Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Tuesday, 3 August 2010

PENALTIES AND SENTENCES (SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.49 pm): I present a bill for an act to amend the Penalties and Sentences Act 1992 to establish a Sentencing Advisory Council, to provide for the making of guideline judgements by the Court of Appeal, and for other particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010 [2661].
Tabled paper: Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010, explanatory notes [2662].

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.49 pm): I move—

That the bill be now read a second time.

The criminal justice system plays an important role in creating a safe community for all Queenslanders. Central to our criminal justice system must be a strong and fair sentencing regime. This bill introduces significant initiatives to strengthen criminal justice sentencing in Queensland, ensuring that it provides greater clarity, greater transparency and a more robust foundation upon which our courts can undertake the sometimes difficult and complex task of sentencing offenders. This bill seeks to enhance public knowledge and understanding of sentencing matters; to fortify community confidence in the sentencing process; and to strengthen the penalties imposed upon repeat offenders, persons who commit sexual offences against children and offenders who harm young children through the use of violence.

The Queensland Penalties and Sentences Act 1992 provides the framework for the courts when sentencing adults in Queensland. The act sets out not only the broader purposes which sentencing is intended to achieve but also the detailed structure and rules concerning the sentencing of different offenders. This bill amends the Penalties and Sentences Act 1992. The amendments are best understood in two parts, but parts that form a continuum of reforms to the sentencing regime in the state aimed at improving the clarity and transparency of our sentencing processes.

The first part of the amendments creates a Sentencing Advisory Council for Queensland that will help to bridge any gap between community expectation, the courts and government on the issue of sentencing in the criminal justice system. The Queensland Sentencing Advisory Council will seek to further

promote consistency in sentencing; to stimulate balanced public debate on sentencing issues; and to incorporate informed community opinion into the sentencing process, thereby enhancing confidence in Queensland's sentencing regime. The Sentencing Advisory Council will achieve these objectives through its functions of advising, informing, researching and educating on sentencing issues. In performing its functions, it is anticipated that the Queensland council will consult widely, including with the judiciary, the legal profession, government agencies and the community.

The composition of this new body will ensure a broad range of membership, including community representation. It will recognise the impact of sentencing options on Aboriginal and Torres Strait Islander people in Queensland and vulnerable persons facing the criminal justice system. The members will have expertise or experience in the areas, for example, of victims of crime, justice matters relating to Indigenous people and vulnerable persons facing the criminal justice system, justice matters relating to domestic and family violence, law enforcement, crime prevention, criminal prosecution and criminal defence representation, civil liberties, corrective services, juvenile justice matters, and criminology and criminal law, including sentencing.

One of the functions of the Sentencing Advisory Council will be to state its views to the Queensland Court of Appeal when the court is considering giving or reviewing guideline judgements. This offers an important new mechanism by which properly gauged and informed public opinion can inform our state's sentencing system. The bill confers jurisdiction on the Queensland Court of Appeal to give or review guideline judgements. A guideline judgement is a means by which the Court of Appeal can give guidance to sentencing courts, thereby supporting a consistency of approach to sentencing and enhancing public confidence in the integrity of Queensland's sentencing regime.

The second part of this reform bill aims to strengthen the penalties imposed upon repeat offenders, those who commit sexual offences against children, and offenders who are violent to young children or who cause the death of a young child. Two judicial sentencing principles currently applied by the Queensland courts will be inserted into the Penalties and Sentences Act. There is significant utility in adopting existing common law sentencing principles into statute, primarily to place beyond all doubt the intent of the parliament that courts must adopt and apply such principles in all appropriate cases. By enshrining these principles in statute law, the parliament is sending a clear message to the courts and to offenders as to the expectations of the community in this regard while also giving the community greater certainty and confidence as to the principles courts must apply in sentencing offenders.

The first principle complements the existing legislative measures aimed at protecting the most vulnerable members of our community from sexual abuse. The bill provides that an offender convicted of an offence of a sexual nature committed in relation to a child must serve an actual term of imprisonment unless there are exceptional circumstances in the case. Sexual offences against children are some of the most disturbing criminal offences in our community, and enshrining this principle into law will ensure that the imposition of an actual jail term is required when sentencing an offender under the Penalties and Sentences Act for any offence of a sexual nature committed in relation to a child under 16 years. Judicial discretion is retained, but it will only be where it can be demonstrated that the most extraordinary circumstances exist that an offender may be sentenced to anything other than an actual term of imprisonment. The term 'actual term of imprisonment' is defined in the bill to mean a term of imprisonment served wholly or partly in a corrective services facility.

The inclusion of the exceptional circumstances provision is important. 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, there may be some offences that will be caught by this provision which involve circumstances that warrant further careful consideration. For example, where a 17-year-old and 15-year-old were in a consensual relationship, it might seem unjust that one of them be imprisoned for conduct in the course of the relationship that raised no other inference of criminality but for the fact of their respective ages. These are not easy cases, and nor are they cases in which the appropriate sentence in each case will be non-custodial. As such, the law must be capable of providing a just and appropriate sentence based upon all the facts in a case, most notably where those facts are unusual and differ from more straightforward examples. As a general principle, the strength of our legal system must be measured not only by its capacity to imprison those who transgress the law but also by whether it is sufficiently robust and fair so as to guard against injustice that might be visited upon the few.

The second principle reflects the community expectation that repeat offenders should be punished with reference to their previous convictions and reinforces the government's and the community's denunciation of recidivists who continue to disobey the law. The bill ensures that, when sentencing a repeat offender, the court must treat previous relevant convictions as an aggravating factor in determining the appropriate sentence. The result of this amendment is that the court will increase the penalty to be given to the offender within the established common law sentencing range for that conduct. The penalty must, however, still be proportionate to the gravity of the current offence.

Finally, the bill makes an important amendment to the serious violent offence provisions of the Penalties and Sentences Act. Currently, an offender convicted of a serious violent offence must serve 80 per cent of their sentence before being eligible to apply for parole release. The bill provides that, in the case of an offender convicted of an offence of violence committed against a young child or an offence that caused the death of a young child, the court must treat the age of the child as an aggravating factor when determining whether a serious violent offender declaration should be made. The amendment will strengthen the penalties imposed on such offenders and will ensure that genuine regard is had to the special vulnerability of these young victims. This bill continues the Bligh government's commitment to the ongoing modernisation and reform of Queensland's legal system. I commend the bill to the House.