Speech by

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Hansard 5 October 2000

CRIMINAL LAW AMENDMENT BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (4.53 p.m.): The coalition in general supports the Criminal Law Amendment Bill. In the course of my contribution, I would appreciate the comments of the Attorney-General on a couple of issues. I may even ask a couple of questions in the Committee stage of the debate, because I will admit that there are a couple of areas I am unclear about. Sometimes the wording of Bills can be highly technical and needs to be read in conjunction with other complementary Acts of Parliament.

The legislation seeks to update many provisions of the Criminal Code, the Bail Act and so on. The Government has made much over time of the establishment of the women's task force to look at issues in the Criminal Code which are of specific concern to women. I suppose that is fair enough. A lot of people say to me that there are many issues in the Criminal Code and the justice system which are very much generic. I have even had women say to me that if we fix it for one we should fix it for the other, and there are issues.

I recently mentioned the situation of people travelling in aircraft from remote Aboriginal communities to Cairns for court appearances. Victims are made to sit in the same aircraft as offenders. Those sorts of issues are of significant concern. We understand that these are not easy issues to address when looking at the costs involved, the irregularity of air services and distance. However, in circumstances such as these we have to think somewhat innovatively and outside the square. We need to use our existing resources on the ground, in the magistrates courts in those areas and to use available technology, thanks to recent amendments to Acts of Parliament. For example, there is the capacity to use more and more audiovisual technology to address certain matters before the justice system.

If matters of consideration before courts which see remote people being disadvantaged are not facilitated by such legislation, it behoves this Parliament to look at further ways of amending legislation to address these concerns I have outlined to the Attorney-General and the House. I have also heard of cases where, because of lack of space, the witness had to stand in the same room in the courthouse as the accused. Some of these issues are equal to or far more important than other issues we may address of a technical nature in the law. Whilst it is good to spell out and clarify the issues we are debating today, through their own conventions and procedures the courts have tried to provide some protections. However, where they have not, there is a need for us to legislate for such protections in the Parliament.

I turn now to the amendment to the Bail Act. It is an extremely interesting amendment, and I must admit that I am confused about the motivation for it. However, it seeks to provide a mechanism to allow the police or a court to release without bail a person who has or appears to have an intellectual impairment. The person may be permitted to go at large or may be released into the care of another person who ordinarily has the care of the person or with whom the person resides. The release is conditional on the person surrendering into the custody of the court before which the person is required to appear on the charge.

It begs the question: if a person who has such an impairment has an incapacity to be able to understand the concepts and the notions of bail, should that person be caught up in the criminal justice system? I suggest for the Minister's advice whether or not it would be better for that person to be dealt

with under the Mental Health Act and its provisions. If there is some criminality involved and they do not understand the basic concepts of bail and what is expected of them, are they in a position to be successfully prosecuted through our criminal justice system?

Mr Foley: A fair point.

Mr SPRINGBORG: That is a reasonable contention to put to the Parliament, and I would be very pleased to hear the Minister's answer. I return to the issue of the person who is to be released into the custody of the court but looked after by a person on the outside. As I understand it, no punishment is to be imposed on them whilst in the care of the person to whom they have been released. That does not provide a deterrent to anyone. I want to hear the motivation behind that provision, because I am concerned about real conflicts as to what is being achieved by amending the Bail Act.

Some of the other provisions of the legislation have grown out of recommendations made by the women's task force on the Criminal Code. There are a couple of recommendations I commend, but there are others I express a subtle general reservation about. Certainly the issue of female genital mutilation has been well publicised over the past decade or so as something that revolts most, if not all, decent Australians. It may be culturally acceptable throughout certain African and maybe even Middle Eastern countries, but it is something that offends the basic decencies and standards of Australians, I think for good reason.

I think it is fair to say that this has not been a big issue in Queensland. I am not sure how many cases of young girls who have become infected as a consequence of these dreadful backyard operations have presented themselves to our hospitals. Just how many have undergone the procedure without mishap so far as infection is concerned we will never really know because of cultural acceptance in our society. So it is difficult to assess the real numbers in our community. It has been reported that there are some people in New South Wales who conduct this sort of cultural practice on young girls. Quite frankly, it offends my standards and the standards of most Australians.

