998, which appeared in the Courier-Mail, in which he said—

> "This major reform of the justice system does not in any way militate against rehabilitation. It simply forecloses on the possibility of parole—in other words, freedom under what is often in effect very loose guardianship—for the worst offenders."

Originally, the proposal was under the banner of truth in sentencing—that 10 years meant 10 years. But when the folly of letting violent offenders out onto the streets without supervision was drawn to the honourable member's attention forcefully in public debate, he shifted his ground. Do you remember, Madam Deputy Speaker, that this was the Bill that was going to be brought into the Parliament on the very first day? Why was it not brought in? It was because the member for Warwick suddenly realised that his proposal would allow out onto the streets serious violent offenders without the benefit of supervision. In other words, it would be endangering the community and victims of crime. And so they had to go to plan B.

The honourable member, having abandoned a commitment to parole, had to cook up this scheme provided for under the Bill of a species of supervision. The honourable member took another month to bring it forward and it was tacked on simply because they had not done the homework, they had not consulted and they had not sought to deal with the realities of life in the criminal law and in the practice of the criminal justice system.

That rethink has produced a bizarre proposal, where prisoners would serve up to five years' community supervision after they have completed their sentence. It is a shame that the member for Warwick did not have a rethink about that proposal as well. One of the benefits of the current parole system is that parolees know that, if they do not behave, they will go back inside to finish their original sentences. Under this legislation there would be no step-by-step integration back into society of serious violent offenders—no assistance for readjustment. This poses a serious risk to society.

What happens to them if they do not behave under this legislation? This Bill provides that a breach of a community order is a simple offence, carrying a maximum penalty of 100 penalty units, or six months' imprisonment. That means the most dangerous and violent ex-prisoners could be taken before a magistrate only for a simple offence. There would no longer be the threat of having to serve out the rest of their sentence inside. The ill conceived community supervision aspect of this Bill would impose an ineffectual, cumbersome process on the courts and corrective services organisations.

Under this legislation the courts must decide if a person is likely to reoffend, but there is no provision in the Bill about the standard of proof required by the courts to make that decision. Little consideration has been given to the impact this legislation would have on our court system. For example, the community supervision aspects alone would take an uncalculated toll on resources for a system that is less restrictive than the current parole system through, for example, the need for litigation on any matters in dispute—court time; witness expenses and professional fees for court appearances; legal aid for impecunious prisoners; reports from prison staff, victims, psychologists, psychiatrists, social workers, police and others addressing the statutory criteria for an application; and, of course, the costs to the Office of the Director of Public Prosecutions of representation by their staff or private practitioners.

Significantly, the member for Warwick did not descend to do what everybody else has to do when they bring in legislation—to give some explanation to the Parliament of just how much it is going to cost. What are the economic impacts? Not there! Why were they not there? Because it was a rushed job designed to achieve a political end, not designed to achieve the proper end of law making!

Mr Lucas: Slapdash.

Mr FOLEY: As the honourable member observes, it was slapdash.

Another aspect of this legislation which obviously has not been considered properly is the impact on the judiciary. From the moment that the member for Warwick rushed in to try to give some political comfort to the temporary Leader of the Opposition, the proposal drew significant criticism, and I refer to the article published in the Courier-Mail on 9 July by former Supreme Court Justice Bill Carter. This article, of course, was attacked by the member for Warwick in his reply of 15 July. He showed the

disdain which he had for the arguments advanced when he said that it is a pity that so-called qualified people such as former Supreme Court Justice Bill Carter failed to understand the very essence of our justice system. What an extraordinary observation upon such a distinguished jurist!

There are further considerations with respect to the judiciary, and let us analyse them because it is plain that the Opposition has not done so. Judges would, if this legislation were to be passed by this House, be required to administer three concurrent sentencing regimes for prisoners who have committed serious violent offences applying to crimes committed prior to 1 July 1997, post 1 July 1997 and after the introduction of this legislation. When judges consider sentences now, they take into account parole provisions and their impact on the actual term of imprisonment. If this legislation were passed, that situation would not necessarily change. It becomes a question of what is the intent of the Legislature, and it is a well-known principle of construction of a criminal statute that the intent of the Legislature must be clear. But it is open on the construction of this statute, if it were passed, for a judge simply to take into account that an offender must serve 100% of the sentence rather than 80% and, thus, impose a correspondingly low head sentence.

Mr Lucas: The member for Callide is struck dumb in embarrassment.

Mr FOLEY: I thank the honourable member for his observation. Perhaps the honourable member for Callide is at long last being exposed to some of the true facts that surround this debate. One never knows just when enlightenment might strike.

That is not an idle speculation because it has occurred in other jurisdictions when the legislation which introduces this so-called truth in sentencing is insufficiently clear to spell out the intent of the statute. If there is one thing that this legislation could not be accused of on this point, it is clarity.

