



Speech by
Bill Byrne

MEMBER FOR ROCKHAMPTON

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CRIMINAL LAW (TWO STRIKE CHILD SEX OFFENDERS) AMENDMENT BILL

Mr BYRNE (Rockhampton—ALP) (5.19 pm): I rise to make a short contribution to the debate on the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill. The objectives of this bill are to amend two acts in order to insert mandatory sentencing provisions with accompanying prescribed minimum non-parole periods. This is another bill designed to tick off election promises made by the LNP. But what is it really about? It is the manifestation of the never-ending and particularly conservative mantra about being tough on crime. This LNP government clearly sees mandatory sentencing as an acceptable tool for establishing a policy position attractive to the community. The source of this mantra is, of course, the same as many other conservative ideologies in recent times—the good old God-fearing Republican United States of America.

I understand the political reality that if I express any opposition to this bill members opposite will try to brand me as some sort of paedophile sympathiser. Nothing could be further from the truth. But as they say, don't let the facts get in the way of a good story.

Connecting this agenda for mandatory sentencing to the subject of child sex offenders is deliberate opportunism—a political construct. People who commit sex offences against children deserve and should receive the complete condemnation of this House and society in general—and they do. This is simply a matter of allowing the courts to not apply this mandatory minimum non-parole period in certain exceptional circumstances and when the interests of justice require. Such is the nature of sex offending against children that this is something that would be used rarely. That is what 'exceptional' means. But we as a parliament should not attempt to fetter the courts' discretion where there exist these exceptional circumstances.

Civil Liberties Australia made an important observation a couple of years ago. It stated—

You'd think, from all the posturing by Law & Order ... politicians through Australia, that crime was up, but it is down. But what's really up is the prison population, by 36% ... over the last 10 years. ... it's costing taxpayers ... because polities want to make big fellas of themselves in newspaper headlines.

This is the essence of one of the known risks that derive from playing politics with sentencing that, when broadly applied, leads inevitably to grossly elevated and unnecessarily elevated prison numbers. Broad application of this political, mandatory and absolutist approach to law and order issues will lead to only one destination, and that is something this government needs to recognise. But this risk is really no more than a minor observation, and it is not the core of my grave concern about this bill.

I took note of all of the submissions to the committee in the lead-up to this debate, and some of those need to be reinforced. The overwhelming majority of comments were targeted at the notion of mandatory sentences and were not particularly specific to child sex offenders. The Supreme Court said—

... in a submission to the Sentencing Advisory Council I expressed reservations about the enactment of mandatory non-parole periods for certain offences. While recognizing the entitlement of the legislature to enact mandatory sentences and minimum non-

parole periods, the courts and others have emphasised the importance of preserving the judicial discretion to ensure the punishment is just in all of the circumstances of the particular case.

The Queensland Law Society said—

... mandatory sentencing laws are unfair, unworkable and run contrary to Australia's international treaty obligations.

The Society opposes the proposed legislation ...

It also observed that there will be an inevitable increase in the prison population. The Human Rights in Law Group of Amnesty International Queensland said that they—

... consider that the imposition of mandatory life imprisonment with a non-parole period of 20 years would not achieve these purposes.

...

There is no evidence to support that the increase in the sentence and non-parole period would be effective in protecting children ...

The Aboriginal and Torres Strait Islander Legal Service said—

... mandatory minimum penalties ... are inappropriate in that they do not account for the different severity levels and circumstances of offences. This leads to injustice ...

The Commission for Children and Young People and Child Guardian said—

The Commission recommends that judicial discretion in relation to sentencing be maintained as mandatory sentencing may have unintended consequences ...

Zig Zag Young Women's Resource Centre stated—

Zig Zag strongly discourages ... mandatory sentencing ...

The Brisbane Rape and Incest Survivors Support Centre stated—

A blanket mandatory sentencing does not take consideration of the circumstances of a case.

The Centre Against Sexual Violence stated—

Applying a blanket amendment of life imprisonment ... on a second offence is not appropriate.

Queensland Advocacy Inc. stated—

We do not support the passing of 'one size fits all' ...

The Prisoners Legal Service and INCorrections both are opposed to mandatory sentences. Finally, the Bar Association strongly opposes the introduction of the new mandatory sentencing regime of life imprisonment. Does anyone on the government benches feel like the emperor with no clothes? How many stakeholders have to tell this government that this particular measure is misguided?

I should say for the record that there is no more objectionable or heinous crime than that being addressed by this bill. This issue is certainly the most emotive to be debated in this parliament in my short time here. I am a man with three daughters. From the moment of their birth I have been sensitised to the issue of paedophiles. At a personal level, I am well aware of my own disgust when considering the types of individuals who commit such offences. I say that because I can assure this House that there is not a law of the land, be it the threat of incarceration or any other instrument of the state, that would moderate me should one of my daughters have ever suffered such degradation. I am forever grateful that my family has not had to endure such horror. This is why the submission of the groups representing those involved with this or directly impacted by these crimes were influential on me.

Stepping back from the horrendous nature of these sorts of offences, I have always maintained an in-principle opposition to the notion of mandatory sentencing. Simply, this sort of legislative absolutism directly undermines the independence of the judiciary. An independent judiciary is critical to the separation of powers and essential to good democratic government. Every time the legislature thinks it knows best and introduces an aspect of mandatory sentencing, it erodes the independent role of the judiciary. For that reason and that reason alone, I find it very difficult to support this legislation in its present form.

Labor believes that the judiciary, as part of its sentencing responsibilities, is best placed to determine appropriate penalties that are consistent with community expectations. The judiciary is best placed to appreciate all the circumstances of an offence. Parliaments exploiting community passion and ignorance by imposing mandatory sentencing regimes are, at the very least, representing a vote of no confidence in the independence and judgement of the judiciary at all levels. This is a very slippery path which is so often tempting to legislators to take.

A blanket exclusion of the courts' discretion in these cases shows a lack of trust by this government in the courts. This undermines the public's confidence in the justice system in this state. That is very unhealthy for the democratic system of government. Let us show some confidence in the judges we have appointed and let them actually do their job. We call on this government to resist such short-sighted and ill-informed opportunism.