Speech By

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MEMBER FOR INALA

CRIMINAL LAW AMENDMENT BILL (NO. 2)

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (4.04 pm): Once again, the government introduces some last-minute amendments in relation to its favourite topic, industrial relations and bashing unions. From the outset, my question to the Attorney-General is: will the opposition be provided with a briefing in relation to the amendments that he is putting forward?

Mr Bleijie: I just gave you a briefing in parliament as to what it's all about.

Ms PALASZCZUK: No, Attorney-General, it is not about being smart. It is about giving the opposition consideration—

Mr Bleijie: Are you going to support it? Are you going to support the amendments?

Ms PALASZCZUK: Obviously not. I am not going to support it.

Mr DEPUTY SPEAKER (Mr Krause): Order! Leader of the Opposition, please address your remarks through the chair.

Ms PALASZCZUK: Honestly, Mr Deputy Speaker—

Mr Bleijie: Why do you want a briefing if you're not going to support them?

Ms PALASZCZUK: Fine, do not give us a briefing, but let it be noted that this Attorney-General is refusing—

Mr DEPUTY SPEAKER: Order! Leader of the Opposition, refer to the Attorney-General by his parliamentary title and refer—

Ms PALASZCZUK:—the opposition a briefing on these pages of amendments—

Mr DEPUTY SPEAKER: Order! Leader of the Opposition, please refer to members by their parliamentary titles and address your comments through the chair.

Ms PALASZCZUK: I am talking to the Attorney-General.

Mr DEPUTY SPEAKER: Please address your comments through the chair, Leader of the Opposition.

Ms PALASZCZUK: Mr Deputy Speaker, I am talking about the Attorney-General. It is his bill and I am addressing the issues at hand.

Mr DEPUTY SPEAKER: Carry on.

Ms PALASZCZUK: Thank you very much.

Mr Bleijie: I just said why do you want a briefing if you're not supporting it?

Ms PALASZCZUK: No. This afternoon, at about a quarter past five, people from the union movement will come to Parliament House. I put a challenge to the Attorney-General: go and meet the people coming here and tell them why you sacked 14,000 people, or up to 17,000 if we take in the government owned corporations? Why don't you go down and talk to them about why once again you are rushing into this Queensland parliament last-minute late-night amendments? We know that this

government hates unions and we know that this government hates the workers in this state. If they did not hate workers, they would not have sacked 14,000 people. They would not have taken away their dignity and they would have treated people with respect.

In this legislation we are once again seeing discrimination applied. Once again the amendments that the Attorney-General wants to introduce are being applied just to the union movement. They are not being applied to other entities; it is just to the union movement. Queenslanders are absolutely sick of your constant bashing of unions. Every time the Attorney-General appears on television, people realise that we do not have the first law officer of the state that Queenslanders deserve. It has always been someone—

Mr Bleijie: We've got someone sticking up for victims in this state. Someone is finally sticking up for the victims in this state.

Ms PALASZCZUK: During the week the Attorney-General came out and made an announcement, but he did not even take it to cabinet. How irresponsible is that? He cannot even talk to the cabinet, he cannot even talk to the Chief Justice, he cannot even talk to the Law Society, he cannot even talk to the Bar Association.

Mr Bleijie: Did they talk to you about asset sales?

Ms PALASZCZUK: You can't talk to them. Oh no, you just come out with an idea, but you would not talk about—

Mr Bleijie: Come on, if you give it out you have to take it.

Mr DEPUTY SPEAKER: Order! The Leader of the Opposition has the call.

Ms PALASZCZUK: I am addressing the bill, Mr Deputy Speaker. You admitted that you did not even take it to cabinet. It was your idea, your flight of fancy, flying by the seat of your pants.

Mr DEPUTY SPEAKER: Order! Leader of the Opposition, please address your comments through the chair.

Ms PALASZCZUK: Once again the Attorney-General is flying by the seat of his pants. He comes out with these grand ideas, but there is no consultation with the Chief Justice, there is no consultation with the Law Society and there is no consultation with the Bar Association. He says, 'No, no. I have this bright idea and I will just put it out there. I won't even talk to my cabinet colleagues, because I know more than them. I'm the smartest person in the room, aren't I?' It is an absolute embarrassment and what do we see?

Mr Bleijie: You don't stick up for the victims of crime; we do. We stick up for the victims of crime in this state.

Ms Trad: I think you hit a raw nerve there.

Mr Bleijie: You always stick up for the offenders and never the victims in this state.

Ms PALASZCZUK: Rubbish!

Ms Trad: I don't think he's the smartest person in the room!

Ms PALASZCZUK: I take that interjection.

