



Speech by

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CRIMINAL CODE AND OTHER ACTS AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—LNP) (4.30 pm): It is my pleasure to rise to contribute to the debate on the Criminal Code and Other Acts Amendment Bill 2008. Before addressing the contents of the bill, I would like to acknowledge the contribution of the shadow Attorney-General, the member for Toowoomba South, and indicate my support for the bill, with the reservations expressed by the member for Toowoomba South in my mind. The bill contains a raft of amendments to a number of acts, including amendments to the Queensland Criminal Code, the Bail Act 1980, the Criminal Law Amendment Act 1945, the Criminal Law (Sexual Offences) Act 1978, the Penalties and Sentences Act 1992 and the Summary Offences Act 2005.

One of the objectives of the bill, as stated by the member from Toowoomba North in his contribution to the second reading debate, is to streamline and modernise the Criminal Code with respect to certain offences. A number of the provisions contained in part 2 of the bill alter existing offences by ensuring they are consistent with modern standards and the reality of contemporary crime and law enforcement. One such example of that is clause 11 of the bill, which pertains to unlawful assemblies and breaches of the peace provisions that are contained in chapter 9 of the Criminal Code.

Section 64 of the Criminal Code requires that where people are riotously assembled together, it is the duty of the sheriff, or a justice of the peace, or the mayor, to—

Go amongst them, or as near as he or she can safely come to them, and to command or cause to be commanded with a loud voice that silence be kept while the proclamation... is made... Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, or they will be guilty of a crime, and will be liable to be imprisoned for life. God Save the Queen!

I look forward to Campbell Newman, the Lord Mayor of Brisbane, or Ron Clarke, the Mayor of the Gold Coast, trying to make that proclamation. I think most of us would agree that this provision is completely irrelevant to today's society. Anyone who has ever tried to read the riot act to skylarking kids will understand how fruitless it is, let alone reading it to a dozen or more rioting rebels. As the minister stated in his second reading speech, in this day and age one might think the mayor reading out the riot act would inflame rather than calm the rioters. The proposed amendments will remove the legal requirement that the riot act be read before any police retaliation can take place.

Legislation is littered with outdated provisions and archaic concepts, particularly in common law jurisdictions where legal principles and rules date back hundreds of years—in some cases well before our country was federated. Some are actually quite humorous if we are to believe some of the research that has been conducted. For example, in the UK members of parliament are not allowed to don full armour in parliament. That is a far cry from the dress standards of some of the members in modern-day parliaments. I am sure we will be seeing some of the members opposite in flip-flops during the next parliamentary sitting in Cairns. Nevertheless, if they wanted to wear a suit of armour in the House of Commons, they would be kicked out for being in contravention of the law.

A few more examples of the antiquated and clearly obsolete laws include it being illegal to be drunk in a pub or bar in the UK. Obviously, anyone who has enjoyed an ale in an English pub would know that

law is not enforced. In Alabama, dominoes may not be played on Sundays. Animals residing in California are not allowed to mate within 450 metres of a church, school or tavern. In Texas, criminals are required to give at least 24 hours notice to their victims, either orally or in writing, explaining the nature of the crime to be committed.

By virtue of the passage of this bill, some of our own unusual laws will be scrapped, including the offence of challenging another to fight a duel. The bill gets rid of section 73 of the Criminal Code, which deals with duels. In that context, it is important to note that the Queensland Criminal Code was written in the late 1800s. Whilst provisions have obviously been made in respect to new crimes, much of the Criminal Code, as written by Sir Samuel Griffith, remains intact. That is why it is necessary from time to time to spring-clean the legislation to ensure that our laws are relevant, enforceable and in line with community expectations.

The bill also seeks to introduce a new offence to the Criminal Code that will make it an offence for parents to leave their children unattended for an unreasonable amount of time without making provision for the supervision and care of the child. These amendments are contained in clause 64, which replaces section 364 of the Criminal Code pertaining to cruelty to children under 16. The new offence will apply to persons who leave a child under 12 years unattended for an unreasonable amount of time. The proposed section 364A(2) states that the question of whether the time is unreasonable depends on the circumstances.

Obviously, as previous speakers have mentioned, this is an offence that has received a lot of publicity. We know that no reasonable parent or carer would leave their children locked up in the car while they go off and, for example, enjoy betting at the casino. But we know there has been lots of publicity about that in recent years. Recently, when I visited the casino at the Gold Coast I noticed a number of signs around the car park warning people against leaving children unattended in cars. I witnessed that last year as well at Broadbeach, where police were called to aid two children who were left unattended in the back seat of a car while their parents enjoyed a drink in the bar across the road.

We all acknowledge that this kind of behaviour is unacceptable and that parents have a legal and moral duty to provide care and the necessities for their children. If they leave them unattended while they go off and pretend that they do not have responsibilities, then they are clearly neglecting their duty and should rightly be punished. The Attorney-General has provided a number of examples at which the provision is aimed. Most of those are obvious: leaving children in the care of a child not yet old enough to look after themselves, deserting a child on the side of a highway in the middle of the night, leaving the children in a car in the middle of the day whilst parents go shopping. As I said, it is not only irresponsible; it is downright dangerous, as other members have said.

