Speech by

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MEMBER FOR INALA

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CRIMINAL LAW AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (4.23 pm): I rise to contribute to the debate on the Criminal Law Amendment Bill 2012. There are three primary objectives to this bill. The first is to amend the Criminal Code to do a variety of things: to increase the non-parole period for multiple murders from 20 to 30 years; to impose a new minimum non-parole period of 25 years imprisonment for murder of a police officer in certain circumstances; and to increase the maximum penalty for assault of a police officer from seven years to 14 years imprisonment in certain circumstances. The second is to amend the Corrective Services Act 2006 to increase the non-parole period for murder from 15 to 20 years imprisonment. The third is to amend the Penalties and Sentences Act 1992 to abolish the Queensland Sentencing Advisory Council. Finally, the bill amends the Police Powers and Responsibilities Act 2000 to introduce a mandatory minimum penalty of $5,000 and two-year licence disqualification for the offence of evading police under section 754.

I propose to deal with the changes to mandatory minimum non-parole periods for murder together even though they are in different pieces of legislation. In Queensland the penalty for murder has been life imprisonment, which cannot be mitigated or varied, since 1922. In most Australian jurisdictions the penalty for murder is a maximum of life imprisonment, with a residual discretion in the sentencing judge to impose any penalty up to life imprisonment. Only South Australia and Northern Territory also have mandatory life for murder. These amendments increase the minimum term that a person must serve when convicted of murder in Queensland. For murder, the minimum that anyone must serve will now be 20 years. For multiple murders it will be 30 years and, where the victim is a police officer and basically the murder is a consequence of them being a police officer, the minimum will be 25 years.

There were a number of submissions to the committee which expressed caution in relation to increasing the minimum sentence to be served. The Supreme Court unusually made a submission to the committee. I say 'unusually' because as the submission itself says—

> The Judges adopt the position that it is generally inappropriate for them to comment on matters of policy. The determination of government policy and the content of legislation are the provinces of the executive and legislative branches respectively. It is inappropriate for the courts and their members to be involved in debates about the merits of legislation and executive action.

The court felt that the objectives of the legislation could be achieved by laws which include a residual discretion to depart from what would otherwise be a mandatory sentence or a mandatory non-parole period, with such discretion to be exercised in a carefully defined and truly exceptional circumstance.

I want to take this opportunity to express the opposition's deep concern about mandatory sentencing which reflects the concern raised by the Queensland Law Society. The Queensland Law Society felt that mandatory sentences can lead to serious miscarriages of justice because the individual circumstances of a case cannot be taken into account. When many other members of the LNP government were on this side of the 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 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 re-offend by requiring the defendant to complete programs or attend counselling.

There does appear to be a substantial change of heart about mandatory sentencing from the other side of the chamber. This issue was highlighted also in the submission by the Aboriginal and Torres Strait Islander Legal Service, which pointed out that juvenile offenders were treated the same as adult offenders for murder. This is appropriate, as murder is the most serious of offences and juvenile offenders who are convicted of murder as opposed to manslaughter must have had a high degree of culpability. But to sentence them to minimum terms of 20, 25 or 30 years reduces the likelihood of them being able to be successfully reintegrated into society upon release.

The other matter I would also raise as a concern is for the propensity for a person charged with murder to plead not guilty on the slim chance that they may be convicted of a lesser offence such as manslaughter. The chance of this occurring will increase if the minimum non-parole period is increased. This could well result in longer trial delays, which means witnesses and families of victims have to wait longer for an outcome and innocent people or people acquitted at trial spending more time in jail pretrial. This may also have consequences on the resources of the courts, the DPP and Legal Aid. I ask the Attorney-General to give a commitment to keeping an eye on this matter and ensuring that these amendments do not result in undue delays. I notice that he has nodded and smiled. This is just a concern that I hold and I would ask the Attorney-General to give a commitment that the effects of this amendment will be monitored, except that it will only apply to persons sentenced henceforth and so it will be at least 20 years before we see any consequences and because juveniles are rarely convicted of murders, many more years before we see any pattern emerge.

