Speech by

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MEMBER FOR GLASS HOUSE

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PENALTIES AND SENTENCES (SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

Mr POWELL (Glass House—LNP) (2.57 pm): I rise to speak on this pertinent debate on the Penalties and Sentences (Sentencing Advisory Council) Amendment Bill. The House needs little reminder of the importance of this debate with reference to the community's concerns for child protection and welfare. It is also important to consider the relevant legal principles of treating like cases alike and the adjustment of judicial discretion in the terms of the cases mentioned in the bill as well as in relation to repeat offending and recidivism.

There is certainly a need for a Sentencing Advisory Council, as outlined by the Attorney-General, to not only bring Queensland into line with other states such as New South Wales and Victoria but, most importantly, to work towards a more consistent, unified and community based sentencing regime. The problem is that the Attorney-General seems to think this is something new for Queensland and that the Bligh Labor government is at the vanguard of responding to community calls for strengthening criminal sentencing—that they are the innovators. Well, if the Attorney-General was writing a university paper he would be up on charges of plagiarism. What we are debating now is not new. The LNP previously introduced this bill in 2005 and the Labor government defeated it, claiming that the member for Caloundra's proposal would create a new and expensive body to do the job of the courts and parliament. So what we have here is a pathetic state version of Kevin Rudd's 'me too-ism'—Labor playing 'follow the leader' because it does not want to go into an election having to admit that the LNP has policies, let alone better policies than they do.

Turning to the legislation, there is little debate that at present there seems to be a lack of a single principle regarding criminal sentencing in general. There are many factors, in relation to both the victim and the offender as well as others, that a single trial judge has to consider when delivering a sentence. Having a wide variety of factors to consider, which more often than not compete with one another, will invariably lead to the occurrence of more errors in sentencing such as errors regarding proportion. So by sharing the burden with the community it would follow that the probability of errors would decrease, allowing sentencing to be more accurate and allowing judges more time and more resources to allocate to other factors in providing justice to both the victim and the offender in the case before them.

With the implementation of the Sentencing Advisory Council will come, over time as sentencing guidelines are made, the development of a large body of guidelines that will reflect community standards and supplement current practices in criminal sentencing. From the explanatory notes it was made clear that the intention was not to erode judicial discretion but to incorporate community involvement. This cannot be stressed enough to those who are concerned that this is done to curtail the discretionary powers of the trial judge. Community involvement in the sentencing process can only be a positive, as it extends the forum of criminal sentencing from being almost exclusively the courts to relevant extra legal fields, because after all crime is not only a legal issue; it is a social one as well.

Turning to the issue regarding the exceptional circumstances provision, I echo the calls of the shadow Attorney-General, the member for Kawana and others on this side that as it stands it needs to be removed from the bill. Presumably this provision was inserted to narrow the circumstances in which a

lenient sentence would be given. However, this gives the judiciary the discretion to decide what exceptional circumstances can be considered, which defeats the mandatory nature of the rest of the amendments that are designed specifically to protect the most vulnerable demographic in the community. The experience in New South Wales has indicated that the narrow caveat created by the exceptional circumstances provision has failed to delineate the boundaries of sentencing practice and, therefore, has failed to extend the net to cover a wider situation in which lenient sentences would be excluded.

Also in the first reading the Attorney-General mentioned that, while it is difficult, if not impossible, to envisage circumstances in which a violent sexual offender might satisfy such a provision and in doing so not be sentenced to an actual term of imprisonment, some offences may be caught by this provision which involve circumstances that warrant further careful consideration. If this is, in fact, the case, why include the provision? It is unnecessary. The example given by the Attorney-General can be better remedied by inserting a provision in the Criminal Code dealing with such behaviour as it relates to a criminal act, not a sentence. Also, it would be extremely inefficient if such conduct were prosecuted only to have it excluded by the exceptional circumstances provision. Therefore, in this sense the government has two alternatives: either that situations comparable to the ones in the example given by the Attorney-General be dealt with in terms of being offences in the Criminal Code or that such conduct will not be made exempt under the new penalties legislation.

I now address the issue of repeat offenders in the bill. In the first reading, the Attorney-General spoke of how relevant priors must be an aggravating factor in determining a sentence. Section 11(a) of the current Penalties and Sentences Act already outlines that relevant priors are a consideration in sentencing and that they may form a basis for the aggravation of a sentence. How would these new provisions treating relevant priors as considerations differ or improve what is already outlined in section 11(a)? Surely relevant priors are already treated as aggravating factors. It is difficult to formulate a circumstance where a trial judge would form the view that relevant priors would not be an aggravating factor. In the explanatory notes it was said that the purpose of the provisions regarding repeat offenders was to bring Queensland in line with the decision in Veen (No. 2). However, from a reading of section 11 of the current Penalties and Sentences Act, that is already the case.

Furthermore, the provisions regarding repeat offenders seem to have not only punishment but also deterrence at the forefront, both specific deterrence in relation to the repeat offender or recidivist in particular and general deterrence to the community at large. However, the concept of deterrence relies on the assumption that the repeat offender or recidivist and the broader community make rational choices in relation to why they should or should not offend in terms of the sentence that they have previously received. I submit that this premise may be somewhat misleading, because motivation and deterrence do not necessarily depend on the previous sentences.

I turn to a paper published in 2007 by the Australian Institute of Criminology, titled *Recidivism in Australia: findings and future research* by Jason Payne. At page 86 of the paper, Payne and others outline factors that are relevant to reoffending, which are unemployment, education and schooling, residential location, family attachment, mental health and drug use. Therefore, it would be more accurate to say that the main motivations of most repeat offenders have their origins in those factors regarding social disadvantage and mental health rather than previous sentencing. Therefore, I submit and remind the government that the goal in terms of recidivism should not be solely confined to treating recidivists with heavier sentences that achieve the goal of punishment but also to more directly address the circumstances that put offenders at risk of repeating an offence by allocating resources and the work of this House accordingly.

Finally, I bring the attention of the House to issues raised by Mr Terry O'Gorman, the Vice-President of the Queensland Council for Civil Liberties, in an article in the *Brisbane Times* dated 8 February 2010. Mr O'Gorman made relevant points regarding the composition of the council, especially the inclusion of certain advocacy groups. From the article it was clear that the concern was based on the notion that such an advisory council will be infiltrated by advocacy groups that would colour the relevant considerations in guideline judgement with their bias and agenda, and thus lead to unprincipled reasoning and expose the sentencing process to errors in proportion. This unease is alarming given that, if Mr O'Gorman's concerns do become a reality, it would undermine the legitimacy of the sentencing process. That would be contrary to the actual goal of such a sentencing advisory committee, which Chief Justice Spigelman of the Supreme Court of New South Wales in R v Jurisic said was to restore public confidence in criminal sentencing. Furthermore, at the very core of a civil society lies the existence of an objective and independent court system, and we cannot afford to undermine that cornerstone of democracy.