



Speech by

Hon. Kerry Shine

MEMBER FOR TOOWOOMBA NORTH

Hansard Tuesday, 13 March 2007

CRIMINAL CODE AND CIVIL LIABILITY AMENDMENT BILL

Hon. KG SHINE (Toowoomba North—ALP) (Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland) (5.28 pm), in reply: At the outset I table the erratum to the explanatory notes. I thank all honourable members who have made a contribution to this debate. It is an important measure in relation to three areas—amending the Criminal Code and amending the Civil Liability Act.

Tabled paper: Erratum to Explanatory Notes for Criminal Code and Civil Liability Amendment Bill.

I thank the members from the government side who have made contributions. The member for Waterford brought his vast experience in unions to the debate. The member for Southport was, of course, a longstanding lawyer with years of experience in criminal courts and personal injuries litigation, and we benefited from that knowledge today.

The member for Woodridge was very concerned, understandably, about the impact of road crashes and the impact they have on society and families. The member for Nudgee spoke with authority on the civil liability provisions of this bill. He referred to the so-called public liability crisis that we went through from about 2001 for a year or two. He referred, of course, to the reforms that the government introduced in response to that situation and the current profitability of insurance companies as reported in the press. He expressed his scepticism about aspects of proposed premium reduction as a result of that profitability. He indicated that there had also been falls in the rates of claims being made. That is another reflection on the environment that exists now as a result of those reforms that were introduced by this government.

The honourable member for Cleveland also contributed significantly to this debate. He brought to bear his 27 years as a police officer and related his experiences as an officer attending horrific road accidents. He is, therefore, well qualified to contribute to this debate, as was the honourable member for Springwood. She was particularly concerned about suburban streets being used as racetracks. I was, as I am sure all members were, impressed by her grasp of the subject matter of identity theft.

The member for Barron River gave us a very extensive, authoritative and learned review in relation to all aspects of the act. He brought to bear his extensive experience as a very outstanding lawyer from Cairns. We all benefited from that. He was particularly informative about the statistics regarding dangerous driving and drink driving as it applies to Cairns. He also spoke of the message that this amending legislation should bring, that is, that sentences will be longer as a result of the increases in the maximum penalties being imposed, but that of course the aim of the bill is to deter people from committing these offences and causing loss of lives, which is a great tragedy. I also thank the opposition members and those non-government members who spoke to this bill, and I will say more about these contributions shortly.

By way of review of the legislation, the Criminal Code and Civil Liability Amendment Bill 2007 addresses growing community concern about dangerous driving offences, particularly where death or serious injury results and alcohol, drugs or speed are contributing factors. There has also been increasing community concern about the incidence of hit-and-run traffic offences that result in death or serious injury. The bill amends section 328A of the code to increase the maximum penalty for the offence of dangerous

driving causing death or grievous bodily harm and expands the existing aggravating circumstances to include travelling at excessive speed, racing or speed trialling and leaving the scene of an accident.

Identity fraud is an issue of major concern to government agencies, to law enforcement, to private organisations, to the financial sector and indeed to individuals. Technological advances have made this an issue of international significance. The bill inserts into the code a new section 408D which provides for the offence of obtaining or dealing with identification information. The new offence will apply to a person who obtains or deals with another's identity information for the purpose of committing or facilitating the commission of an indictable offence. In order to assist the victim of such an offence to begin to repair damage to their reputation, for example their credit rating, the sentencing court is empowered to issue a certificate to the entity stating the offence, the entity's name and anything else that the court considers relevant for the entity's benefit.

The bill also amends the Civil Liability Act 2003 to exclude the application of the act to all work injuries for which compensation is payable under Queensland's workers compensation legislation, apart from recess and journey claims. This means that injured workers will have the right to seek damages assessed at common law rather than limited by the Civil Liability Act. This aligns with the government's original intention regarding the protection of workers' rights under that act.

In March 2006 the Court of Appeal in *Newberry v Suncorp Metway Insurance Ltd* interpreted the act in a way that restricted the intended scope of this inclusion. The *Newberry* decision would potentially reduce the entitlements for workers injured by the actions of a third party where the employer is not at fault, such as the driver of a motor vehicle involved in the collision with the claimant. The bill aims to restore workers' rights by redressing the effect of the *Newberry* decision and reinstating the government's intention regarding the exclusion from the Civil Liability Act.

I would like to now address briefly some of the matters raised by honourable members opposite. The honourable member for Caloundra raised a number of cases that had arisen in his locality on the north coast. I note that he was concerned about some of the conduct involved in the court process and that he intends to write to the minister for police about that process. No doubt he will take that course of action. He did say that it is important to look at the circumstances of each case very carefully. I agree with that comment. It is the basis on which this side of the House opposes mandatory sentencing; circumstances do vary so often in most cases. He also raised the case of some disparity in sentences and gave some examples of a person being jailed for 18 months, others for much longer periods, different periods of disqualification and the different penalties imposed by magistrates. I simply make the comment that it is always up to the police who are involved to appeal those decisions. That is the system that we have. If the police believe that the sentences were manifestly inadequate then, doing their duty, they would lodge an appeal in those circumstances.