Mr DEPUTY SPEAKER: Order! The Leader of the Opposition has the call.

Ms PALASZCZUK: I will now move on to the substantive elements of the bill. We look forward to the debate on the new amendments that the Attorney wants to introduce. As I said, we note that the opposition has been refused a briefing by the Attorney-General.

I rise to make a contribution to the debate on the Criminal Law Amendment Bill (No. 2) 2012. From the outset, let me advise that the opposition will not be opposing the bill, but we are opposed to certain aspects of the bill and have some concerns and would like some clarification about other aspects of the bill.

The purpose of this bill is fivefold: to provide that the Magistrates Court may impose as a condition of bail that the defendant participate in a rehabilitation, treatment or other intervention program; to create a graffiti removal regime for graffiti offences; to abolish the Drug Court and to establish transitional arrangements for orders still in place after the 30 June finishing date; to impose a mandatory minimum non-parole period for certain drug-trafficking offences; and to require victim impact statements to be read out in court if the victim so desires.

Let me indicate from the outset that the opposition will not be opposing this bill. However, there are a number of matters upon which I will seek the clarification of the Attorney-General. If he could address those matters during his speech in reply it would be appreciated.

Firstly, I will address the amendments relating to victim impact statements. In 1992 the Labor government introduced the Penalties and Sentences Act which imposed on a court the obligation, when imposing a sentence on an offender, to have regard to the nature of the offence and how serious the offence was, including any physical or emotional harm done to a victim. Then in 1995 the Criminal Offence Victims Act provided that prosecutors should inform the sentencing court of appropriate details of the harm caused to a victim by the crime.

The then Labor government recognised the important role that the victim impact statements could play in the criminal justice system in Queensland. As was stated in Hooper v The Queen, they 'ensure that judges know of actual, rather than the assumed, consequences of the crimes which come before them.' Another significant benefit is in cases where an offender pleads guilty and a court is unlikely to have had evidence of the personal circumstances of the victim or the extent of the injury, loss or damage upon the victim placed before it.

As a result of those amendments, courts in Queensland have recognised that information provided in a victim impact statement can assist the court to impose a proper sentence. That is why Labor introduced a system whereby victims could outline to the court the impact that an offender and an offence has had on them and their family. These amendments extend those provisions to provide that, where a victim so requests, the court must allow either them or the prosecutor to read their victim impact statement aloud to the court unless the court considers it is inappropriate to do so.

The bill also provides special arrangements to be in place when a victim of crime reads their statement to the court. This includes being able to have a support person with them, the offender being obscured from view, all unnecessary people being excluded from the court or the statement being delivered by way of audiovisual link. These arrangements are similar to the special arrangements that Labor introduced for victims when giving evidence to a court in criminal proceedings. I commend the LNP government for adopting our special arrangements for this purpose. I also commend the inclusion of a discretion on the part of the judge in determining whether it is appropriate for a victim impact statement to be read aloud.

The next set of amendments that I will address are those allowing a Magistrates Court to impose as a condition of bail that the defendant participate in a rehabilitation, treatment or other intervention program. This proposal was not opposed in any of the submissions made to the committee in respect of the bill, and the opposition will not be opposing those amendments. However, there was some concern expressed by the Queensland Law Society in its submission about the offence provision in relation to a breach of such a bail condition. Bail, by its very nature, means that a person has not yet been convicted of an offence. The society's concern is that the inclusion of a breach of bail provision could tend to criminalise people who have not yet been found guilty of an offence. This may result in an increase in the number of people who are on remand awaiting their trial.

Concern about the breach provision is also shared by Legal Aid Queensland. In its submission, Legal Aid has recommended that consideration should be given to not making a breach of bail condition to participate in a program an offence. Because programs would no longer be required to be prescribed by regulation, Legal Aid is concerned that there is a risk that some program operators may require some participants to do something unreasonable or inappropriate or impose some requirement with which participants cannot comply.

There could also be confusion as to what could constitute participation in a program. Would 100 per cent participation be required in every session of every program and would allowances be made for sickness or inability to attend because of family responsibilities? I think these issues need to be clarified by the Attorney. I would ask if he could address these issues during his speech in reply.

The concern of the opposition is that bail is a system for determining whether a person should be free in the community, whether or not on conditions or remanded in custody pending the hearing of criminal charges against them. If a person is in breach of their bail they can be brought back before the court and it will be determined based on the nature of the breach whether they should continue to be free in the community with additional conditions or whether the breach is such that bail should be revoked and they be remanded in custody. The court is well versed in making those types of decisions. The creation of a new offence is not necessary. For the reasons I have outlined and for the reasons expressed by many of the stakeholders, the opposition will be opposing that aspect of the amendments.

