Speech by

Mr L. SPRINGBORG

MEMBER FOR SOUTHERN DOWNS

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RACIAL AND RELIGIOUS OFFENCES BILL

Mr SPRINGBORG (Southern Downs—NPA) (12.19 a.m.), in reply: In rising to summarise this bill, I would like to say that I think the government's change of heart was not so much about a genuine commitment to parliamentary democracy but more about addressing some negative feedback in the press tomorrow morning over its performance earlier on today. It is very aware of that issue. The aspirations outlined to the House in the debate earlier today by the Leader of the House when she said that we needed to suspend our standing orders are certainly not matched by what has happened tonight.

I thank all honourable members for their contributions to the second reading debate. I wish to make some general points and some very specific ones. We saw a rather pathetic and appalling performance from the Attorney-General. He failed to address the issues. At the outset, he said that this is going to impact unduly on the courts. At the end of the day, the greatest impact on the courts that we are seeing in Queensland now is from their appalling mismanagement and lack of resourcing by this state government. One needs to look no further than the CJC's report released last week which stated basically that our criminal justice system in Queensland was operating more by good luck than by good management. In the courts in Queensland, particularly in the Magistrates Courts, we see no greater caseload than there was under the former Borbidge-Sheldon government yet in the 10 major Magistrates Courts there has been an extension in the time that people spend waiting to have their matters processed in the criminal jurisdiction. I suspect that the caseload in the civil jurisdiction is very similar.

In this state the government's mismanagement of the courts through a lack of resourcing and positive direction has been creating most of the concern that the Attorney-General is talking about. At the end of the day, if we are going to do something positive to address the fundamental problems in our community, if we are genuinely concerned about racial or religious vilification, do we come into this parliament and say, 'We're not going to do it because we have some concern that it is going to impact on the courts'? Surely that is a concession in itself that it is going to work, be effective and address the problems that might exist out there, namely, people who commit a crime based on a racial or religious motive. That is what this legislation is all about.

There is no doubt that this legislation is about increasing a penalty which would otherwise be imposed on a person who commits a crime as laid down under the Criminal Code. If that person commits a crime and there is a racial or religious motivation, that person may face additional time in prison. We make no excuses for that. This is all about imposing an additional penalty—something very similar to what the member for Toowoomba North mentioned earlier on today but not in this context. He said that if we are about deterring these things from happening and making our society a better place in a whole range of areas, we have to look at the issue of penalties as an effective deterrent. I hope I am not misquoting the honourable member, and he may not necessarily want it used in this context. I concur with his general sentiment in his contribution to the Anti-Discrimination Amendment Bill earlier today.

The Attorney-General was extraordinarily blinkered in his approach. He did not properly consider the merits of the bill. Basically, the Attorney-General has led the blind government on this piece of legislation by trotting out some sort of legal argument that was rather convoluted and, I think, a degree

confusing. Anyone can come in here, quote all sorts of legal concepts, give a so-called erudite performance and make it sound as though they have a perfectly good legal reason for voting something down. At the end of the day, they might not have a very good reason at all. It might be just about creating diversions. I suspect that is what the Attorney-General did earlier on when he came in here and outlined the government's opposition to this bill.

In looking around the world for precedents as to why we should be looking at the bill, we see that it is similar to but not exactly the same as legislation in place in Western Australia. Western Australia decided to go a different way to other Australian states when it came to the issue of addressing racial vilification—it does not carry the religious context—by actually prescribing that a crime must have been committed. That is something more tangible and definite.

Then we can go to a court and prove a case. The rules of natural justice apply and there is a higher standard of proof. We then feel far more comfortable in dishing out sanctions that might be prescribed in law by the state. But it is not only Western Australia that is keen on addressing the problems of racial and religious vilification along similar lines to the Queensland National Party opposition, and quite clearly the intention from other non-government members of this parliament. One of the most successful governments currently in the Western World has gone down this track.

