Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

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CRIMINAL CODE (SERIOUS ASSAULTS ON POLICE AND PARTICULAR OTHER PERSONS) AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (7.41 pm): I rise in the House tonight to oppose the Criminal Code (Serious Assaults on Police and Particular Other Persons) Amendment Bill 2010, introduced by the member for Southern Downs as a private member's bill on 24 February 2010. I advise the House from the outset that the government will oppose this bill.

The bill proposes amendments to section 340 of the Criminal Code, which contains the existing offence of serious assault. The bill aims to introduce mandatory minimum sentences of three months imprisonment for people convicted of seriously assaulting police or certain public officers where the offence involves actual bodily harm or biting, spitting, or throwing bodily fluids or faeces. The mandatory minimum penalty will only apply when the assault is committed against a police officer, or an ambulance, fire and rescue or rural fire officer. The explanatory notes do not explain why assaults on these officers and not other front-line public officers—for example, corrective service officers, state emergency workers, transport inspectors, nurses in our state's hospitals, teachers in state schools or child safety officers—have been captured.

This is an artificial and false distinction and is insulting to those other officers who may be in jeopardy in their work each and every day. It shows just how politically motivated this bill is. I would like to see how the member for Southern Downs explains why this particular legislative measure should not cover the 1,200 new clinical health staff provided for in this year's budget or the 316 new teachers and teacher aides this government has provided this year or the 35 new child safety officers. It is an artificial and false distinction that does not seek to properly protect public sector workers as does the current section in the Criminal Code, which has been strengthened by the Labor government.

The bill specifically provides that the three-month minimum term cannot be suspended in whole or in part. At first blush it appears that offenders will be required to serve at least three months in actual custody. However, it should be noted that this will not be achieved because the provisions do not preclude the court from making an intensive corrections order which requires the offender to serve their term of imprisonment within the community, or from fixing an immediate parole release date. Again, another example of the best funded opposition in the history of Queensland delivering yet another lazy drafting effort that does not even achieve the purposes of the bill.

The government takes assaults on police and public officers seriously. I want to make that very clear. Under section 340 of the Criminal Code, behaviour which would otherwise constitute a common assault is deemed to be a serious assault in certain circumstances. For example, a person who assaults, resists or wilfully obstructs a police officer while acting in the execution of the officer's duty is guilty of the offence. In 2006 the code was amended by Labor to include situations where the person bites, spits or throws bodily fluid or faeces at a police officer.

Further, in 2008, the Bligh government introduced the Criminal Code and Other Acts Amendment Act, which amended the offence to confirm that assaults on public officers constitute a serious assault

punishable by seven years imprisonment. Also, the Queensland Court of Appeal decision in R v King demonstrates the court's serious approach to assaults on police, particularly those involving spitting. In the decision of the court, the Chief Justice, with whom Justice Keane agreed, stated that those people who spit on police officers should ordinarily expect to be imprisoned, meaning actual imprisonment.

This week I have introduced into the parliament the Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010. The bill establishes Queensland's Sentencing Advisory Council. The creation of this council is intended to promote consistency in sentencing and stimulate balanced public debate on sentencing issues.

The government opposes this private member's bill. This is because, in addition to the bill's other shortcomings which are manifest, the government does not support mandatory minimum sentences. Firstly, the inclusion of mandatory minimum sentences violates fundamental principles of sentencing including that punishment should be appropriate to the circumstances and to the nature of the crime. Judicial discretion is an important part of the judicial system. For example, a young offender may commit an offence at the low end of the range, is genuinely remorseful, may plead guilty at the earliest opportunity, may be a first-time offender and may be an ideal candidate for a community based order. A repeat offender who commits a serious assault may refuse to cooperate with authorities and insist on a trial. Whilst under the present system the court would acknowledge these differences when considering the appropriate sentence, the proposed bill would require both offenders to serve at least three months in custody. How can that be just?

Secondly, research, as well as the experience of other jurisdictions, indicates that mandatory minimum sentences—and this is critical—offers little in the way of deterrence. Even a cursory examination of evidence and research in this area would have demonstrated that to members of the LNP, but they do not want to be dissuaded from the base political motives underlying this bill. I will go to more of that hypocrisy shortly.

A report by the Victorian Sentencing Advisory Council observes that sentencing schemes based on concepts of deterrence presuppose that would-be offenders weigh up the costs and benefits of criminal conduct before acting. However, serious assaults on Queensland police and other front-line officers, by their very nature, would generally occur impulsively, in the heat of the moment—in some cases as a result of alcohol or drug consumption—and would not be premeditated. The findings of the Victorian Sentencing Advisory Council are worth repeating. Noting that the aim of mandatory sentencing regimes are deterrence and a reduced crime rate, the council concludes—

Ultimately, current research in this area indicates that there is a very low likelihood that a mandatory sentencing regime will deliver on its aims.

