Speech by

Annastacia Palaszczuk

MEMBER FOR INALA

Hansard Tuesday, 10 July 2012

CRIMINAL LAW (TWO STRIKE CHILD SEX OFFENDERS) AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (3.56 pm): I rise to contribute to the debate on the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012. This bill is quite a small bill but it has significant consequences. The purpose of the amendments is to impose a mandatory penalty of life imprisonment for certain repeat sex offenders and to further provide a mandatory minimum non-parole period of 20 years for those offenders.

Sex offences against children are some of the most serious offences that can be committed. Children as a group are one of the most vulnerable groups in our society and, as such, they need the protection of the community in a way that few other groups do. We need to ensure that the penalties imposed by the courts will have the effect of deterring offenders and providing disincentives to exploit children in a way that discourages detection by authorities and therefore punishment. We need to ensure that those children who come forward and make a complaint about sexual abuse are safe and also protected.

Unfortunately, we in the opposition do not believe that this bill is the most effective way of achieving this, and we are in very good company in this belief. Of the 19 stakeholder groups or individuals who made submissions, only three support the proposed amendments. Even one of those, PACT, Protect All Children Today, had grave misgivings about some aspects of the bill. Many stakeholders who did not support the bill represent groups who are frequently overrepresented as victims of sexual abuse. By that I mean women, children and those with an intellectual disability.

This is also another bill in respect of which the Supreme Court has unusually made a submission to the parliamentary committee. The court had real concerns about the mandatory nature of the bill and has recommended a solution that could help to allay its fears. The court submitted—

Sometimes the objectives of the legislation of the kind currently under consideration can be achieved by laws which include a residual discretion to depart from what would otherwise be a mandatory sentence or mandatory non-parole period, with such a discretion to be exercised in carefully defined and truly exceptional circumstances.

The court is joined in this concern about the fact that the penalty of life imprisonment cannot be varied or mitigated in any circumstances by Protect All Children Today, Queensland Law Society, Prisoners' Legal Service, Catholic Prison Ministry, Queensland Public Interest Law Clearing House, Youth Affairs Network Qld, Aboriginal and Torres Strait Islander Legal Service, Centre Against Sexual Violence, Commission for Children and Young People and Child Guardian, Amnesty International, Brisbane Rape and Incest Survivors Support Centre, Bar Association of Queensland and Potts Lawyers. There are many reasons put forward by these groups as to why the mandatory nature of the sentence is poor policy. One reason is the resource implications. As the Chief Justice points out in the Supreme Court's submission—

One area requiring further research and the active consideration of your Committee are the implications of proposed changes in the law on the rate of guilty pleas. The introduction of a mandatory sentence of life imprisonment will affect the preparedness of individuals to plead guilty to such offences. Simply put, someone facing a life sentence is far less likely to plead guilty than would

otherwise be the case. An increase in the rate of not guilty pleas for such offences will result in more trials. Additional judicial and other resources will be required to try cases which otherwise would have resulted in pleas of guilty and the early sentencing of offenders.

The court is concerned that, unless additional resources are allocated to make allowances for this, there will be delays in the timely disposal of criminal matters, which will result in victims having to wait longer to give evidence and to see the offender punished. As the Chief Justice says—

It would be unfortunate if such well-intentioned laws had unintended consequences for the victims of crime and the courts, through delays in the disposition of such cases and criminal cases in general.

The department has responded to these concerns by saying, 'The costs flowing from the bill will be met from existing agency resources, the allocation of which will be determined through the normal budgetary process'.

