Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

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PENALTIES AND SENTENCES (SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.56 pm), in reply: I am pleased to be able to speak in response to a number of matters raised in this important debate on the Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010. At the outset I thank all honourable members for their contribution, particularly those members of the government who spoke on the bill. A number of those speeches stood out: the member for Woodridge and her very thoughtful analysis of what actually happens in Queensland courts each and every day and the role that a whole range of individuals and groups play in that; and the address by the member for Chatsworth who, along with the member for Yeerongpilly, comprehensively demolished the falsehoods perpetrated by the Liberal National Party opposition in relation to crime and law and order in this state.

The highlight of the debate for me overall was that it illustrated that the opposition is a long-term, lazy, fundamentally ignorant opposition in this state. We know they are lazy.

Mr Springborg: You don't even know the sub judice rule!

Mr DICK: All members of the Queensland community need to know that this is the best resourced opposition in Queensland.

Mr Springborg: Is that what they teach you in Tuvalu? You didn't know it yesterday.

Mr DICK: I take the interjection from the member opposite. When the member for Southern Downs, as he does often, seeks to criticise me for having served the community as a volunteer in Tuvalu—

Mr Springborg: They must have a different sub judice rule over there.

Mr DICK: I served in Tuvalu very proudly for three years as a volunteer under Australian Volunteers Abroad. When I came into this parliament I thought that there would be some things that would be above politics. I thought that there would be some things outside of the nature of political debate. When the pressure is put on the member for Southern Downs on various issues by me as the Attorney-General and Minister for Industrial Relations he resorts to this denigration not just of me as a volunteer—I do not care about his denigration of me personally—but of Australians who serve their country as a volunteer and he denigrates those people, the overwhelming majority of the world, who live in poverty and disadvantage.

I will not be criticised by the member for Southern Downs about my service as an international volunteer. I do not care about myself but he denigrates all Australians who have served overseas. I remind the member for Southern Downs to read some of the first speeches by the members of the Liberal National Party who were elected to this place in 2009. I ask him to read some of those speeches where they talk about their service as volunteers overseas. I look forward to him denigrating the member for Cleveland and others for being volunteers who have worked overseas. He belittles volunteers. He belittles international volunteering. But most of all he belittles himself. I will say more about the member for Southern Downs as we go through this debate.

Both the member for Chatsworth and the member for Yeerongpilly demolished the criticisms of the LNP about law and order and crime in this state. One statistic that never crosses the lips of members of the Liberal National Party is that crime is down 20 per cent under Labor. That is all I ask them to acknowledge—that crime in Queensland has dropped 20 per cent since Labor was elected to power in 1998. It is one simple fact. If they are unable to acknowledge that, everything they say must be seen through the prism of falsehood and political populism. That is all. That is the only way you can demonstrate it. We do need to lift debate in this state about law and order, but it will never be lifted if the Liberal National Party fails to acknowledge facts about the safety of the Queensland community delivered by Labor governments successively over 12 years.

Let us turn to some of the other issues. I want to talk about some of the fundamental principles in this bill and then I will talk about some of those matters that were raised by the opposition in the debate. Firstly, the bill amends the Penalties and Sentences Act 1992 to create the state's first Sentencing Advisory Council and to confer power upon the Queensland Court of Appeal to deliver and review guideline judgements. The bill also reflects the Bligh government's tough-on-crime approach in its three discrete amendments relating to child sexual offenders, repeat offenders and those who commit violence upon or who cause the death of a young child. These are serious matters and are deserving of serious debate in this parliament but debate based on facts.

These amendments represent significant initiatives to strengthen our criminal justice system—a system that 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. The amendments are best understood in two parts but parts that form a continuum of reforms aimed at improving the clarity and transparency of our sentencing processes and providing a robust foundation upon which our courts can undertake the complex task of sentencing criminal offenders.