The Blair Labour government in the United Kingdom has legislation that is extremely similar to this. That is the home of our Westminster democracy and the foundation of the court processes. That is the foundation of much that we enjoy in this country. If they do not have the fundamental concerns that the Attorney-General in Queensland has, what is altogether wrong with it? They have decided that it is appropriate to look at the issue of racial and religious offences and to impose a circumstance of aggravation that could see the offender receive an additional penalty. If it is good enough for the Blair Labour government, which has been a significant reforming government in the United Kingdom, to go down this track, why is it not good enough for the Labor Party government in Queensland also to consider this approach? That is a question to which an adequate answer has not been offered tonight by members opposite. The reason for that is that they could not. They were embarrassed. They came in here and boo-hooed, guffawed and carried on unbelievably during contributions by the opposition. But not one of them other than the Attorney-General, who offered a rather weak and legalistic opinion, was prepared to stand up and argue the relative merits or otherwise of this piece of legislation. That is extremely unfortunate, because there is much that is meritorious in it. And I am not saying that it is absolutely perfect.

As has been identified by the debate on the government's legislation earlier today and also as raised by the member for Gladstone, whom I will come to a little later on, there are some issues in defining racial and religious vilification or offences. There are subjective tests and objective tests. But we were not able to have a good solid debate in this parliament because government members were not serious about it. We entered into the discussion today on their legislation in good spirit and tried to indicate that whilst we understood the intent we were concerned about its motivation and about where it might lead further down the track. They were not prepared to have the common decency to offer the same to us.

This bill, as I saw it when I introduced it into parliament, is a compromise bill. It is about trying to meet the expectations and concerns that the government had about addressing these perceived and real issues in the community, but addressing, also very importantly, the freedom of speech issues, which I think are manifestly important if we are dealing with the way that our country has developed, and the relative freedoms that we have enjoyed in the unique democracy we have built up in this country over more than a century. It was a compromise. It was a way of saying, 'Look, there are some issues here. Honourable members, how do we go about best solving this?' We go about best solving it by saying, 'Yes, there may be issues of racial and religious vilification, but at the end of the day do we want to get involved in deciding something which may—it had not happened—have led to racial or religious vilification under the government's bill, or do we want to have something which we can actually see, that is, not just something rustling in the bushes but something we can see and something that is not just a phantom concept?

I am speaking about a court process, police investigating a crime, a person being charged for a crime, the process of committal, trial and adjudication by a person's peers in a court—a filtering process. Once a person has been found guilty of that crime, we then start looking at the circumstances of aggravation. That is what this is all about, namely, determining whether in the context of the Penalties and Sentences Act there is a circumstance of aggravation which may be racial or religious.

There are circumstances of aggravation and mitigation currently laid down by the Penalties and Sentences Act that judges have to adjudicate every day of the week. Earlier on the member for Gladstone mentioned the issue of motive, as did the Attorney-General. At the end of the day, if something is injected into the court process during that particular stage—the stage where there is an opportunity for the rules of natural justice to apply—and the court is comfortable and confident that there was a circumstance of aggravation whereby racial or religious contempt contributed to that crime,

then that person may face an additional penalty of up to three years. So you are looking at the list of prescribed crimes which are laid down and you are working on that. In many ways, that is something that is far more objective—you have got the rules of natural justice—than what the government proposed earlier on in the parliament. Unfortunately, it is not going to come to pass. As I said, it does not target freedom of speech.

The other problem with the government's legislation, as I said today, as opposed to what we are talking about tonight, is that the talk does not always transpose into actions. What we are dealing with here is something that is incited, something that actually transposes itself into an action which causes somebody to be harmed in some way, rather than the tens, the hundreds or the thousands of cases out there where subjectively somebody might have said something that somebody else finds offensive, which might lead to some conciliation or some charges being laid further down the track and therefore it does not impact upon freedom of speech.

Mr HOBBS: I move—

That the Attorney-General wake up.

Mr DEPUTY SPEAKER (Mr Fouras): Order! I see him smiling at you. I think he is awake.

Mr SPRINGBORG: Also, if we believe that having a decent penalty regime in law is about rehabilitation, about punishment and about deterrence, then having something which indicates to a person who might perpetrate a racially or religiously motivated crime that they may incur an additional penalty should, for some people at the very least, act as a deterrent. I believe that there is a very positive deterrent aspect in this legislation. That is, if people are aware through public education that if they do go out and commit a crime that is racially or religiously motivated they may go to jail for much longer, that is less likely to happen.

The Attorney-General did mention—and I want to come back to this matter—the issue of establishing motivation. There are so many obvious cases that are written about in the press in which it may have been black against white, white against black—whatever the case may be—where there has been a racial motivation. You can see it. It sticks right out. It is quite obvious. These matters do come before the courts, but not all that often. That is why we are talking about targeting them. I do not believe that it is all that difficult.