No definable benefit whatsoever to women comes out of this procedure. It is a dreadful operation. It is something that is conducted traditionally without any form of anaesthetic and in very unclean environments—in septic environments—and the risks of infection and of death can be quite extreme. Basically, the procedure seeks to ensure that a young girl is, at some future time, when she is married, absolutely a token of her husband. As I understand it, it is all about reducing her opportunity to participate in sexual satisfaction and increasing that of her husband. I think that is absolutely dreadful and something that it is right for us to legislate in this Parliament to ensure does not happen.

The protections in the legislation seek to ensure that people will not be unduly or unfairly prosecuted. An issue raised with me is that if a child is taken interstate and female genital mutilation occurs there the legislation deems that the child has been taken for the purposes of female genital mutilation. However, I think there are some protections that address the concerns outlined and the issues raised by the Scrutiny of Legislation Committee.

Another provision in the legislation is that consent to carnal knowledge must be freely and voluntarily given. It has been raised with me that that is probably a tautology. I would like the Minister to explain what it actually means. If the Minister does not refer to this in his speech in reply to the second-reading debate I will probably raise it in the debate on the clauses.

Most people would feel that voluntary consent is the real issue. If we start talking about free and voluntary consent, we need to determine what we are trying to actually address. What is the draftsman really suggesting? What is he hoping to achieve? Will we have two standards—the first being that a person may have voluntarily given consent and the second being that the consent may not be considered to have been freely given but perhaps given under duress? I would like the Attorney-General to address that matter in his reply to the debate.

Another issue in the legislation relates to restrictions on the ability of an accused to raise in court details of a previous sexual relationship with the person who is accusing him. I will use the term "him", because that is the way things basically unfold. It is usually an allegation by a female against a male. This is an issue that has been raised with me. I understand that there has been some significant extension of the limitations which exist with regard to disclosure of the previous sexual conduct of the accuser and with regard to the sexual liaison that may have happened between the accused and the accuser. The accused may still raise the issue in the court, but only with the agreement of the court.

It has been the case in the past that some people who have made complaints have probably been unduly pursued on these issues in court. In most cases the courts have probably acted responsibly in limiting undue, unreasonable or insensitive cross-examination, but I am on the public record as indicating that I have very little tolerance for those who have been convicted of crimes. I believe they should have the book thrown at them and that we should get tougher once a person has actually been convicted. I think we need to make sure, though, that the protective mechanisms in place in our criminal justice system that ensure an accused gets a free and fair trial and is able to maximise his defence—not unfairly, not unduly and not unreasonably—are not unnecessarily or unreasonably

dismantled. At the end of the day, we need to ensure that important issues are able to be raised during court hearings, particularly if they will ensure that an innocent person is not convicted. I would like to have some assurances on that matter.

I raise the matter of unrepresented accuseds. Issues have been raised in the past about some rather vociferous counsel who get stuck into child witnesses and about people making complaints against accusers in our courts. A person accused of committing a crime—in many cases the crime is of a sexual nature—who is unrepresented has the right to stand in the court and to cross-examine the person they are accused of offending against. Whilst I can never really appreciate the feelings the victim would go through in this instance—there would be a lot of trauma and unease involved—it is up to us to try to address that particular issue. I think it is reasonable to move to ensure that unrepresented accused are not able to cross-examine those who are allegedly victims of their behaviour. In the case of rape and other sexual assault, that is something which is of paramount importance.

This matter is not without some difficulties, as the Attorney-General pointed out in his presentation to Parliament. That is, it raises the issue of procedural fairness in our courts. We need to ensure that people are able to be properly represented and to have their issues put. As I said earlier, we need to ensure that everyone convicted of a crime in Queensland has been proven guilty beyond reasonable doubt. We need to be sure that, when removing provisions that currently exist in the law—procedural fairness, natural justice or whatever the case may be—we provide options to the accused person which are equal to or better than those which previously existed. That is where the issue of legal costs and legal aid comes into it. This, no doubt, as the Attorney-General pointed out in the Explanatory Notes which accompany this legislation, will apportion some costs to Legal Aid.

If we are going to take these steps we need to ensure that this issue is properly worked through and that the appropriate mechanisms are put in place. I understand that this is not going to apply in matters that are going to be decided before a magistrate. Certainly, once it goes beyond that stage this issue will apply.

