Speech by

Grace Grace

MEMBER FOR BRISBANE CENTRAL

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PENALTIES AND SENTENCES (SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

Ms GRACE (Brisbane Central—ALP) (4.58 pm): I, too, rise to support the Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010. This bill has three major and important functions: to establish the Sentencing Advisory Council, to give the Court of Appeal power to issue guideline judgements, and to strengthen the penalties imposed on child sex offenders and on those who commit an act of violence against a child or cause the death of a child. One of the strengths of Queensland's criminal justice system is its capacity to change to meet the needs and expectations of the Queensland community. Earlier this year the Attorney-General brought legislation before this House to radically change the jurisdictions of the Magistrates Court, the District Court and the Supreme Court and to make changes to processes such as committal hearings, and I might add that they were excellent changes. Most of these changes take effect from next Monday. The legal profession in Queensland is to be commended for the work it has done in order to be prepared for those changes.

The establishment of the Sentencing Advisory Council is another important milestone in the evolution of the justice system in Queensland. The model the government has adopted is a combination of the best aspects of various councils established elsewhere, with certain characteristics, of course, that make it uniquely suited to Queensland.

Sentencing advisory councils have been established across the world. Some of the work undertaken by these councils has been invaluable in assisting governments to formulate public policy based on proper research and statistics—I emphasise those words, 'proper research and statistics'—not some of the outlandish comments that we have heard from those opposite in the House this afternoon.

In 2006 the Victorian Sentencing Advisory Council conducted research into myths and misconceptions about sentencing. We have heard some of those again this afternoon. The council reviewed surveys relating to the criminal justice system which found that public trust and confidence are at critically low levels around the world. I think a lot of the time that comes from not knowing the full details of the case.

This bill is an important tool in ensuring that public confidence in our justice system is maintained at the level it should be. The council is to comprise 12 members. They will come from a broad cross-section of the community and will have experience in relation to a number of very important areas. I want to name some of them because I think they are important. They will have experience in relation to victims of crime; justice matters relating to Aboriginal and Torres Strait Islander people; justice matters relating to domestic and family violence; vulnerable persons facing the criminal justice system; law enforcement; crime prevention; criminal prosecutions; criminal defence representation; civil liberties; corrective services, including offender rehabilitation; juvenile justice matters; criminal justice policy; criminal law, including sentencing; and criminology. That is an outstanding array of experience that will be on this council.

The next part of the bill that I want to address is the part relating to the issuing of guideline judgements. This is contained in part 2A of the bill. Allowing the Court of Appeal to issue guideline

judgements will give guidance to the lower courts on the appropriate range of sentences for a particular offence, or particular class of offence or offender.

When the court is considering whether to issue a guideline judgement, the council will be empowered to provide advice to the court. What makes this bill vastly different from the private member's bill introduced into this House in 2005 by the opposition is that the court will not be bound to follow the views expressed by the council, only to consider its views. I think that is a very important differentiation. Why? Because this maintains the important concept of the judicial independence and ensures that the Court of Appeal retains its discretion. This is an important factor in ensuring the validity of this process. It has to be, and we have to acknowledge that. However, we have seen this afternoon—and we saw it in the last sittings of parliament during the debate on the Justice and Other Legislation Amendment Bill—the scant regard that members opposite have for concepts such as judicial independence. Who could forget the contribution to the debate by the member for Mudgeeraba? She stated—

Far and away the most contentious amendment in this bill is the changes to the retirement age for magistrates. The bill seeks to allow magistrates to retire five years later. This is merely a Labor government ploy to continue Labor appointed magistrates into the future and smacks of jobs for the boys.

…

No magistrate should be guaranteed a job for life if they use poor judgement and/or questionable performance in the course of carrying out their duties. Members of a parliament have a performance review every three years. If we do not perform then the electorate ensures we are not returned. Jobs for the boys are in Labor's DNA.

