Speech by

Dr Alex Douglas

MEMBER FOR GAVEN

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PENALTIES AND SENTENCES (SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

Dr DOUGLAS (Gaven—LNP) (3.20 pm): Rather than ask why in 2010 it is now appropriate to introduce a Sentencing Advisory Council, as was originally proposed by the LNP in 2005 and rejected by Labor, the rational question might now be this: what has Labor done to our judicial system that even it realised its own ideological and policy failures? The answer to that question can be found in the legislation in the last 10 months, ending with the virtual admission of judicial failure in lesser courts with the appointment of judicial registrars, and in higher courts with the Attorney-General appealing manifestly inappropriate sentences from judicial officers whose appointment and skills base are questionable. The second part of the bill completes that admission of failure and I will go into close detail to explain those reasons.

Labor knows that it is not only seen as being weak on law and order in policy terms, but it is actually seeing the consequences of poor appointments to the judiciary, soft laws and a lack of commitment to punish offenders. This decision to embrace a modified version of sentencing councils obviously was thought by Labor to be the thing to do when you want to look as though you are tough on crime but do not really intend to deliver on anything. Certainly, if the most recent decision made in the case of a serious sex offender is to be taken as some kind of guide, then this sentencing council will have its work cut out for it. If Labor's poor record is to be considered any guide, then not much is really going to happen.

With regard to the sentencing council section of the bill, like all members I am very confused by what the Labor Attorney-General in Queensland is doing. If this is not a double backflip with pike, then I missed something. There are two former Attorneys-General in the current parliament who both spoke on the prior bill, as did the current Minister for Education, who is also a man who holds his legal qualifications close to his heart. In September 2005, the member for Murrumba said—

This parliament actually determines the sentences that are to be imposed for different categories of offences.

And—

It would not serve the interests of justice.

The member for Toowoomba North, who at the time was the Attorney-General, said that the establishment of 'a sentencing advisory council could seriously compromise the discretionary powers of the judiciary' and that, critically, since this bill is directed at the Court of Appeal being given direction and its proposed function to give those courts of appeal its views in relation to sentencing guidelines and principles—

This could be interpreted as an attempt to instruct the courts on what the council considers to be the public's expectations of sentencing, placing the courts under moral pressure to at least partly assimilate the council's views into their practice.

But his final words seem in total contradiction to the bill today. He criticised the member for Surfers Paradise, now the Leader of the Opposition, and I have the speech here. He was stating that in all instances judges should follow the community views in regard to these serious offences. The member for Toowoomba North, who was then the Attorney-General, said—

... judges are sworn to do justice according to law, and that is not necessarily always in line with the views of the community.

At this point, I would like to take the former Attorney-General back to his speech on 29 September 2005. I refer to his speech and his quoting of Sir Anthony Mason, where he alluded to the fact that the views of a statutory body—such as a sentencing council—could undermine the process of courts using their discretionary powers to measure an offence taking into account the circumstances in which it was committed. He quoted Sir Anthony Mason as saying—

Legislatures, in generally leaving courts with that discretion, have recognised that like offences, by reason of differing circumstances in which they are or may be committed, may merit differential treatment by the courts simply because the different circumstances may reveal varying degrees of moral responsibility or blameworthiness.

Interestingly, what the Attorney-General did not include after that was the words that were included in every piece of literature subsequently published by Sir Anthony Mason. He said in his book *The courts and public opinion*, which was republished in 2007, that 'judges cannot dismiss public opinion as having no relevance in the work of the courts'. To paraphrase his detailed argument, to do less than this is to undermine public confidence in the administration of justice.

Interestingly enough, the current education minister also spoke on this sentencing principle. He said—

The sentencing principles reflect and respect the fundamental constitutional principle of the separation of powers—the executive from the legislature and the judiciary.

Honourable members like me might look to see what is the difference between the bill introduced by Mr McArdle, the member for Caloundra, in 2005 and the bill we are debating today regarding sentencing councils. We have had five years of delay and five years of embracing this principle alone because then Premier Beattie stated it to be 'unnecessary and fundamentally flawed'. The current Attorney-General, the member for Greenslopes, said that the Sentencing Advisory Council will help bridge any gap between the community expectation, the courts and the government on the issue of sentencing in the criminal justice system.

Who is right? The former Premier or the current Attorney-General? The answer is neither because the former killed it off, despite the Labor government in New South Wales and Victoria introducing the same sentencing councils in 2003 and 2004 respectively, but in Queensland—because the Premier was either too slow or just too embarrassed that the opposition showed such determination, imagination and initiative in putting the private member's bill forward—Labor killed it off.