The first part of the amendments create a Sentencing Advisory Council for Queensland that will help bridge any gap between community expectations, the courts and the government on the issue of sentencing. Through its education role, the Sentencing Advisory Council will foster greater public understanding of the sentencing processes and competing issues, thereby enhancing public support for sentencing decisions and reforms. Through its community engagement role, the Sentencing Advisory Council will provide an opportunity for the community to have a voice in the development of sentencing policy. Through its research, advice and consultation, the Sentencing Advisory Council will promote sentencing reforms that are well grounded and reflect best practice.

The structure of the Sentencing Advisory Council 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 bill ensures flexibility in the selection of members and provides considerable detail as to the depth of experience or expertise members will possess. This will ensure a fair and representative balance of members. The function of the Sentencing Advisory Council in providing its views to the Court of Appeal on the issue of guideline judgements offers an important new mechanism by which properly gauged and informed public opinion can be injected into the sentencing system. The conferral of jurisdiction on the Queensland Court of Appeal to give or review guideline judgements provides a means by which the Court of Appeal can give guidance to sentencing courts.

The second part of the reforms aims to strengthen the penalties imposed upon child sexual offenders, repeat offenders and offenders who commit violence upon a young child 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 to make crystal clear to the courts and the community that these sentencing principles are to be followed. Enshrining these principles in statute gives permanency to the principles and clearly signals parliament's intention with regard to offenders who sexually abuse children and offenders who continue to disregard the law. It will give the community greater certainty and confidence as to the principles that the courts must apply when passing sentence.

The first principle, which relates to child sexual offenders, complements the existing legislative measures aimed at protecting our must vulnerable members of the community. The bill provides that offenders convicted of an offence of a sexual nature in relation to a child under 16 years must serve an actual period of imprisonment, unless there are exceptional circumstances. I want to talk to that issue of exceptional circumstances and about the need to maintain discretion in Queensland courts. There is a line that is now forming between the position consistently held by Labor governments and that of the opposition.

Mandatory sentencing, which removes all aspects of discretion from a court, as the opposition well knows, does not work in reducing crime or delivering just outcomes for Queenslanders. What in fact happens—and the opposition knows it well—is that the criminal justice system is distorted by mandatory sentencing. Firstly, it leads to unjust results. Why? Because all offenders are treated the same. Whether it be a first-time juvenile offender or someone who is a serious criminal with a history of offending, all are

treated the same under mandatory sentencing principles. It takes proportionality out of it, and I do not think it represents community values or Queensland values to treat them all the same when there are clearly different types of criminal offending that the court must admit.

Judicial discretion is a fundamental part of our criminal justice system and is retained in this amendment through the inclusion of the 'exceptional circumstances' proviso. The most disturbing part of this debate—and there was much to be disturbed by from the comments of members of the Liberal National Party—was their untrammelled desire to remove the exceptional circumstances provision from the amendment. As my second reading speech clearly demonstrates, there are cases where the court must take into account—and should quite properly take into account—matters relating to exceptional circumstances. It is worth repeating the comments that I made during my second reading address to the parliament. I said—

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.

It is perhaps in the nature of the Liberal National Party that they never seek to defend the few—those who are vulnerable, those without a voice, those who are marginalised. They are swept away in the mad desire by the Liberal National Party to impose mandatory sentencing in Queensland. All I would say to all honourable members opposite, as I say to members on this side of the chamber, is that we have sons and daughters. We have young people who may go into the criminal justice system. How could it possibly be just for one person to be imprisoned—sent to a prison in Queensland to serve actual jail time—in circumstances where the only fundamental factor about their criminal transgression may be their age when all other aspects of their relationship may be consensual? That may not excuse them from a breach of the criminal law. It may not excuse them from punishment. But it is cruel and profoundly wrong for the Liberal National Party to continue to say that young people must go to jail for entering into consensual relationships with each other as young people. It is profoundly wrong and cruel for that to continue to be perpetrated by the Liberal National Party in this state.

It is easy to come into this place and to sloganeer and seek to run public policy on the basis of slogans without substance. We see that every day in this parliament by the Liberal National Party seeking to obtain political advantage, but we must take this debate to a higher place. Labor will always stand for discretion in the criminal justice system and discretion in our courts.