Thirdly, the implementation of mandatory minimum sentencing can interfere with the existing hierarchy of sanctions. For example, this bill will increase the severity of sanctions for certain serious assaults on police and prescribed public officers while not adopting the same approach to offences involving other abhorrent conduct. In addition, mandatory sentencing schemes disregard the important role of the court. Such schemes can lead to a 'redistribution of power' from the open and transparent decisions of the judiciary to pre-trial decisions of prosecuting authorities.

This is demonstrated by one case in Western Australia where there is mandatory minimum sentencing for certain serious assaults. One of the first people charged under the new laws was a 22-year-old woman with mental health issues. The charge was downgraded on the basis that the injury inflicted—a cut to the nose—was not substantial bodily harm, even though the legislation does not provide that the bodily harm must be substantial. This shows the steps authorities will go to, including those prosecuting matters, to circumvent harsh and oppressive laws. We do not need a justice system that punishes people with mental illness; people who carry out criminal offences sometimes for the first or second time and put them in jail for criminal offences that might be related to their mental illness. I quote again from the work undertaken by the Victorian Sentencing Advisory Council on this issue, where they concluded—

There is ... ample evidence that suggests that mandatory sentencing can and will be circumvented by lawyers, judges and juries both by accepted mechanisms (such as plea bargaining) and by less visible means.

I note that during the recent parliamentary debate, very interestingly, on the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009, members of parliament—including opposition members such as the member for Southern Downs, the member for Currumbin, and the member for Glass House—acknowledged that mandatory sentences can have a disproportionate impact. Surely, if they have some semblance of credibility and consistency and integrity in what they believe when they come into this House, the same reasoning should apply to any mandatory sentencing regime, as there will always be cases where the impact of the sentence will be disproportionate and unjust.

This bill is a cynical attempt to exploit community concerns in an effort to convince the electorate that crime is out of control and harsher measures are warranted to stop criminal behaviour, yet the facts do not back this up. I do not have psychic powers, but I know what I will hear in this debate—the same consistent sloganeering we hear from the LNP every time we discuss a matter relevant to the criminal

justice system. It will be the same sloganeering that substitutes for sound public policy. We know there is no evidence base for this bill, but we will hear the same slogans time and time again. What will they be? Labor is soft on crime. Labor sentencing laws are weak. We will hear all of those things. But what does the evidence tell us about that? Let us look at police resources first of all. When the National Party was last in power, what was the police to population ratio? One police officer for every 507 people. What is it now under Labor? One police officer for every 427 Queenslanders. Over a 12-year period, when the population of Queensland has led the nation in its growth, we have gone ahead of the nation. We have continued to increase police numbers. When the Nationals were last in power, we had 6,833 police officers. What is the number in 2010? We have 10,400 police officers and rising. That is almost 4,000 more police officers under Labor.

What is the core basis of any criminal justice policy? It is to protect the Queensland community and to make it safer. What does the evidence show? During the history of this Labor government, crime rates have fallen in Queensland. During the period of power of the Labor government, crime has reduced by 21.5 per cent, notwithstanding the fact that our population has grown above the national average and has grown significantly in that period. The crime rate has dropped by over 20 per cent since Labor came to power. Property offences are down, offences against the person are down, clearance rates are up. More people are being caught because of the funding and the support that the Labor government gives to our Police Service. We have more funding, better services and a safer community.

What do we hear from LNP members? They talk about Labor being soft on crime. What happened when it came to organised criminal activity in this state? What did we hear from the LNP members then? They were cowards when it came to attacking the most serious, hardened group of criminals in the state. These are silent, closed criminal organisations that perpetrate very serious criminal offences against the community. What did we hear from LNP members? Nothing. In fact, we heard again complete hypocrisy. We had members who spoke in favour of their own legislative measures to crack down on organised crime on one occasion and then they came back here last year and spoke and voted against those measures. You could hang your coat on the hypocrisy in the air when it comes to the LNP and law enforcement, and the community knows it. We now have Malcolm Cole—a candidate in the federal election endorsed by the LNP who was supporting the organised motorcycle gangs, who was their mouthpiece in the community, who was acting as their PR representative. That is the sort of hypocrisy we get day in, day out from the LNP on crime and law and order. No-one believes them.

What about sentencing trends? What about what courts do in the Queensland criminal justice system? We have the third highest imprisonment rate in the nation for serious offending—that is, offending in the District and Supreme courts. Only New South Wales and the Northern Territory have a higher imprisonment rate per head of population than Queensland. One statistic we will not hear from those opposite is that there are about a million more people living in Victoria than in Queensland but there are about a thousand more people in Queensland jails. Queensland courts send criminals to jail but they send them to jail in a fair and just system, not one where the politicians make decisions about what a criminal sentence should be. That is what we are hearing from the LNP—that it is politicians who should set the tariff, it is politicians who should set the penalty.

Mr Springborg interjected.

Mr DICK: The ignorance of the member for Southern Downs knows no depth, it knows no bound. It is extraordinary that someone who holds himself out to be the alternative Attorney-General of Queensland demonstrates such arrogant ignorance and nonsense every time he opens his mouth about the criminal justice system. You would think he would take some advice, you would think he would do some research, you would think he would take some steps to improve his own knowledge and understanding of such matters that are of such critical importance to our state. Why? Because it is about keeping Queensland safe. We hear nothing from the shadow minister on that. It is all about the headline, it is all about the news grab, it is all about transitory political advantage and nothing about substance and commitment.

