



Speech by

Mr BRUCE LAMING
MEMBER FOR MOOLOOLAH

Hansard 17 May 2000

MENTAL HEALTH BILL

Mr LAMING (Mooloolah—LP) (2.43 p.m.): I will speak only briefly to the Mental Health Bill because I intend to restrict my comments to forensic aspects of the Bill. To say that I have been waiting a long time for this legislation to come before the House would, in some respects, be an understatement. There are a number of former and current Ministers who have been in receipt of copious amounts of correspondence from me on behalf of my constituents Ron and Pat Nash of Mooloolah, whose daughter Christine was murdered some years ago. If I have been waiting a long time for this legislation, spare a thought for the Nash family. I have read and forwarded where appropriate every communication from them and many others on this case. Their grief is as unending as it is tragic. Their grieving process cannot conclude under the current Act and probably not under the current Bill.

I must repeat at this juncture that my comments on the Bill will be restricted to matters pertaining to forensic patients who have been charged, or could have been charged were it not for the Mental Health Act, with an indictable offence. Others have already spoken, or will no doubt speak, with passion on behalf of mental health patients who are blameless, in every meaning of the word, for their situation. I support those concerns and agree that we have come a long way in mental health care and still have some way to go. Today, however, I speak for the victims of crime and the families of victims of crime, whose suffering will not be assuaged unless we put their rights at least on a par with those of forensic mental health patients.

The more I wrestle with this dilemma, the more I ponder whether the current Act and this Bill try to be all things to all people. Where else in legislation do we have the concepts of health provision and law enforcement in such uneasy juxtaposition? I refer to the Explanatory Notes, under the heading Reasons why the proposed legislation is necessary, to show this contradiction. They state—

"This means that, as far as possible, the treatment of people with a mental illness should be regarded in the same way as treatment of any other illness."

They go on to state—

"The statement asserts a commitment to ensure that people with mental illness and mental health problems have the same rights to dignity and respect as other Australians."

They are fine sentiments, with which it would be difficult to argue unless one happened to be a victim or the family of a victim of a serious crime allegedly committed by someone suffering from unsoundness of mind.

To go further, one of the policy objectives of the Bill is stated to be "to provide for the expert determination of criminal responsibility for people with a mental illness charged with criminal offences". Who writes such clinical observations, as if any serious and violent offence can be just obliterated from the record, let alone from the minds of those who are left behind? If any human being dies at the hands of another and the criminal responsibility of the suspect is determined not to exist, what does that mean for the victim's family—that the victim is responsible, that someone else is responsible or that no-one is responsible?

Although I believe that the provisions of this Bill are considerably better than the current Act, there are still a number of areas in relation to forensic patients that do not, in my opinion, adequately take into account the perception of justice following serious violent offences. This is particularly the case from the perspective of victims and victims' families. A particular aspect of concern to me is whether the

Bill actually requires the Mental Health Court to ensure that a forensic patient is actually charged with the relevant offence if the circumstances indicate that an indictable offence has occurred.

Having the public prosecutor involved throughout this process is also of concern to me. Is it a requirement of the court that the facts of the matter are conclusively established? Unless this is the case, I suggest the court is only dealing with an alleged offence and then turns its attention to the matter of unsoundness of mind. It is perhaps a different situation if the court is dealing with fitness to stand trial, where that process could lead to the accused facing court to establish the facts. The Minister might like to clarify this point.

Mrs Edmond: If there is a dispute, that gets referred to the court. That is what the new Bill does. The problem under the old Act was that that wasn't the case. Under the new Bill, if there is a dispute of fact—and that fact could be whether that person is mentally ill—it is referred to the courts.

Mr LAMING: I am talking about the facts of a crime, not—

Mrs Edmond: If there is a dispute about the facts of the crime or the fact as to whether the person is mentally ill, that is referred to the court.

Mr LAMING: So it is established whether the person is responsible for the crime?

Mrs Edmond: It goes out of the Mental Health Court into the normal criminal courts.

Mr LAMING: I thank the Minister for that clarification. I realise that this legislation is very strong on the rehabilitation of mental health patients. That is undoubtedly most important, and I support that. But we must not lose sight of justice and the perception of justice in the community when dealing with serious and violent offences. Similarly, the rights of victims and their families must not be relegated to second place. These considerations are most important in our overall justice system so that society can be reassured that victims are not subsidiary to other responsibilities. This I believe is the only way we can ensure that everything possible is done within the power of the State to assist the grieving process.

I support the Bill. It is better than the current Act. On behalf of the victims of crime and the grieving families of victims of crime, I would ask that the Minister advise, in her summing-up, how she believes this Bill addresses the deep concerns of the families of victims. I would also appreciate her comments on what aspects of the Bill are retrospective in their application to patients currently held in relation to past indictable offences. I note the amendments foreshadowed by the member for Maroochydore and trust that the Minister and the Parliament will give them the consideration they deserve, as they do address some of the concerns I have raised.
