Speech by

Peter Lawlor

MEMBER FOR SOUTHPORT

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BAIL AND PENALTIES AND SENTENCES AMENDMENT BILL

Mr LAWLOR (Southport—ALP) (9.13 pm): In his second reading speech the shadow Attorney-General and minister for justice stated—

Under current Queensland law there is no automatic right to bail.

That is simply wrong. As has already been pointed out by the Attorney-General, the right to bail is as old as the law of England itself. I do not understand why the members of the opposition cannot get their heads around the fact that the people whom we are talking about—the people who are making application for bail—are accused or defendants; they are not offenders or criminals. They have not been convicted of anything. But the members opposite do not seem to be able to make that distinction.

The proposed amendment is a major departure from the current provisions of the Bail Act which provide a statutory presumption in favour of bail for most offences with the defendant being placed in a show-cause situation in limited cases only, for instance, murder, which carries a mandatory life sentence. In that case, the situation is different and defendants have to show cause as to why they should be granted bill.

Under the existing provisions of the Bail Act, bail may be refused only if the court is of the opinion that there is an unacceptable risk that the defendant would fail to appear, reoffend, endanger the safety of the community, interfere with witnesses, or that the defendant should remain in custody for their own protection. So the onus rests with the prosecution to prove that the defendant poses an unacceptable risk. This amendment would reverse that onus of proof. It provides that, if a defendant is charged with an offence against the Bail Act or an offence that carries a maximum penalty of two years—that is the maximum penalty—or more, the bail application must be refused unless the defendant shows cause why the defendant's detention in custody is justified. This is completely unrealistic. For many offences that attract a maximum penalty of two years, depending on the circumstances, often only a minor fine, probation or some other form of punishment is imposed. It may take months before the prosecution is ready to proceed. What has been suggested by the opposition is that the accused should be held in custody for that length of time.

I do not agree with the shadow Attorney-General's assertion that—

Bail has been awarded too leniently.

I also do not agree with the shadow Attorney-General's assertion that—

There are myriad examples of reoffending behaviour by persons on bail.

Of course, whilst we are dealing with human behaviour, there will always be some failures. It is not an exact science. But to suggest that reoffending while on bail is widespread is ridiculous. What is the basis for the shadow Attorney-General's assertion that there is too much bail being granted and so on? He states 'media reports'. That is the basis for the member's assertion. I have practised for many years as a solicitor and I have had hundreds—indeed thousands—of cases, both civil and criminal, that have gone to court. I can guarantee members that you get no real information or sense of the evidence that was given in court in any report from the media. That is not the media's fault. I am not blaming the media. It is simply

that the media must get days or weeks of evidence, of judgements, sentences and so on down to a few sound bites for TV or radio and down to a few columns in newspapers. You get no sense whatsoever of what has actually happened. The media is not a good source for research that could lead to the statements that were made by the shadow Attorney-General.

The majority of criminal offences in Queensland carry maximum penalties of two years or more imprisonment. This amendment would mean that most people charged with an offence would be remanded in custody pending the final determination of their matter unless they can show cause that their detention is not justified. I will give members an example of how ridiculous this amendment is and how ill thought out and ill conceived it is.

In 1985 I acted for 17 defendants arising out of one particular incident during the SEQEB dispute. Those defendants were charged with a variety of offences that would have been caught by this legislation if it had been the law then. There were 17 defendants. The hearing of the charges was adjourned at the request of the prosecution on eight separate occasions spanning over more than six months. All of those defendants had families and had to try to earn a living. But according to the shadow Attorney-General, the 17 of them should have been locked up for six months. How ridiculous! Finally, we ran into a visiting magistrate who was absolutely disgusted by the abuse of process. On the ninth application for an adjournment all charges were dismissed and costs were awarded against the police. But if the members opposite had their way, these 17 people—17 innocent people—against whom there was not a skerrick of evidence would have done six months.

This amendment is a direct attack on the presumption of innocence, which is one of the most important planks of our justice system. In the example that I have just given members, under these amendments 17 innocent men would have done over six months in prison. This amendment would unnecessarily increase and complicate the number of bail applications and magistrates courts would grind to a halt. It also would adversely affect the diversionary programs.

I do not know where this legislation has come from. It has come out of the head of someone who has never, ever practised in the area of criminal law. As the Premier said many times when she was Deputy Premier, this is the best resourced but laziest opposition in Queensland's history. If any further proof of that statement was required, one only has to look at this particular bill, which I strongly oppose.