Now the Attorney-General has introduced it again five years too late after the horse has bolted and we have all sorts of crazy sentencing going on. We have near community revolt over largely hopelessly inadequate sentences for major sex crimes mainly committed on children. The Attorney-General says that his stewardship of the criminal justice system 'plays an important role in creating a safe community for all Queenslanders'. Furthermore, the Attorney-General seems completely oblivious to the utter mess going on, because he concluded his second reading speech with these words—

This bill continues the Bligh government's commitment to the ongoing modernisation and reform of Queensland's legal system.

Someone needs to turn the lights on here for these reasons: one, all of the former Attorneys-General and the former Premier do not think that it is reform; two, the education minister thinks it breaches the separation of powers; three, New South Wales and Victoria did it seven years ago, so does that mean Queensland is seven years behind the southern states in a kind of fixed time warp; and, critically, four, why did Queenslanders have to be treated less safely than any of those Australian citizens for five years? Does one person's ego and a state border mean so much?

This is an embarrassment to Labor here in Queensland. The Attorney-General should have just walked in and said, 'We got it wrong.' Bob Debus, the former Attorney-General in New South Wales—a Labor man to his bootstraps—said on introducing the sentencing council legislation in New South Wales that it would be 'an invaluable opportunity for the wider community to make a major contribution to the development of sentencing law and practice in New South Wales'. He was not wrong then. Suddenly, because the Attorney-General and Queensland Labor found it too hot in the kitchen in regard to this issue of law and order or they found a spine, voila we have a sentencing council and the public will have some input into the process.

What they have subsequently done is to be politically correct and have possibly made it totally unworkable. We have a situation where they involve absolutely everyone including victims of crime—who are certainly major parts of this—Indigenous and vulnerable people, civil liberties councils, juvenile jurists, criminologists, prosecutors, defenders, family and domestic violence experts, and a variety of other people. It will allegedly advise, inform, research and educate on sentencing issues. These, too, are fine aspirational goals. Trying to reach a consensus with all these people certainly tries to reach out to them all, but remember that we have to try to get a result on a very difficult problem.

I look back and think Premier Beattie spent a good deal of his political life apologising constantly for his ability to make errors and pleading to the community for forgiveness. The public, who are generally very charitable, constantly did so until it reached what was basically a use-by date. This current Labor left-wing government does not bother with any apologies. As all true socialists do, Labor says, 'Comrades, this

is year zero. Everything that went before did not really happen. We are the centre of the universe, aka the Smart State. The Premier is God,' but she's an atheist, 'and all recorded history of the past is wrong because Bligh Labor says so.' Please, Mr Attorney-General, if you truly aspire to be Premier, get rid of this nonsense, and get out and say it like it is. A sentencing council is sensible. It was sensible in 2005. Labor must apologise for putting mainly our children in harm's way. At the time Labor were basically too busy trying to win elections and work out who was going to get the best job and the pay rise to go with it.

This response of Labor is really all about backflipping in the face of community—read 'public'—anger, and the evidence is all too clear from key former government members and now a key cabinet minister in the Bligh Labor government. Either they do not have the heart now or they were too loose with the truth in their beliefs in 2005. If this bill is about Labor gaining redemption via a kind of collective salvation, it is very much mistaken. Salvation is not something that is always recognised immediately. For some, it is the end. For others, the end is the beginning. For most, it is somewhere along life's path. Life is lived through both discovery and chance. For very few, it is by meticulous design. Sure, there are choices that can lead nowhere and some to a very nasty place.

Labor in Queensland just cannot find salvation. Nearly everything goes wrong and the will seems to be failing, too. Do you know why? Because they cut loose with the truth and they will not confront it when they find it staring them in their face. I would have thought the Attorney-General might see this bill as a seminal moment where he drew a line in the sand that separates him from the former mob and many of the current bunch of losers, but humility was not something he wanted to demonstrate on this bill.

Mr Shine: You're the ones in opposition.

Dr Douglas: As former Attorney-General, a lot of this has to do with you.

Mr DEPUTY SPEAKER (Mr O'Brien): Order! The member will direct his comments through the chair.

Dr DOUGLAS: I think there is a denial of reality and a verbal equivalent of a 180-degree turn performed.

The second part of the bill has an aim of strengthening the penalties imposed upon repeat offenders who commit sex offences against children and offenders who are violent to young children or who cause the death of a young child. The Attorney-General has gone to some lengths to explain the government's intention by adopting existing common law sentencing principles in statute law. He details that it provides a clear meaning and a message to courts and offenders.