The second principle I mentioned 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 is that the court will increase the penalty to be given to the offender within the established common law sentencing range for that conduct. So we leave it to the courts. It is another factor that must be taken into account when determining a sentence. As a safeguard, the bill expressly provides that the penalty imposed must not be disproportionate to the gravity of the current offence—another safeguard that we respect within the government.

Lastly, the bill makes an important amendment to the serious violent offence provisions of the Penalties and Sentences Act. The effect of a serious violent offence declaration is that the offender must serve 80 per cent of their sentence before being eligible to apply for parole release. The amendment targets the small cohort of prisoners who commit the most serious offences—namely, those who commit violence upon a young child or who cause the death of a young child. The amendment recognises the special vulnerability of very young children and the need to legislatively protect them.

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, where the court has the discretion to declare the offender to be convicted of a serious violent offence, the court must treat the age of the child as an aggravating factor in making that determination. We leave it to the courts to determine those categories of individuals who should be declared serious violent offenders—when all of the facts in the case are considered and determined by the court. We leave it to the courts to make that decision. If you remove discretion, if you say that courts must sentence on a mandatory basis—which the opposition suggests—then we may as well bring offenders in Queensland to the bar of this parliament and judge them here ourselves and impose the penalty.

Mr Shine: Get rid of the judicial system.

Mr DICK: We might as well move away from a judicial based justice system. I do not understand the concern when the courts in Queensland have served our state in an overwhelmingly positive way for 150 years. I do not think we should be seeking to attack and denigrate them, as the Liberal National Party does.

I make the point again: under successive Labor governments since 1998, the rate of crime in Queensland has dropped 20 per cent. People are safer in their homes under Labor. They are safer than they have ever been. We have these falsehoods perpetrated by the Liberal National Party. The rate of crime is down 20 per cent. All I ask for is a genuine and good faith acknowledgement of that by those members opposite. When Liberal National Party members talk about crime the way they do, all it does is inflame community concern and anxiety.

Mr Kilburn: Unnecessary.

Mr DICK: It makes people frightened unnecessarily, I take the interjection by the member for Chatsworth. It unnecessarily concerns people in the community. We want to be tough on crime, and we have demonstrated that over 12 years and we will demonstrate it again by introducing standard non-parole periods in Queensland courts. But the difference between mandatory sentencing and standard non-parole periods is this: we will admit discretion in the process. We will say that a court can determine that the sentence can be increased or decreased, but if there is a deviation the court must explain that in accordance with set criteria.

There may be a case where a non-custodial sentence may be imposed, but the court will need to explain that in its judgement. Why? Because every case is different. We cannot move away from a system of individualised justice in Queensland. I say to the member for Southern Downs, as I say to all families, one day it might be your son, your daughter or a relative of yours who goes before a Queensland court and, if you go down the path of mandatory sentencing, all you will do is send more people to jail on an unjust basis and you will not make Queensland safer.

I want to talk to a number of those matters raised by the opposition in this debate. The member for Southern Downs asserted that the presentation of this bill before the House was a recognition that the current sentencing regime had failed. Nothing could be further from the truth. This is a government that listens and responds to the community. We have always done that and we will continue to do that.

Most notably, the member for Southern Downs expressed great dissatisfaction with the Dangerous Prisoners (Sexual Offenders) Act. It is worth noting that, despite all of the honourable member's complaints and crocodile tears, he cannot escape the fact that under the Liberal and National governments in this state, recidivist sex offenders were released free and clear into the community, without any measure of control. Members of his political organisation were unwilling or unable to keep them in custody. They were unable to bring the appropriate legislation into this place, and that is what Labor did. The most dangerous people in the Queensland community either continue in custody or are released into the community under very strict supervision. For some of those offenders, that means that those provisions prohibit where they can live, who they can associate with, where they can go at what times during the day or night, whether they can consume alcohol—all of those prohibitions are on their lives. Some have up to 40 or 50 different prohibitions. Why? Because we put community safety first.