We do not deny there are issues facing our community, nor does this government deny that criminal activity continues to present a challenge, but we are simply misinforming the public if we bark and bemoan the illusion that criminal activity is on the rise. It is not; it is down and it will continue to stay down under Labor governments. The other thing about mandatory sentencing is that it has a disproportionate effect on first-time offenders and young people in the criminal justice system. If there is anything that our criminal justice system should do, it should keep people out of the system if at all possible. We do not want young people who come in contact with the criminal justice system to ever come back to our courts, nor do we want first-time offenders to ever come back to our courts.

Mandatory sentencing can have a devastating effect on people and their families. That is why the inconsistencies in the arguments of members opposite in the debate we had some weeks ago on the new spousal defence in the Criminal Code in relation to unlawful killing and also yesterday in the debate on the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010 are so marked. A strong, safe and fair justice system is one of the hallmarks of our modern democracy, but the concerns raised by

members opposite yesterday illustrate why mandatory sentencing as a policy is flawed. Members opposite cannot hold a position for 24 hours. In relation to the need for adequate legal aid funding, the member for Southern Downs said—

> That can actually have the effect of forcing people to plead guilty to something when they arguably might not be guilty of that particular offence.

Yet under his proposal such a person would face a mandatory jail term of three months.

The government does not believe in mandatory sentencing. In fact, we believe judicial officers should retain discretion to impose an appropriate sentence based on all the facts. This does not mean, however, that we will not pursue with vigour those people who break the law and those people who should be punished in the Queensland community.

Together with the Premier earlier this week, I announced proposed changes to the Penalties and Sentences Act which will enshrine in legislation the sentencing principles enunciated not by parliaments and not by politicians seeking momentary political advantage—which the member for Southern Downs always seeks to do on every issue—but by the Court of Appeal. We seek to enshrine them in legislation. The Court of Appeal has said for 14 years that people who indecently deal with children or otherwise sexually offend against children should spend actual time in prison. Unlike the LNP, we have thought long and hard about this. We have drafted a bill that reflects our intention, unlike the members opposite who fail to even capture what they are seeking to do in their own legislation. They have failed and drafted poor legislation.

The provision before the parliament in our bill says that, unless exceptional circumstances exist, a person who commits an offence against a child should serve an actual period of imprisonment. What do we hear from the member for Southern Downs who introduced this bill? That exceptional circumstances are a 'get out of jail card'. What does he have in his own bill? Exceptional circumstances for young people. What a hypocrite. It is the most arrant form of nonsense one has ever heard.

Mr DEPUTY SPEAKER (Mr Ryan): Order! That is unparliamentary.

Mr DICK: I withdraw my comment, but the comments of the member for Southern Downs speak for themselves. He is still out there trawling for the leadership. He was out there trawling for two weeks when his leader was missing in action overseas. Quite rightly, no-one actually missed his leader, no-one even knew that he was out of the jurisdiction, no-one even knew that he had left the state. The member for Southern Downs is out there slavering to obtain the leadership so he can have his chance again. He will do anything to get that, including perverting and distorting our criminal justice system for his own ends.

In a very fundamental way, this bill fails to deliver its policy objectives because it is poorly and incorrectly drafted. It purports to impose mandatory minimum sentences, but this will not be the effect of the bill as drafted. The LNP has not excluded intensive corrections orders and the LNP has not excluded people being released on parole. The LNP has failed in the very most fundamental way to even deliver on what it said publicly it would do through this sentencing.

In relation to Labor's tough on crime approach, we have some of the strongest penalties and protections in the nation in our Dangerous Prisoners (Sexual Offenders) Act 2003. These are some of the toughest laws in the country that this government will make tougher. Why? To protect the community in a way that is constitutionally valid and that has been upheld by our courts in this state and upheld by the High Court. Labor will not stop in our task to ensure the Queensland community remains protected and safe.

This bill undermines the fundamental tenets of our state's criminal justice system, including the independence of the judiciary, but why would that ever bother the LNP or the shadow Attorney-General? The greatest condemnation of this flawed legislative proposal is that it will not make Queensland safer, nor will it result in any greater protection for our hardworking Queensland police officers or those other very limited classes of public officers named in the bill. Labor has enormous respect for the incredibly hard work that Queensland police officers do each and every day, putting themselves in the line of fire. We will continue to support them, but this bill does not even achieve its own objective of providing greater protection for police officers.

This bill reveals the modus operandi of the LNP. It has been introduced into this House for nothing more than political purposes. It is politically motivated. All the shadow Attorney-General is seeking to do is to obtain momentary political advantage, to grab a headline and to get a news grab. That is the only thing that motivates him. It is simply dishonest and illusory for the LNP to pretend that this measure will make Queensland safer or protect Queensland police officers or the other very limited band of public officers it seeks to name in the bill. The bill should be opposed.