If, indeed, the judiciary were to reduce head sentences as a consequence, this could have a devastating impact on victims of crime, who may well ask the member for Warwick why on earth the sentences were being reduced. In fact, victims of crime would be the real losers under this legislation because of the chance head sentences could be reduced, the reduced level of supervision of ex-prisoners, the chances of a higher rate of recidivism and the added costs all taxpayers must bear for the administration of clearly flawed legislation.

In contrast, the Beattie Labor Government is taking practical steps— workable steps—to improve the situation of victims of crime. It is important that we draw attention to the reaction that we have had from senior members of the judiciary to these proposals. Let me table in this House press clippings, firstly, from Friday, 31 July 1998, from the Courier-Mail under this heading.

Mr Nelson interjected.

Mr FOLEY: The honourable member may have little interest in the observations of senior judicial officers, but I suggest to the honourable member that, if he were to listen to the opinion of judicial officers, he might find himself considerably better informed in this debate.

The report is headed "Top judges blast move to change sentencing", and appeared in the Courier-Mail on Friday, 31 July 1998. It says—

> "Queensland Chief Justice Paul de Jersey and District Court Judge John Robertson have criticised truth-in-sentencing proposals and called for protection of the current system.
>
> Justice de Jersey said truth in sentencing was one step away from fixed jail terms and mandatory sentences, which had been trialled in the past in Queensland and failed."

Justice de Jersey was launching a Queensland sentencing manual at the Supreme Court Library. That manual was written by District Court Judge John Robertson and Queensland University of Technology criminal law senior lecturer Geraldine Mackenzie.

Mr Nelson: Who makes the law—us or judges?

Mr FOLEY: The honourable member asks the question: who makes the law? Let me explain to the honourable member that it is the function of the elected representatives of the people to make the law. It is the function of judicial officers to apply the law. It is important that one should have regard to the facts of life as they occur in the criminal justice system because judicial officers have to deal with these laws, and the braying disregard that comes from the honourable members does little credit to them and demonstrates a patent lack of respect for the judiciary.

I table the article headed "Top judges blast move to change sentencing" and suggest it as reading for all honourable members. I table also for the benefit of honourable members a similar report appearing in the Queensland Times of 1 August 1998 similarly critical of the proposals in respect of so-called truth in sentencing legislation.

Let us contrast this with what the Beattie Labor Government is doing. It is taking practical, workable steps to improve the situation of victims of crime. What did victims of crime get under the coalition? Their compensation payments were cut arbitrarily by the Government of the day, which

systematically reduced payments to victims of crime. Yet those opposite have the temerity to come into this Chamber and hold themselves out as champions of victims of crime. They should hang their heads in shame.

The Labor Government has created the Premier's task force on crime prevention, which is currently conducting meetings throughout the State to receive input from Queenslanders on how they think our crime rate can be reduced. The honourable Leader of the Opposition may think that consultation with ordinary Queenslanders is unnecessary. No doubt that is why those opposite did not even bother to consult before introducing legislation. The honourable Leader of the Opposition should get out and talk with some of the citizens of Queensland and learn from some of the Neighbourhood Watch and victims of crime groups about practical ways of attacking crime and the causes of crime. The Labor approach is to be tough on crime and tough on the causes of crime. It is attacking the causes of crime, trying to prevent offences from being committed in the first place. That is the crucial aspect of our approach.

In addition, we have progressed a number of reforms aimed at shifting the focus of our criminal justice system back onto the victims of crime. Already today the Parliament has received legislation relating to stalking. That will be debated in due course. The process of examining the position of victims of crime has been under way for a number of months. That has involved consultation throughout the length and breadth of this State. It is all about ensuring that victims of crime are treated with dignity and respect.

The Labor Government was the first to introduce the Criminal Offence Victims Act, an Act much criticised by the coalition but which it never sought to amend. It took a Labor Government to do the hard work, to introduce victims of crime legislation and to take up the cause on behalf of victims of crime so that they might be treated better in the criminal justice system. It took a Labor Government to establish the task force on women and the Criminal Code to help make criminal legislation fairer for all Queenslanders.

The legislation before the House is ill-conceived. It is a political stunt. It is not designed to prevent crime. It is not designed to attack the causes of crime. It will not result in the commission of one less offence. It will mean an uncertain cost to the taxpayers of Queensland. It is a matter of great shame that the Opposition has blithely ignored any attempt to cost the proposals that it puts before the Parliament. It is not interested in a serious analysis of how to go about the task of confronting crime; it is interested in atmospherics. It is interested in putting something forward, without having done the basic work in order to make it an effective proposal.

The legislation is deeply flawed. I urge all honourable members of this House to reject the legislation and to work instead towards real and practical reform.