The member for Southern Downs then went on an extraordinary attack against the Office of the Director of Public Prosecutions and the hardworking prosecutors in this state. He claimed that prosecutors were 'forced into plea bargains', that they were forced to 'settle quick and settle easy'. This is a disgraceful slur on the Office of the Director of Public Prosecutions. It is a cowardly attack. The member for Southern Downs is happy to attack them here but he will not attack them in the community, he will not attack them outside of this chamber where he is protected by parliamentary privilege. It is a craven attack on the Director of Public Prosecutions and his hardworking staff to suggest that they make decisions on any basis other than the publicly available and published guidelines.

Mr Shine: What does it do for their morale?

Mr DICK: That is right; I take the interjection from the member for Toowoomba North. What does that do for the morale of Queensland prosecutors who work at the hard edge of the criminal justice system every day?

The legal community should be on notice once again that it is clear that Liberal National Party members have no respect for the independence of the DPP and would be only too willing to interfere and direct the DPP about what they should prosecute and what they should not. Again, we leave the prosecutorial direction in Queensland to the independent DPP, and I for one as the Attorney-General will never seek to interfere in that. More than that, the member for Southern Downs then went on to complain that the police had too much discretion in charging individuals. So the police are also on notice by the Liberal National Party.

The member for Southern Downs also indulged himself in a complaint about the use of suspended sentences and that they were somehow evidence of improper discretion. What the honourable member ignores, and what LNP members have always ignored—either because they do not understand them or

they are too scared to repeat them—is that the statistics tell a very different story. The Australian Bureau of Statistics figures released at the start of this year demonstrate that, for serious offences, Queensland courts are using fully suspended sentences at the second lowest rate in the nation. In the Magistrates Court, Queensland has the lowest rate of suspended sentences in the nation.

The LNP member for Buderim was also interested in the ABS figures but could not quite bring himself to develop a clear understanding of the document. Despite the issues primarily in question in this bill concerning serious sexual and violent offending, the member for Buderim seemed intent on discussing Magistrates Courts figures. Why? Because it fitted their argument to continue to cause concern and distress in the Queensland community about the rate of crime.

The member for Buderim seemed intent on discussing Magistrates Courts figures, where, yes, the Queensland magistrates do not sentence a high proportion of offenders to imprisonment. Why is that? Is it because they have too much discretion? Is it because they love to let criminals walk free in Queensland? No, it is because the vast majority of offences sentenced in the Magistrates Courts are minor offences—things like public nuisance and traffic offences. I would say that the majority of Queenslanders would not expect people who commit public nuisance offences or traffic offences to be going to jail. Should those people go to prison, the question might be asked? According to the member for Buderim, everyone should go to prison because that is all he knows and that is all he wishes to push to cause concern in the community.

The day before the member for Buderim spoke we had a debate in this House about moving those offences out of the Magistrates Court. We talked about an overwhelming number of cases, particularly public nuisance offences, being moved out of the Magistrates Court so they could be ticketable offences—so we could free up courts to deal with the most serious offending and have individuals ticketed by police. That was a debate we had the day before the member for Buderim spoke on the bill.

Finally on this issue, it seemed to me that the member for Buderim sought to deliberately misread chapter 2 of the ABS report containing his figures, which relates to the higher courts. In his address to the parliament he kept mentioning the 'High Court'. It was not, in fact, the High Court of Australia; it referred to 'higher courts'. The member seemed to flagrantly ignore the distinction drawn by the ABS between a custodial order, which includes custody in the community and suspended sentences, and custody in a correctional institution, which means exactly what it is: time in prison. To make it clear for the honourable member: when I talk about imprisonment rates in the higher courts, I have used the time in prison figure as the most appropriate and accurate indicator. In order to measure how regularly courts send people to prison it seems sensible to look at a direct measure of how regularly courts send people to jail.