His stated intentions are to give the community greater certainty and confidence in the principles courts must apply in sentencing offenders. Like the Attorney-General, I will discuss both points but from a slightly different point of view. I have been greatly concerned by ongoing statements by government members, the Attorney-General and ministers using confusing terms when the LNP legitimately raises these matters. I have raised the issue of Sir Anthony Mason's statements. Garfield Barwick has also stated that he has reinforced the view that the Commonwealth, when reviewing criminal matters in the state, must only in extreme circumstances override those product judgements of state legislation placed into law. Mr Justice Michael McHugh in the case of Markarian v The Queen in the High Court of Australia noted that judges who might consistently impose sentences that are too lenient or severe 'risk undermining public confidence in the administration of justice and invite legislative interference in the exercise of judicial discretion'. What the LNP has been raising is exactly that from our highest courts of Australia.

Sir Gerard Brennan goes further. He stated that the Attorney-General is the guardian of the administration of justice. He is not the guardian of public interest. There is a difference and it is stated very clearly. What he must do when challenged is go to the tribunal. That is the point to which he may refer by clearly stating that he is not the guardian of the parliamentary interest or the public interest in the parliament. What that means is that the parliament is directed to respond to community concerns by providing such careful directions to our courts to assist our citizens. Courts do not exist in a vacuum away from communities, and our highest courts support that view.

In specific terms, the first principle is about truth in sentencing, Labor style. I say this because this is about ensuring that a child sex offender does serve a prison term in a corrective services facility. The minister has retained the right of the judiciary to have discretionary sentencing. This debate is not about that right. What the minister has gone to great lengths to discuss is the issue of exceptional—and what he described as extraordinary—circumstances that either mitigate prison sentences or vary them in some way. This is ill defined. Certainly the exceptional circumstances rule has failed in other jurisdictions. In Victoria the proportion of serious criminals on suspended sentences has increased from 21.4 per cent in 2005 to 25.8 per cent over the subsequent four years. In New South Wales the same result has occurred. I must ask: why are we allowing ourselves to fall into the trap of repeating a failed strategy of other states without building upon it? These Queensland changes are no different from other states' jurisdictions.

The Attorney-General has given a very rare example of a matter that rarely comes to court. He is possibly correct when he says that young people do engage in consensual relationships where the female, whilst compliant, is under the age of consent. This has occurred in the past, and I can speak about a case

on the Gold Coast of a couple who are now married and are grandparents who 40 years ago were taken through the court process. It would seem entirely reasonable, for this is a reasonable area for the exceptional circumstances rule. It is hard to believe that there are any other applicable circumstances. In my 30 years as a doctor—22 years as a GP and 20 years in Corrective Services as a medical officer—I cannot honestly find any other applicable examples. If the minister honestly believes that he knows of other examples, could he please list them, discuss them and explain why they must be included to allow for the significant diminution in the capacity of this legal change to have teeth? Do not confuse the arguments, Minister. The question I am asking you directly is not about New South Wales, Victorian or Queensland sentencing councils; it is about exceptional circumstances—

Mr DEPUTY SPEAKER: Order! Member for Gaven, you cannot ask the minister a direct question. I have already asked you to refer your comments through the chair. I now ask you to do so a second time.

Dr DOUGLAS: Through the chair, I would ask the minister to address the issue of the exceptional circumstances and to list what those examples might be and why we need to have this included in the bill. I would be very keen to hear a response on it. I am asking you critically about this part of the bill because I believe the bill will pass. I say so because the second principle of this part of the bill is really a path towards the parallel path of truth in sentencing. This is what both the community and offenders want to know. Primarily beyond the 80 per cent serving time of a custodial sentence, the court under this change takes into account the age of the child as an aggravating factor when determining whether a serious violent offender declaration must be made. What worries me and many members here is that currently only 44 per cent of serious sex offenders spend less than three years in prison. Like everything in life, the proof of the pudding is in the eating.

This is not an area that has any joy for anyone. A prison sentence for an offender can for the families involved and the children offended upon never really be enough to redress the harm to the victim. Irrespective of any opposing argument from the current Bligh Labor government, we have to have a situation where the rightfulness of community interests is represented in the courts and the judgements of them. This is only sensible in a democracy.

The Sentencing Advisory Council reflects this and should have been put in place five years ago, but a vacillating, incompetent government dithered. Do not think we were fooled then and we certainly will not be fooled again. A large number of these offenders are recidivists. Sex offences against children are heinous crimes that members must not see as a challenge but as a threat to us all. We are all responsible to take serious action.

(Time expired)