



Speech by

DIANNE REILLY

MEMBER FOR MUDGEERABA

Hansard 21 August 2002

JUVENILE JUSTICE AMENDMENT BILL

Mrs REILLY (Mudgeeraba—ALP) (10.56 p.m.): I am pleased to rise in support of the Juvenile Justice Amendment Bill 2002, because this bill introduces changes and amendments which have been long awaited by both members of the legal fraternity, other community members, particularly victims of crime, and youth advocacy groups. It has broad appeal to most sectors of the community involved in or who have any knowledge of the criminal justice system. In that sense, it represents a set of balanced and necessary amendments that will improve clarity within the juvenile justice system and also improve fairness and safety in relation to the system's dealings with some of the most vulnerable members of our society and its young people who have been caught up in criminal activity.

This is a very complex and comprehensive piece of legislation so I wish to restrict my comments to one section of the bill, that is, the new Charter of Juvenile Justice Principles. The other areas have already been dealt with to a large extent and will be further dealt with by other speakers. The incorporation of a new Charter of Juvenile Justice Principles into the Juvenile Justice Act 1992 was an election commitment made by the government in the lead-up to the 2001 state election. The new charter incorporates the existing principles presently found in section 4 of the act and incorporates further statements in compliance with recommendations of the Forde report. Importantly, the charter of principles will underlie the operation of the act, will provide guidance to the courts in the sentencing process and in other decision-making processes, and be the basis for the development and operation of programs and services provided under the act. The new charter has a broader purpose than the existing set of principles of juvenile justice currently found in the act.

The new charter includes new principles that underscore the important balance in having children take responsibility for their offending and providing a juvenile justice system that will not lead to the tragic consequences uncovered by the Forde inquiry. New principles include, for example, principle No. 2, that the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing. Principle 16 states that a child should be dealt with under this act in a way that allows the child to be reintegrated into the community. The charter includes new principles that are relevant to all children being dealt with under the act but are consistent with an important Forde report recommendation, namely, the bill requires the chief executive to ensure as far as is reasonably practicable that the following principles are complied with for every child in a detention centre. Principle 3 states that a child should be treated with respect and dignity while in custody and should be encouraged to treat others with respect and dignity, including the courts.

Principle 15 outlines that a child being dealt with under the act should have access to legal and other support services, including services concerned with advocacy and interpretation. Principle 19 outlines that while a child is in detention contact should be fostered between the child and the community. There is also another new principle, No. 20, which provides a list of rights specific to young people in detention. In general, these principles require measures to ensure the safety and stability of the living environment for those young people and that it is a nurturing environment; that the children and their families maintain contact and have contact with the community; that they are involved in decisions about their lives, their programs, their education and their health; that they are given information that they need to make decisions and plan for their future; that they be given appropriate

privacy, health care and education; and, most importantly, that they be assisted to make the transition from detention to independence or to be fully and properly reintegrated into family or community life. This new Charter of Juvenile Justice Principles represents a significant improvement to the current act. I understand that the Charter of Juvenile Justice Principles will be a major tool used by sentencing judges in relation to their considerations of young people before them in the courts.

I want to raise the fact that I had a concern brought to me by a defence lawyer who deals with juvenile justice in the courts on a regular basis. He had some initial fears that the reordering of principle (c), which is out of sequence and which has been moved to a different part of the list of principles, could in fact undermine the intention of the act and that most important intention that we have heard a number of opposition members and government members refer to tonight—that is, that a child should only be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is necessary and only in a facility that is suitable for children. These principles are now listed as Nos 17 and 18. However, having sought clarification from the minister and the minister's office and having had these additional amendments to the act explained to me and the lawyer and in consideration of other relevant sections, particularly 109 and 165, and including recent judgments, both the lawyer and I are more than reassured that that most important principle will not lose integrity with the addition of new principles which indeed seek to serve to strengthen that intention within the act.

I have also been assured that the Charter of Juvenile Justice Principles is not a hierarchical list, so therefore no one principle is considered more important or more heavily weighted than another. Indeed, the way that they have been drafted is to simply move from the broadest to the most specific. It is certainly not—and I want to reiterate this—the intention of this parliament nor the government to diminish that principle that children should only be detained in custody as a last resort.

I thank the minister and her staff for discussing the matter and working with me to clarify that situation and for taking my concerns seriously and investigating them to see if there was any substance to that matter. There is no doubt that juvenile justice is a highly controversial and a highly emotive subject. Perhaps it is the most difficult aspect of our criminal justice system to manage in a fair and balanced way. There can be no movement from a position that states that children should only be detained in custody as a last resort, because prison is an inappropriate environment for children for at least all but the most serious of offenders. I only wish that the federal government would apply these same principles to its management of detention centres for refugees and asylum seekers where children are being held in appalling and inhumane detention situations when they have in fact committed no crime. I want to be very clear about that, because no crime has been committed in seeking asylum or coming with one's family to seek asylum. There is no excuse or justification at all for children to be held in those conditions behind razor wire in a civilised society like Australia.

I congratulate the minister and her staff for the very comprehensive way in which the act has been reviewed and redrafted. I hope it will provide a shining example for the federal government and for the rest of Australia to follow in their dealings with children. I commend the bill to the House.

Debate, on motion of Mrs Reilly, adjourned.