The Scrutiny of Legislation Committee raised an issue in regard to whether it was a new offence or whether it was a circumstance of aggravation to be established by the courts on the balance of probabilities, or whatever. I wrote back to that committee and indicated that it would be similar to what is normally provided for in the Penalties and Sentences Act when it comes to sentencing people on each of the charges on which they have been found guilty. This parliament actually passed legislation last year that sought to clarify issues that had been raised by the Supreme Court. They said that it should be beyond reasonable doubt. I said that generally I think the balance of probabilities would be fair enough once a person is convicted. This is something about which I would be very pleased to talk to other members if there were issues that we could tighten up, but unfortunately we are not going to get that chance.

We live in a world based on tolerance. This is about encouraging tolerance, that is, encouraging people to participate as free members of our society—not to have their freedom of speech impacted upon but to say, 'If you step out of line and actually do something, then the law is going to jump on you very, very quickly.'

I talked about the view of many immigrants in my speech earlier today. Many of the members on the other side believe that they are the only ones who know immigrants, work with immigrants and sympathise and empathise with immigrants. Many of us have them in our electorates. We understand them; we are all immigrants one way or another. We do those people a disservice by saying that they are automatically in favour of the government's approach and against ours. They are not. Many of them are first generation Australians or even new immigrants to this country who have the same concerns that we have raised here today.

I would like to turn quickly to the contributions of individual members. I thank the members of the National Party for their support. I think that they understand the concepts and the issues raised very clearly and were able to articulate them tonight. I think that we are one on this issue, and that is extremely important.

The member for Gladstone raised some issues in what I thought was a very genuine, sensitive and thoughtful contribution, and I do thank her very much for that. I do not know whether anything that I say might change her mind. There is the difficulty in seeking to define religion, which I pointed out in my speech in the second reading debate on the other bill earlier today. The ABS basically accepts a group of people who put themselves down as believing something. I do not necessarily agree with that process. We could even have witchcraft, and the government decriminalised witchcraft last year. That is not what I consider to be a religion.

That is why I have sought to take it from a process under the government's legislation whereby an Anti-Discrimination Commissioner may be going into court with the Attorney-General's consent to a situation in which the court and the processes of natural justice and the opportunity for some cross-examination or some further legal consideration would be able to try to get to the facts that enable a decision to be made on whether it is a genuine religion or whether it is a ruse. I think that the member and I have a fairly well-defined idea of religion and therefore religious vilification. If somebody had a set on Muslims, Buddhists or Catholics and they went out and assaulted them and said, 'I hate you so-and-so Catholics'—bang!—and they were charged with grievous bodily harm, under this bill that would be a fairly open and shut case. That is what I am trying to indicate.

That does not necessarily overcome all of the member's concerns, but if we can get it into the court process, if we can get it into the situation in which a person is convicted beyond reasonable doubt, if we can get it into the process whereby there may be this circumstance of aggravation, then I think the court is more easily able to actually decide that and look at those issues than adopt the more nebulous front-end response suggested by the government. I do thank the member for expressing her concerns. I do think they are genuine. Nevertheless, I think we have a better chance of being able to work them out through a court process after an offence has been committed and sanctioned as per the Criminal Code.

I would very much like to thank the member for Gympie for her support. She very succinctly summarised the issues and the intent of the legislation, and I think she underlined and espoused to the parliament the very genuine commitment that we all have to the rich multicultural history of our nation and the very strong fabric that binds us together. However, there are issues of concern that we must deal with. Certainly the issue of freedom of speech is one of those. She very sincerely stated that we should not tolerate racial or religious crimes and indicated her support for this legislation. I thank her very much for that.

In conclusion, this is good legislation. It is compromise legislation—legislation which was designed to address many issues that manifested themselves after the government indicated its intent to introduce such legislation. I have had discussions with representatives of religious and ethnic groups. Whilst they indicated that they would like the government's legislation for their own reasons, which I respected, it was also indicated to me that they were comfortable with what we were going to bring to the parliament as well. They did not have a problem with it. I think ours is a more pragmatic, more reasonable approach and response, and therefore deserves the support of all members of this parliament.