So no more money will be given to the courts, the DPP, Legal Aid, the Queensland Police Service or any other government agency likely to be affected by these changes. But resource implications are just the first of many unintended consequences for victims of sexual abuse in these amendments. As the Bar Association points out, mandatory sentencing regimes are notorious for exacerbating court delays because offenders who might previously have elected to not contest a charge will run it all the way through to trial and, if necessary, on to appeal in an effort to avoid the mandatory life sentence. This will mean that victims and their families will have to wait years for an outcome, whereas presently matters could be disposed of in a matter of weeks or a matter of months. The same victims will be subjected to what can sometimes be rigorous cross-examination and, if the matter goes to appeal and there is a retrial, on more than one occasion. The Queensland Police Service had real concerns about this and the traumatic effect it might have on child sex offence victims. As the Police Service submission points out—

... child victims of sexual offences are ambivalent about reporting family or friends. There is also likely to be increased pressure on the child to not report the offence, or to recant the allegations.

They were concerned that the amendments may lead to a reduction in reporting of offences, especially 'where a witness makes a complaint with the aim of seeking a stop to the offending behaviour rather than having the offender face mandatory punishment'.

The Commission for Children and Young People and Child Guardian shared these concerns and had others. Their submission lists the following possible consequences of these amendments: child victims may be unwilling to report or may be persuaded by other family members not to report repeat offences committed by a family member if they know the person, if convicted, will be sentenced to life imprisonment; juries may be unwilling to find a person guilty for the same reason; and the additional cost of mandated life sentences may result in a reduction in the provision of rehabilitation programs directed towards reducing sexual offending against children and young people. The commission pointed to evidence that children have been reported as saying they do not want to get the person into trouble, they just want the abuse to stop.

Protect All Children Today raised similar concerns. They were concerned about the possibility of fewer guilty pleas, which will mean more children and young people will be required to give evidence in court. This will result in lengthier delays for matters to be heard, adding further trauma for children, especially during their formative years. We can understand a child waiting to give evidence in court about sexual offences committed against them, possibly by a family member, and how that would play upon their mind, affecting schooling, social interactions with their peers and also other people such as family members and strangers. The quicker matters are disposed of, the better future for the child victim and their family. They also point out the greater motivation that would exist for the defendant or a sympathetic family member to put pressure on a young child or young person to change or withdraw their allegations and the reluctance of juries to convict if they feel that the punishment is too harsh.

The offences covered by these amendments are very serious offences, and they should, therefore, necessarily reflect the community's abhorrence for behaviour of this type. But within those offences there is a range of offending that varies in severity. The Bar Association makes this point quite succinctly in their submission. One of the offences that will attract a mandatory life sentence, for which an offender must serve at least 20 years, is that of maintaining a sexual relationship with a child. A jury might be reluctant to send a person to jail for life, serving at least 20 years, for the more low level offending when contrasting the low level offending with something that could only be described as brutal, degrading sexual assault. This would be an unfortunate consequence because all offending against children and young people should definitely be punished, simply for the reason that threat of detection and punishment is the most effective deterrent against offending of this type. This is a consequence of mandatory sentencing that resulted in the Premier, before he was in the parliament, being opposed to mandatory sentencing. I recall that he told the Queensland Media Club in 2011—

The trouble with mandatory sentencing, and it's not well understood, is that the tougher you get on these sorts of things, and there's plenty of history and data on this, the more judges and in some cases juries do anything not to convict.

He also told the gathering that mandatory sentencing had serious flaws that were 'not well understood' in the community. 'Mandatory sentencing is often put up as a policy solution to some of these law-and-order issues,' he said. He also said, 'I say unequivocally today that we in the LNP care about judicial independence and the separation of powers.' What has changed over the 12 months to bring about an absolute U-turn in policy direction?

When many other members of the LNP government were on the other side of this chamber, they also expressed concern about the inability of mandatory sentences to take account of the individual characteristics of every case. As the member for Southern Downs said in February 2010 when discussing the mandatory minimum penalty of life imprisonment for murder during debate on the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009—

However, I think it is very important that we do point out that within legal circles and academia, and probably also privately in the judiciary, there is concern about the lack of sentencing discretion which limits their capacity to take on board the extraordinary circumstances of a particular case and the potential disproportionate application of a particular penalty for the crime of murder when, in the minds of some people, there may be serious circumstances of mitigation.

That was the member for Southern Downs.

