Speech By

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MEMBER FOR INALA

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CRIMINAL LAW AMENDMENT (PUBLIC INTEREST DECLARATIONS) AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (Leader of the Opposition) (12.00 am): I rise to make a contribution to the debate on the Criminal Law Amendment (Public Interest Declarations) Amendment Bill 2013. Let me make it very clear from the outset: the opposition will be opposing this bill because it strikes at the very heart of democracy, breaching one of the fundamental tenets of a Westminster government—the doctrine of the separation of powers. Tonight—or, should I say, this morning—the LNP has reached a new low. I noticed from tonight's speaking list that the government is pulling out the big guns—the member for Ipswich West and the member for Mount Ommaney! Not one single other cabinet minister is prepared to stand side by side with this Attorney-General with this draconian legislation that is being introduced into this House tonight. Where are the lawyers in the LNP? Why aren't the lawyers prepared to stand side by side and support the Attorney-General? What does the Minister for Science and Information Technology think? What does the Minister for Transport—I think he has a law degree—think? What does the Treasurer think? I note that the member for Ipswich, a former president of the Law Society, has struck his name off the list. Not one other cabinet minister—not the Premier, not the Deputy Premier, not one other cabinet minister—is prepared to stand in this House and support this draconian legislation that tramples on the fundamental elements of democracy—the separation of powers—because that man over there wants to be judge, jury and executioner! It is a disgrace! Tonight is a disgrace! Let there be no doubt: this bill is not a bill solely about sex offenders; it is an unabashed grab at power by a megalomaniac Attorney-General who has no qualms about trampling on the rights gained over centuries of struggle.

Protection of the community is one of the foremost responsibilities of government. Protection of some of our most vulnerable citizens—our children, those who cannot look after themselves—is one of the reasons why I am here in this parliament. Protection of our democratic system of government is another of those reasons, and the first cannot be used as an excuse to destroy the very basis of democratic government in this state. Let me remind people about the Fitzgerald era. As the Fitzgerald report stated very clearly—

> The separation of judicial power from legislative and executive power is fundamental to the system of checks and balances designed to achieve a stable democracy.

The Labor government developed the toughest sex offender laws in the country. We developed those laws in consultation with the Solicitor-General to ensure that they would withstand the scrutiny of the High Court. Other states such as New South Wales and Victoria had introduced legislation that purported to be tougher but, when struck out by the High Court as invalid, left those states without any protective legislation to ensure that sex offenders who remained a danger to the community after the end of their sentence could be detained in custody. But the approach of the previous government to proceed with caution is in stark contrast with the approach of this government, because what is included in this bill is a get-out clause. We like to refer to it as the 'house of cards clause'. Part 4A of the bill is a set of transitional provisions—not unusual. Most bills contain transitional provisions, but

part 4A of this bill applies to the situation where the bill could be declared invalid by a court. That is right: the bill is drafted in contemplation of being declared invalid. I guess in the circumstances that is the wisest thing about this bill, because in the opinion of many of Queensland's best lawyers that is the likely fate of this bill. This is unprecedented. I have never before seen a bill drafted in the full knowledge that it could be declared unconstitutional. The normal practice is to draft a bill that is likely to be valid, but that highlights the fact that this bill is nothing more than a publicity stunt by this Attorney-General, who seems to be drunk on the notoriety he is receiving for his outrageous actions, particularly this week. It seems that the Attorney subscribes to the political theory that there is no such thing as bad publicity.

I note that in an article published in *Proctor* shortly after the 2009 election the Attorney-General, when asked which historical figure he would like to dine with, listed Sir Joh Bjelke-Petersen. That does not surprise me. Sir Joh Bjelke-Petersen had the same lack of interest in and respect for the doctrine of the separation of powers. I remember the Fitzgerald inquiry when Joh Bjelke-Petersen was asked to explain the doctrine of the separation of powers. This has become an infamous moment in Australian politics which has been celebrated far and wide. I want to quote from a speech made in the Western Australian parliament by the Hon.—

A government member: Forty years ago!

Ms PALASZCZUK: And we will never forget what happened in the Fitzgerald era. We will never forget what happened, and members of this parliament should never forget what happened in that era. I want to quote from a speech made in the Western Australian parliament by the Hon. Peter Collier, Deputy President of the Legislative Council and Minister for Energy, in 2008. He stated—

There is a bit of a problem when we blur the lines of responsibility in the different levels of government, and when one level encroaches on another, we go down a very slippery slope. I just draw the house's attention to the following article to reinforce what I have just said on the separation of powers. The article from Oz Politics, under the heading 'Separation of powers', reads—

...

The doctrine of the separation of powers had a celebrated moment in the history of Queensland politics. It occurred in December 1988, at the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. In spite of his 19 years experience as the Premier of Queensland, the by then retired Sir John Bjelke Petersen was unable to explain the doctrine to the Inquiry. Quite simply, the ex-Premier had no idea. Evan Whitton ... reported part of the exchange as follows:

Michael Forde (Counsel examining Sir Joh Bjelke Petersen): What do you understand by the doctrine of the separation of powers under the Westminster system?

Sir Joh Bjelke Petersen: The Westminster system? The stock?

Forde: The doctrine of the separation of powers under the Westminster system?

Bjelke Petersen: No, I don't quite know what you're driving at. The document?

Forde: No, I'll say it again. What do you understand by the doctrine of the separation of powers under the Westminster system?

Bjelke Petersen: I don't know which doctrine you refer to.

Forde: There is only one doctrine of the separation of powers.

Bjelke Petersen: I believe in it very strongly, and despite what you may say, I believe that we do have a great responsibility to the people who elect us to government. And that's to maintain their freedom and their rights, and I did that—sought to do it—always.