The increase in the minimum non-parole period for multiple offences for murder, we would also not oppose. The increase in the minimum non-parole period for murdering a police officer is a little more problematic. On this side of the chamber we hold all life to be of equal importance and do not really see the distinction between the murder of a police officer and anyone else. We, of course, value all life being equal. I have a relative who is a police officer. We, of course, value the dangerous and often life-threatening work that our dedicated police officers do and the fact that they take their life into their own hands each and every day. But so do many of our other government workers: paramedics, ambulance drivers, child safety workers, or workers trying to move a child from an armed parent. What about the murder of a child, an elderly person, or someone with an intellectual disability? What about a mother protecting her child? Surely that is a duty similar to that of a police officer. The courts already have a discretion to impose a non-parole period of more than 15 years in any situation. In fact, the murder of a police officer or any other public officer carrying out their duties has long been a circumstance of aggravation that will result in the courts imposing a much more severe sentence. That is only right, because the work that police officers and other public officers do protects us as a community and makes the community safer for everyone. As the Bar Association pointed out in its submission, the system as it currently operates is working very well and the absence of appeals by the Attorney-General against the way in which that discretion has been exercised in the past underscores this point. We will not be opposing this amendment, but we have some concerns about it.

I now move to amendments to the Criminal Code to increase the maximum penalty for serious assault on a police officer from seven years to 14 years. The maximum penalty for this offence was increased to seven years in response to the call by the Police Union to do so. It recognised the fact that police officers often are put in dangerous situations where they are more likely to be assaulted than are ordinary members of the public and this is in the process of protecting the community. It was also recognised that there are other vulnerable victims who are deserving of similar protection. So this section has been amended to include a variety of other classes of victims, including Corrective Services officers, people aged over 60, people who rely on a guide-dog, wheelchair or other remedial device and any other public officer assaulted in the exercise of their duties. The maximum penalty for these classes of victims of seven years was in keeping with the community's standards. To further increase the penalty only for police officers is a problem for the reasons I outlined before about the minimum non-parole period for murdering

a police officer. It is difficult to single out only one class of victim in this way without making the laws disproportionate.

But a further cause for concern is the length of the maximum term of imprisonment. Fourteen years is the maximum penalty that is usually reserved for the most serious of offences. Whilst we recognise the important job that police officers do in this state and the inherent risk of danger that their job puts them in, this would make the penalty for spitting at a police officer the same as causing grievous bodily harm to any other individual. When the amendment to the section was first mooted, police were happy with the seven year maximum penalty. They were pleased when the amendment passed the House. The Attorney-General has said that he will monitor the effect of the amendments and, if they result in fewer assaults on police officers, he will consider extending these amendments to apply to other public officers. This means that there is no clear policy objective in decreasing the number of assaults on police officers in these amendments, because there is no evidence as yet that this will be the effect. I urge the Attorney-General to reconsider this part of the bill and perhaps wait until there is some evidence from other jurisdictions where there might have been similar amendments made that support these amendments.

There is an incremental increase in penalty without any research or policy basis to support it. It is also the doubling of an already more than double penalty that was introduced just a number of years ago. I am concerned that if, as the Attorney-General has indicated, he later increases the penalty to apply to other public officers, the police will then ask for a further increase in the penalty for assaulting a police officer or will the Attorney-General give an assurance that, when he monitors the effect of these amendments, if they do not result in a decrease in the incidence of the offence he will repeal these provisions?

I now move to the amendments to the Penalties and Sentences Act to abolish the Sentencing Advisory Council. The Attorney-General made the announcement a number of months ago that he would abolish the council and moved swiftly to do so. These amendments merely give legislative effect to a decision made and carried out. We opposed the move when it was announced and we are still opposed to it. The deputy opposition leader made a speech during the matters of public interest debate in this House on 29 May about this subject. In that speech he pointed out that the members opposite, when in opposition, were wholeheartedly in support of the Sentencing Advisory Council. During the debate on the bill establishing the council the Attorney-General himself said—

Without a doubt the bill, if it is passed today—and it certainly will be—will provide an avenue for the people of Queensland to have a more direct say on the sentencing regime under which they live.