As would be predicted, the member for Southern Downs, the Deputy Leader of the Opposition, was at his most shrill when complaining that the Sentencing Advisory Council—as he sought to do—was his own idea. On 11 May 2005 the opposition introduced a private member's bill to create a Sentencing Advisory Council modelled on the approach in Victoria but with a number of key differences. Quite properly, the private member's bill was defeated in the House on 29 September 2005. The Sentencing Advisory Council proposed in this bill differs from the opposition's model in a number of critical and important respects. Unlike the opposition's model, the bill confers jurisdiction on the Queensland Court of Appeal to give or review guideline judgements and inserts a new part 2A into the Penalties and Sentences Act 1992. One of the statutory functions of the Sentencing Advisory Council will be to provide advice to the Court of Appeal on guideline judgements. This offers an important new mechanism by which properly gauged and informed public opinion can be injected into the sentencing system.

Unlike the opposition's model, this bill provides a legitimate interface between the council and the Court of Appeal. The council would not be able to give unsolicited advice to the Court of Appeal directly, and that is precisely what the opposition sought to do in its bill in 2005. What did proposed new section 198 of its 2005 bill say? It states—

The functions of the council are—

(a) to state in writing to the Court of Appeal its views in relation to the application by courts of the sentencing guidelines and principles in section 9—

This is of the Penalties and Sentences Act. We had the opposition setting up a body appointed by the executive to state its views in writing anywhere, any time, on any basis to the Court of Appeal. We would have had a body created by the executive providing its views and directing the Court of Appeal on what it says the applicability of sentencing principles should be.

I said earlier in this debate that this is a lazy, fundamentally ignorant, long-term opposition and its members demonstrate it again by their complete failure to understand the doctrine of the separation of powers, that the executive and the legislature are separate from an independent judiciary. They seem to play with these ideas. As one of the opposition members said in the debate two weeks ago, 'Don't lecture to us'—meaning the opposition—'about the doctrine of the separation of powers.' Why would we want to do that? It is only fundamental to the way in which Queensland democracy works. They seemed to conflate these ideas in their shrill attack during the law and order debate. It is completely improper for a body of the executive to give unsolicited advice to a court—that is, the executive seeking to monster, seeking to direct,

seeking to put pressure on the judiciary. We say that the judiciary needs to be separate and independent to make its decisions.

Under the model put forward by the government that is before the House today, the council can only provide advice where the Court of Appeal is considering whether to give or review a guideline judgement. The advice is to be given upon notification by the court of its intention in that regard. The approach maintains the integrity and independence of the court. We put that first. We have this shrill argument put forward, including by a qualified lawyer, the member for Caloundra, that there was no difference between these bills. I can excuse the member for Southern Downs for his ignorance about the matter, but it was stunning to hear the member for Caloundra saying that the bills were 'exactly the same'. They are far from being exactly the same.

There was an attack on the last resort principle, as we see by the LNP all the time. Its members want to remove that. Of course, for the LNP, justice equals jail. It is their only response. If they looked at the statistics, if they had seen crime drop 20 per cent, they would know there is an interaction between a whole range of sentencing principles and outcomes including, much to the horror of the LNP, non-custodial orders made by courts and non-custodial measures so that people can go back into the community. Why? So they can become productive and functioning members of society where they do not re-offend and do not go back into the justice system—that is what we want to see—resulting in a reduction in crime by 20 per cent under Labor.

There were a number of other stunning contributions in the debate by members opposite. The member for Kawana, joining in the rancid tradition of what is a lazy, ignorant, long-term opposition, said that it was time to 'listen to the LNP on law and order'. Let us take that invitation and think about the depth of the LNP law and order plan. I will take the advice of the member for Gaven and say it like it is, as he said. The LNP wants to publicly name persons who may be part of the witness protection program. The LNP wants to force the DPP to report to parliament if they do not like his independent decisions. This is what they have done in the last 18 months. The LNP wants to discipline wayward judges for political reasons. That is what they said in the debate two weeks ago. The LNP wants to treat first-time offenders in the same way as career criminals. For the LNP, the member for Gaven and all those members opposite, that is how it is. It would be a sad day, indeed, if the LNP ever got their hands on a justice system because it would not be a justice system; it would be an injustice system. With those concluding remarks, I commend this bill to the parliament.