Nothing could be further from the truth. Then of course we had the member for Kawana, who, giving the Labor government a touch-up, said—

There needs to be a serious reflection of community expectations in terms of punishment for crimes that are committed in our society. The bill before the House contains amendments to the Magistrates Act that alter the retirement conditions. The last thing that Queensland needs is a generation of magistrates who are more interested in occupying chairs than upholding the laws of the state.

That is a most disrespectful statement. Even though it has been done, it is worthy of further acknowledgement in the House in this debate.

The member for Gaven, who should know better, made this contribution. He stated—

We certainly have a very strong interest in the judiciary. I believe that appointments to the judiciary under the Goss, Beattie and Bligh governments have not always been made on merit, and this has led in recent times to dreadful and, I would have to accept, often unintended consequences.

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Sadly, there have been too many examples of serious illness impeding capacity, a reluctance to retire and also, in parts, manifest incompetence.

They say all these words and make all these statements without any evidence. It continues this afternoon and continues every time we have a debate in this House about the judicial system. It really is pathetic that that comes from the other side. After what I have heard this afternoon, thank goodness we are politicians and not members of the judiciary. If we were members of the judiciary, Lord help those outside who came before us. I can only say that I am glad we are elected officials and not appointed to that learned institution of the judiciary.

This bill does not suffer from the failings of the private member's bill and will ensure a system that has due regard for the importance of judicial independence. We as a Labor government will ensure that. We will not go on spruiking in this House unnecessary untruths about the judicial system without the full facts.

Another important improvement in this bill compared with the private member's bill is the establishment of a designated office to provide support to the council. Because the role of the council will involve preparation of documents and the undertaking of research, the human resources component is very important. It is quite unimaginable how the opposition model of a council without support staff could have ever even functioned.

The next important function of this bill is to enshrine in legislation a number of sentencing principles. The first has been long established in Queensland. In The Queen v Pham in 1996 the Court of Appeal stated that, unless there are exceptional circumstances, those who indecently assault or otherwise deal with children should be sent to jail. I concur with that statement. This judgement has been repeatedly endorsed by the courts and it is considered such an important part of Queensland jurisprudence that the government believes that it should be enshrined in legislation.

I know that members opposite have criticised the inclusion of the exceptional circumstances exception and have described it as it a get-out-of-jail-free card, like somehow we are playing a game of Monopoly here. But exceptional circumstances mean just that—exceptional circumstances. The courts have considered what this means. As Justice Chesterman has said, to qualify as exceptional the circumstances of the offender or the offence must be properly identifiable as truly out of the ordinary or extraordinary. In another case the court upheld this sentencing principle, rejecting an argument by the

defendant that his were exceptional circumstances. As the Chief Justice said in that case, 'The circumstances were not, in my view, sufficiently unusual to warrant the respondent avoiding incarceration.' These words are working, in spite of all the hype that we hear often from those opposite.

Also contained in the bill is a provision to ensure that, in sentencing repeat offenders, previous relevant convictions must be treated as an aggravating factor. This does not mean that the sentence that can be imposed is out of kilter with the actual offence; it means that the courts must take into account the fact that the offender has continued to show a disregard for the law and the community's expectations. I think that is eminently sensible.

Finally, there is also an amendment to the Penalties and Sentences Act to ensure that a court, when sentencing a person who commits an act of violence against a young child under 12 or who kills a child, must take into account the young age of the child as an aggravating factor in determining whether a serious violent offender declaration should be made. Once again, this is a sensible step in the right direction. Declaring an offender a serious violent offender means that they must serve 80 per cent of their sentence before being considered for parole.

The community—and I think everyone in this House—abhors violence against vulnerable children and expects the condemnation of the courts in sentencing such offenders. This amendment will strengthen the courts' ability to impose sentences which reflect community expectations. These are important amendments to the Penalties and Sentences Act and important additions to the criminal justice system.

I would like to commend the Attorney-General and his staff for their commitment in ensuring that Queensland's justice system is one of the strongest in the country. I am happy to stand up in this House anytime and make the statement that our justice system is one of the strongest in the country. I resent any indications without proper evidence that the contrary is the reality. I commend the bill to the House.