During debate on the bill the member for Indooroopilly also reflected on the inflexibility of the mandatory sentence for murder to take into account the particular circumstances of each case. The member for Kawana, who is now the Attorney-General, also supported the amendment contained in the bill and noted its capacity to 'expand the court's scope for sentencing'. The member for Glass House asked the then Attorney-General to address the issues he raised, which included the suggestion 'a discretionary sentencing regime would make available the full range of sentencing options including those community based options that may in such cases best ensure the defendant is not likely to reoffend by requiring the defendant to complete programs or attend counselling'.

There does appear to be a substantial change of heart about mandatory sentencing on the other side of the chamber which appears to coincide with the increased influence of some senior LNP operatives—Bruce McIver, Barry O'Sullivan and perhaps even Clive Palmer. I am quite sure that there are members of this House who are not fully supportive of mandatory sentencing. I note, in particular, the member for Ipswich, a former president of the Queensland Law Society. I wonder whether he would agree with the Law Society submission that has been put forward to this House through the committee.

One of the other possible consequences of these amendments is that someone who might come forward and admit to an offence that had hitherto not been reported, possibly out of extreme remorse, would have no incentive to do so if they were not to have the benefit of the special credit normally given by the courts for people who do this. In fact, their lawyers would have to advise them of the consequence of making such an admission, which is a mandatory life sentence for which they must serve at least 20 years.

A number of organisations that made submissions to the parliamentary committee raised a very sobering matter. The Queensland Police Service submission noted—

... as the proposed 20 year non-parole period will apply for both murder and repeat child sex offences, an offender may consider killing the child victim to evade punishment under the rationale there is little incentive to leave a child witness alive ...

They are not my words; they are the words of the Queensland Police Service submission. The Bar Association submission asserts—

... without by any means wishing to be unduly emotive, the Association has grave concern for the welfare of child sex victims if the proposed legislation is passed. For the same reason that the court system will be further clogged with contested proceedings in relation to repeat child sex offences—the offender has nothing to lose and little to gain—some such offenders may become motivated to kill and dispose of their victims in order to make detection of their crimes more difficult. This is admittedly an horrific thought, but the potential for precisely that sort of outcome to be realised in consequence of the legislation cannot be lightly dismissed.

That is an issue that has been raised in a number of submissions. For the reasons I have outlined here today, I would like to foreshadow that I intend to move an amendment during consideration in detail to give effect to the Chief Justice's suggestion as contained in the submission of the Supreme Court. I think this is the right path to take. The opposition will be opposing this bill. However, we believe these amendments are absolutely necessary. It is my intention to move an amendment that retains a residual discretion on the part of the sentencing judge to depart from the mandatory sentence and mandatory non-parole period, with such discretion to be exercised in truly exceptional circumstances.

In conclusion, I would like to acknowledge and thank the hardworking and dedicated officers of the Department of Justice and Attorney-General not only for their work in preparing this bill but also for the

work they did for the parliamentary committee. With such a large number of submissions, this would have been no easy matter within such short time frames.

The bill is a complex one and one which may result in many unintended consequences, especially for victims of child sex offences. For this reason, it deserved the benefit of careful consideration by the committee. Whilst I am again extremely impressed by the generosity of the stakeholders who made such thoughtful and highly considered submissions to the committee, I cannot help thinking they would have preferred more time to consider the implications of the bill before responding. In fact, the limited consultation period was raised in quite a number of submissions. I ask the Attorney-General in future consideration of bills that he might be mindful of the real purpose of the committee system, which is to give thoughtful scrutiny to pieces of legislation in order to improve their effectiveness in achieving policy outcomes. To this end, time frames that better allow this to occur would be appreciated by everyone concerned.

I have raised a number of concerns with this bill and foreshadowed an amendment I propose to move to alleviate some of those concerns and also the concerns of most of the stakeholders who made submissions to the committee. I urge the Attorney-General and other members opposite to give very real consideration to supporting that amendment.