The Attorney-General and I recently had some argy-bargy, much to the Attorney-General's significant annoyance and discomfort, over the issue of Internet images. I looked at the legislation before the Parliament and found that the legislation seeks to clarify the issue of what is able to be transmitted electronically. I suppose it takes information technology into consideration.

I had raised what I felt was a very real concern, namely, that there was a significant disparity in the law between the Criminal Code and the Classification of Publications Act in this State. On the one hand, one could publicly display certain traditional images—not electronic images—and one could be sentenced to seven years' imprisonment. Under the Classification of Publications Act the maximum sentence was some two years' jail. I felt that there was a very significant disparity in the legislation and that it needed to be addressed.

It appears to me that some of the issues I had raised are now dealt with in this Bill—namely clause 228, for example. The legislation seems to take into consideration the use of modern technology to distribute and generate these images. I am wondering if that might be a concession that there was an issue which needed to be addressed in some way by amending legislation in this Parliament.

I am not going to be overly vociferous on this, but I suggest that there has probably been a degree of consideration given to the issues I raised. Those issues may have been coincidentally addressed in the legislation which is now before the Parliament.

I believe the issue of alternative verdicts in cases of rape and incest is a sensible reform. I am not going to canvass all the issues, but there are many matters which have been addressed and updated in this legislation. I believe that most of them are very sensible. A number of provisions have been removed from the Criminal Code. These provisions no longer have standing in today's criminal law. I believe it behoves any Government to ensure that our Acts of Parliament are relevant and up to date.

The issue of sexual offences against girls under the age of 16 years has been altered to read "children under the age of 16 years". We are seeking to provide non-gender specific definitions, and that is sensible.

I suppose it is necessary in this day and age to consider questions of surgical reconstruction. People do have surgical reconstruction of their genitalia in order to make males females and females males. I think this is a very interesting contention in law. We could potentially have people prosecuted for the offence of rape where the offender could have been born a female and have a birth certificate which says that the offender is a female, but in the meantime the person has gained a surgically constructed penis. Whilst those sorts of issues can be handled in law, I believe they will be of—I will not say amusement—interest in our courts. We need to ensure that our legislation is up to date in order to address such issues. I think we will leave that one alone.

I come now to the question of hearsay. I commend the Attorney-General for including in this Bill a provision which allows for the consideration of hearsay evidence in court. I have not spoken with the Attorney-General or his officers about the motivating factor for the inclusion of this provision, but in the time that I have been shadow Attorney-General a number of people who have come to me have expressed concern that matters which were very important to them were not admissible in a criminal trial because they were considered to be hearsay. On hearing the evidence which was in the possession of these people it appeared to me that it was a vital element in the prosecution of the alleged offender. In some cases it could have assisted in clarifying the reputation of the person who was not able to be in court to defend himself, either because he was dead, or because he was traumatised or disabled by the crime.

I recall a case in north Queensland. I will not mention the details of the case, but I am sure that the Attorney-General is aware of it. In that case, a woman was accused of murdering her de facto husband. In the first instance, she was found guilty of murder. The Court of Appeal heard certain evidence and the woman was granted a new trial. On the second occasion I believe she was charged with manslaughter. Evidence was given that the person who was killed had been abusing the lady and was not necessarily of good character. The lady involved loved the deceased. It emerged that it was inadmissible that the person involved had been subjected to significant violence and had actually gone to the police and sought protection. The protection was not forthcoming. The approach was made to the police, but the fellow was shot the next day. That hearsay evidence would have been fairly important in the court.

I do not know whether the hearsay provisions address that type of issue, but I believe there is a very strong argument for the admission of hearsay evidence in our courts, because it could be important in ensuring that we have a just outcome not only for the victim but for the accused as well. I would like to hear what the Attorney-General proposes by way of the hearsay provisions. It is not possible to completely describe the motivating factors behind these sorts of things. I would appreciate it if the Attorney-General would offer his views to the Parliament.

There are many other provisions in the legislation which update the law to ensure that today's law is relevant. I welcome that. However, as I said, the coalition has a couple of concerns. Those concerns address mechanisms which have been traditionally available to an accused person in order to allow him to put up a defence in court. It may be that the alternative mechanisms contained in this legislation seek to address the coalition's concerns. Nevertheless, the coalition will be monitoring the provisions of this legislation. We will be looking at any issues that arise further down the track.