The member cited some cases—I think they were *Smout*, *Cusack* and another—and he indicated the disparity of the sentences that were imposed in those cases. I am not familiar with them myself. I do agree that there is divergence, but again this tends to highlight in my mind that each case is different. Therefore, as he said earlier in his speech, the circumstances of each case have to be looked at carefully because they are both individual and peculiar to that particular case.

Overall, the member for Caloundra supports the amendments to section 328A, the increases in penalties and the expansion of the aggravating circumstances. He raised some specific issues which I will deal with now. He may or may not wish to raise them in the debate on the clauses, but I will deal with them now. One question that he raised was would I consider empowering the trial judge to impose a 'not before time' consideration before which the offender can apply to have their drivers licence disqualifications lifted.

I am satisfied that the current regime is fair and just. It provides for a minimum mandatory disqualification period of two years. After that, the offender can apply to the court for the removal of the disqualification. At that point the court will consider all relevant facts including the nature of the offence and the offender's conduct subsequent to the order. The court has the discretion to reject the application in which case the offender has to wait another 12 months before bringing another application. To my mind that is an adequate provision at this stage.

The member further asked the question: is it relevant to consider sentencing guidelines? I understood the query to be whether the government should provide sentencing guidelines to the courts for the offence of dangerous driving. Such guidelines, for example, would outline the minimum sentence that the court should impose. This really is another way of advocating mandatory minimum sentences. Mandatory sentences are designed for the most culpable criminal, yet they do catch many who are considerably less so.

A particular offence can carry varying degrees of seriousness and a huge range of conduct can constitute a particular offence. For example, section 328A may apply to a driver who is deliberately reckless or momentarily inattentive or even doing his or her incompetent best provided the jury think the driving was dangerous in all the circumstances. Under the present system such issues are highly relevant

when it comes to sentence and it would be acknowledged by the court when considering the appropriate sentence to impose. Under a mandatory minimum sentencing scheme, very unequal offenders would be subject to the mandatory jail term.

As honourable members would I hope appreciate, sentencing is a complex process and one of the most difficult functions undertaken by the courts. That was referred to by the member for Barron River. The court must attempt to construct a sentence which balances, on the one hand, the interest of society and the victim in punishment and deterrence and, on the other, the interest of society and the offender in rehabilitation.

Queensland's Penalties and Sentences Act 1992 sets out the objectives of sentencing, identifies mitigating and aggravating factors and provides guidance on the means of determining an offence's seriousness through detailed sentencing principles. The maximum penalty applicable to the offence also indicates to the court where, in the hierarchy of seriousness, the offence in question sits. In addition, the power of the Attorney-General to appeal inadequate sentences to the Court of Appeal is an important safeguard in ensuring that the courts reflect community attitudes. I, and previous attorneys-general of this government, view dangerous driving very seriously. We have successfully appealed a number of sentences to the Court of Appeal—for example, the successful appeal of Sandra Wilde's sentence of two years and four months imprisonment to five years. This is also relevant to the example raised by the member for Cunningham. Recently in Toowoomba a young mother and her two-year-old child were tragically killed. In that instance I can inform the House that I have instructed the DPP to lodge an appeal.

The honourable member for Burdekin made a supportive contribution to the debate. She referred, as other members did today, to the 71 fatalities recorded on our state's roads this year. She also indicated that her view was that tougher penalties were necessary, particularly in relation to those circumstances of aggravation that we are dealing with in the amendments today relating to racing or excessive speed and drink driving. The members for Nicklin, Surfers Paradise and Currumbin were also supportive in their remarks. The member for Cunningham mentioned the specific case to which I referred. I have indicated to the House what I have done about that.

The honourable member for Gladstone also covered the bill in its entirety. She particularly referred to the personal injury claims. She was concerned to see that workers' rights were maintained and that the constraints imposed by the case of Newberry would be put aside by this amendment. She was concerned that, with respect to the dangerous driving aspects of the bill, it be remembered that those who suffer go well beyond just the victims of the grievous bodily harm offence or the deceased in the case of death to not just the families of the victims but also the families of the offenders. Many people are affected by these fatalities on our roads.

Likewise the member for Burnett is concerned about dangerous driving in his area. He is concerned about hoon racing. He referred to the report on hoon racing and also to the RACQ road safety web site information in that regard. The member for Mirani spoke of the situation in his locality where drink driving does occur on an all too regular basis and the fact that the number of fatalities of a horrific nature are on the increase. The member for Charters Towers was concerned about some aspects of roads in his area, particularly relating to road trains. I thank all honourable members for their contributions to the debate on this bill.