This bill increases the maximum penalty for graffiti offences from five years to seven years. Under section 469 of the Criminal Code, the maximum penalty for wilful damage is five years. This

increases to seven years where the offence involves obscene or indecent representations. This bill makes the maximum penalty for all graffiti offences seven years.

Effectively, this will make the state's punishment the toughest in Australia. The maximum penalty for the same offence in New South Wales is five years, while in Victoria and Western Australia vandalism carries a maximum jail sentence of two years. In South Australia offenders face up to six months jail time, while in Tasmania perpetrators may face a fine or a community service order.

Legal Aid Queensland and Protect All Children Today were among the organisations which filed submissions against the changes. The Youth Advocacy Centre also voiced concern, writing—

It is inconceivable that any court would punish anyone by imprisonment for seven years for an offence which does not present any serious risk to life or significant threat to any person. The offence of "assault occasioning bodily harm" has a maximum penalty of seven years—the same as proposed in this situation. It sends an odd message to the community—that putting (some) paint on a wall is considered as serious as actually inflicting injury on another person.

There has been much criticism of the increased penalty and, as the Youth Advocacy Centre points out, the penalty is disproportionate when compared with offences of violence. The opposition therefore opposes this increased penalty.

The previous Labor government opposed a private member's bill in 2008 which purported to make it mandatory for graffiti offenders to complete some graffiti clean-up as part of their sentence. The 2008 bill was flawed because it required the mandatory clean-up order or a compensation order. This was not the only aspect of the drafting of the bill that was defective. Because in spite of the rhetoric espoused by the then opposition, the bill required a court, when sentencing an offender for a graffiti offence, to perform community service under the Penalties and Sentences Act 1992, including, for example, removing graffiti from property. It allowed the court to make an order which was already open to it, namely a community service order. The order could include removing graffiti from property, but did not require it to.

The bill provides that a court must make a graffiti removal order for the offender, whether or not it records a conviction, unless the court is satisfied that because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with that order. The effect of the order is that the offender is required to perform unpaid graffiti removal service for the number of hours stated in the order. It does not require the offender to clean up the graffiti they performed nor does the complainant have to allow an offender to go onto their property to remove graffiti. The offender is also not obliged to have such an order if they are not suitable, so most of the objections that the then government had to the 2008 bill have been removed.

It is pleasing to see that before drafting this bill the Attorney has clearly taken on board the objections of the previous government to the previous policy initiative of the then opposition and has addressed most of the flaws and concerns that we highlighted in their failed bill.

This bill also makes provision for a court to order confiscation of property used in connection with a graffiti offence. This is provided that the person was an adult when the offence was committed and the thing was owned by or in the possession of the person and it was used to record, store or transmit an image of, or related to, the commission of the offence. Such a provision might be justifiable where the person who commits the offence is the owner of the property. As the department briefed the committee—

The new graffiti forfeiture provision which applies to adult offenders is justified to stop the dissemination of images of graffiti between offenders. The sharing of acts of graffiti is an important part of the graffiti culture and drives the graffiti-gang mentality.

That might be the case in those circumstances, but the property does not have to be owned by the offender. It can merely be in their possession. It need not even be lawfully in their possession or the owner need not have any knowledge or even a suspicion that it will be used to record, store or transmit an image. There should be some protection for owners of property who have acted in a perfectly honest manner. That is a concern with the bill.

There is, of course, a discretion in the court as to whether a confiscation order is made. As the clause provides, when the court is imposing a sentence on the person for the offence, the court may order the thing to be forfeited to the state. Whilst the court should be expected to consider who the owner of the property is and whether permission was given to use the thing or whether the owner had knowledge or reasonable suspicion that the thing was used in connection with a graffiti offence, this should probably be contained in the bill. I would therefore ask the Attorney-General to explain in his reply whether or how an innocent owner of property will be compensated for the loss of such property through a confiscation order.

In conclusion, this bill has some worthwhile features. The victim impact statement provisions and some of the Bail Act amendments have considerable merit, and the opposition will be supporting those amendments. We opposed the abolition of the Drug Court when it was considered earlier this year. This is a program that should have been continued by this government. It is negligent in the extreme to abolish the court without even proposing an alternative way of dealing with the vexed issue of criminal offending as a result of drug addiction. We will also be opposing the creation of the bail offence of failing to complete a program. We will be opposing the increase in the penalty for graffiti offences. This penalty increase is totally out of proportion with the penalty for offences of violence and with the penalty for similar offences throughout Australia. In conclusion, I ask the Attorney in his reply to please address the questions and issues that I have raised.