Mr Bleijie: You're verballing.

Ms PALASZCZUK: Later in the debate he said—

... the current Attorney-General recognises the value of what the LNP has previously proposed and continues to support. I just say to the Attorney-General that I guess it is better late than never.

The member for Ipswich, when he was president of the Queensland Law Society, wrote to the then Attorney-General, Kerry Shine, in 2009 asking the government to establish a sentencing council to advise on sentencing policy. He pointed out in his letter that—

... disconnection between what people might consider appropriate sentences for crimes ... and what sentences are imposed.

As well he said that a Sentencing Advisory Council could put an end to the cynical law and order debate that politicians engaged in in the lead-up to the election.

The submissions made to the parliamentary committee were resoundingly in favour of the retention of the council, because the work undertaken so far has been exceptional in its quality. The Attorney-General has said that the Sentencing Advisory Council duplicates the work of the Law Reform Commission. However, its work is very different in nature. The Law Reform Commission often spends years working on its projects whereas the council had a much quicker turnaround on referrals. More importantly, though, unlike the commission, the council has representatives from across a whole range of community organisations and so brings a whole range of perspectives to the table. That means that the purpose of the council to bridge the gap between the community and the justice system in terms of sentencing policy can be much more efficiently achieved. I would ask the Attorney-General if he will give an assurance that if the Law Reform Commission is to take over the role of the council that he will refer all outstanding projects to the commission so that they can be completed and that he will adequately resource the commission to ensure that they have the capacity to undertake the referrals.

Mr Bleijie: No.

Ms PALASZCZUK: I now turn to the final amendment, which is an amendment to the Police Powers and Responsibilities Act 2000, to introduce a mandatory minimum penalty of $5,000 and a two-year licence disqualification for the offence of evading police under section 754. This amendment is in response

to the coroner's recommendation and the CMC inquiry into police pursuits and the tragic death of a young schoolgirl at Redcliffe during a police pursuit. The policy objective of the amendment is indeed noble. It seeks to impose a greater deterrent to motorists wanting to evade police. In particular, the mandatory licence disqualification seeks to ensure that someone who is a drink driver and will therefore have an automatic licence disqualification has no incentive to evade police. Police cannot pursue a suspected drink driver under the current policy so if they are not caught immediately or within two hours they cannot be breathalysed. We have no issue with the policy behind this amendment and in principle we can see that it has merit. We have the same concerns that we had about the increase in the mandatory minimum non-parole period for murder. As the Supreme Court pointed out in its submission, mandatory sentences do not allow the special circumstances of an offence to be taken into account. However, in this case it would be even more dangerous than that. If a person has a momentary failing and seeks to evade detection by police because they think they might be over the limit, but then in a moment of clarity 50 metres down the road they stop, they will still be subjected to the mandatory licence disqualification period.

There has obviously been a lot of work that has gone into this bill. I note that the Department of Justice and Attorney-General has been bearing the heavy workload of the government's legislative program as is usually the case. I congratulate the hardworking departmental officers on their application and diligence in being in a position to bring this bill before the House. I would also like to express my disappointment that a more fulsome examination by the committee was not possible. Submissions were required to be, by their very nature, rushed to fit the very short time frames. I am, as usual, overwhelmed by the generosity of those stakeholders who took the time out of their busy schedules to make the submissions that they have made. They were fulsome, they were informative and they were very highly considered. We are fortunate indeed to have the benefit of the ideas and views of many legal minds in this state, but I am sure that they would have preferred more time to put their thoughts together. In conclusion, once again I ask the Attorney-General to please be mindful in the future of the pressure that these repeated requests for submissions within such short time frames can have on stakeholders.