It is acknowledged that a locked car can turn into a furnace in the height of summer. There have been instances where children and pets have died from heat illnesses as a result of being trapped or left in a car. I note the member for Southport referred to a recent case and I know also that many of us will remember the story of a young Brisbane girl who died after accidentally locking herself in a car for 30 minutes. Her devastated family are still trying to understand why it happened. Of course, our condolences go out to the family as they heal.

But what I cannot understand, particularly having learned about the heartache one family has suffered as a result of a tragic accident, is why some parents would deliberately place their child in harm's way by leaving them in the car whilst they go shopping, gambling, or drinking. Do they not know what the consequences could be? I am not talking about a fine, or a potential imprisonment sentence; I am talking about the far greater consequence of losing a child. Surely no parent could take that risk. I hope that upon passage of these laws they will be well publicised. Parents need to know that intentionally leaving a child unattended is not acceptable parenting in Queensland.

I wish to go back to the examples given by the Attorney-General in his second reading speech of the types of acts that will be covered by the new offence. Another example was parents sleeping off the effects of taking illegal drugs or intoxication and whose children were found wandering the streets. Those parents would be liable for prosecution under the new laws. Another example was a father who left a small child in a motel room unaccompanied. He would also be caught under the new laws.

I am concerned about where we are going to draw the line between what is acceptable and what is unacceptable when it comes to parenting. Obviously, parents in a stupefied state whose children are left to wander the streets alone are not properly caring for their children. The police would be right in charging them under this new provision in the Criminal Code. But, of course, judicial and police discretion needs to be applied, for example, in regard to parents who are sleeping in on a Sunday morning and whose energetic kids decide they want to go and play in the street without obtaining permission. We could also look at the situation of a father leaving his child in a motel room. Are we going to legislate that parents holidaying in a hotel with their children cannot go downstairs to the lobby bar and have a drink while their kids are asleep upstairs?

How young is too young to leave an older sibling in charge of the children? Obviously, based on the example given by the Attorney-General, 10 years old was too young. What about a 13-year-old? Are we imposing a minimum age for babysitters? These are some of the practical issues that arise from this provision, particularly when one considers the penalty provision that provides for three years imprisonment—and I acknowledge that that is the maximum penalty. Of course, we do not want to start overregulating parenthood.

Whilst I strongly support the new offence contained in clause 64 for flagrant disregard of a parent's duty to provide care for their children, I am apprehensive about applying to it borderline parenting behaviour. I understand that is the subject of the amendment that the honourable member for Toowoomba South is moving. Of course, we cannot legislate against stupidity, but we can try to legislate to prevent the blatant bad behaviour of a minority of parents. In effect, we already do. Section 285 of the Criminal Code foists a duty upon parents to provide the necessities of life. Section 286 imposes duties on persons in charge of a child. I would like to see some clarification from the Attorney-General on how this new offence will interact with these other offences and why there is a need for a stand-alone offence.

One of the other major achievements of the bill are the amendments contained in part 6 pertaining to the Penalties and Sentences Act 1992. Clause 136 amends sentencing guidelines contained in section 9 of the PSA. Section 9(1) of the act sets out the purposes for which a sentence may be imposed. These include punishment, rehabilitation, deterrence and protection of the community. Section 9(2) sets out the particulars a court must have in regard to sentencing an offender. One of these is the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim. The bill will amend this section to allow the court to pay particular regard to the effect of the offence on any child under 16 who may have been directly exposed to or a witness to the offence. Whilst the court could have previously taken this into account, the amendment will ensure that the courts will consider the impact of crime upon children in sentencing an offender. The high personal and social cost of crime on the community should certainly be taken into account when sentencing offenders.

Importantly, clause 136 also makes it clear that when sentencing certain offenders some principles of justice, such as a sentence of imprisonment should only be imposed as a last resort, should not apply. Specifically, this provision is aimed at persons found guilty of offences against the Classification of Computer Games and Images Act 1995 and others designed to catch and prevent child pornography. I think most people in the community would agree, and certainly the LNP believes, that persons found guilty of child pornography offences should not be afforded this 'last resort' standard. The proposed section 9(6B) sets out the factors a court should have regard to in addition to the matters outlined in section 9(2).

Finally, I note a number of other changes to legislation that further clarifies the law in relation to other acts, including the Bail Act. The LNP believes that every person has a right to feel safe in the community. We pride ourselves on being tough on crime. We are committed to ensuring our law enforcement agencies are equipped with the intelligence, resources and support to fight against crime. If we are to succeed in stamping out crime, it is essential that we give the police and the courts the means by which they can catch and prosecute criminals for the benefit of the community. This legislation will help achieve this. I commend the bill.