Forde: I'm sure you're trying to be responsive to the question, but the question related to the doctrine of the separation of powers or the principles—

Bjelke Petersen: Between the Government and the—Is it?

Forde: No, you tell me what you understand.

Bjelke Petersen: Well, the separation of the doctrine that you refer to, in relation to where the Government stands, and the rest of the community stands, or where the rest of the instruments of Government stand. Is that what—?

Forde: No.

Bjelke Petersen: Well you tell me. And I'll tell you whether you're right or not. Don't you know?

Mr Johnson: What's that got to do with the debate?

Ms PALASZCZUK: Absolutely everything, member for Gregory, because this government is trampling on the doctrine of the separation of powers. It is extremely relevant, member for Gregory.

Mr Johnson interjected.

Ms PALASZCZUK: Mr Deputy Speaker, I should be able to be heard in this House.

Mr Johnson: We are trying to protect the kids in this state.

Mr DEPUTY SPEAKER (Dr Robinson): Order!

Mr JOHNSON: My apologies, Mr Deputy Speaker, I did not see you on your feet.

Ms PALASZCZUK: It is quite obvious that some members of this House do not want to hear the history of the doctrine of the separation of powers and what this government is trying to do. Less than a year later, in September 1989, when Russell Cooper replaced Mike Ahern, who had replaced Bjelke-Petersen in December 1987, ABC journalist Quentin Dempster asked the Premier-elect the same question—

What do you understand by the doctrine of the separation of powers under the Westminster system?

For all to see the question was met with a similar display of incomprehension from Cooper. The Attorney-General seems to have the same level of comprehension as the two former Premiers. He has already shown—

Mr Choat: You can't even pronounce 'Westminster'.

Ms PALASZCZUK: I am looking forward to the contribution from the man who runs pigeon competitions. The Attorney-General has already shown this week that he is not fit to be the first law officer of this state. Members of the legal profession have been highly critical of his actions.

Honourable members interjected.

Ms PALASZCZUK: Madam Speaker, I am not taking interjections. I am trying to have my voice heard this evening.

Madam SPEAKER: Order!

Ms PALASZCZUK: Thank you, Madam Speaker. The president of the Queensland Law Society, the professional organisation to which the Attorney-General belonged, has taken the unusual step of criticising the lack of consultation and the rushing through of this legislation without reference to the Legal Affairs and Community Safety Committee. Today on ABC Radio she very diplomatically skirted around the question of whether the Law Society has confidence in the Attorney-General because, as the Law Society has said—and as many members of the legal profession have felt duty-bound to point out since the announcement of these laws yesterday—judicial decision making should be exercised by judicial bodies, not by a member of the executive government.

The Law Society has put out a number of tweets on social media today—executive overreach a danger to all; legislative rush impacts the rights of Queenslanders; the separation of powers, government makes the laws and the courts interpret them; this week has seen significant legislative developments from Queensland government which impact on profession and rights of all Queenslanders. The president made the following statement—

Proposed amendments to the Criminal Act would allow the government to bypass our judiciary to effectively keep certain offenders in jail for life.

The separation of powers is a fundamental principle that has always applied in Queensland. By shifting the responsibility for determinations on detention from the judiciary to the executive government, it means arbitrary detention will be the sole determination of the executive.

These are ill-considered changes that would send Queensland back to its colonial roots when offenders were held in custody at the Governor's pleasure.

I know that my colleague the Leader of Opposition Business quoted from a media statement by Peter Callaghan, SC, President of the Law and Justice Institute on Tuesday night in relation to the bills being debated then. I now wish to read the following statement he has issued in relation to this bill—

Attacks on the separation of powers in Queensland are coming on a daily basis. In civilised countries, individual liberty can only be restrained by a member of the judiciary. The government should declare its confidence in the judiciary and stop interfering with its function as if it was just another part of the executive.

Unlike the Attorney-General, the opposition has confidence in the judiciary of this state. The many checks and balances that exist ensure that every person has a right to have their case reviewed right up to the High Court. If one party thinks a judge gets it wrong, there are others who are charged with responsibility for reviewing those decisions. That should not be the Attorney-General or any other member of the executive.

I understand that the Attorney-General has delusions of grandeur. I understand that he sees himself as a great legal mind who is vastly superior to all those around him, including the judges of

the Supreme Court. I refer to a publication called *Profile*, which has an interview with the Attorney-General back in 2008 when he was endorsed as the candidate for Kawana. He was asked where he sees himself in 10 years time. I would like to share with the House the Attorney-General's response to that question—

Many places, in the courtroom as a judge, in Parliament, the Lodge.

It is a very interesting article.

Mr BERRY: I rise to a point of order. The Attorney-General's musings has no relevance in this debate tonight. If there is, perhaps the opposition leader can help us out, but it is just irrelevant.

Madam SPEAKER: I ask the Leader of the Opposition to address the bill.

Ms PALASZCZUK: Tonight, what is happening is the Attorney-General is making himself judge, jury and jailer. This legislation gives a judicial power not only to this Attorney-General but also to all subsequent Attorneys-General.

Mr Johnson interjected.

Ms PALASZCZUK: The member for Gregory is perfectly entitled to put his name on the speaking list, which contains the names of only two backbenchers.

Mr Johnson: I'll have a go all right, sister. You wait and see.

Madam SPEAKER: Order! Member for Gregory, I ask you to cease interjecting. I also remind you to use a member's appropriate title.

Ms PALASZCZUK: The member for Ipswich wants to stand and interject. I ask him to please feel free to add his name to the list. I would love to hear from the great legal mind of the member for Ipswich and his views in relation to this draconian legislation. We in the opposition are reluctant to give this Attorney-General any more power in relation to appeals.

Mr Bleijie: Playing the person. Playing the man.

Ms PALASZCZUK: I would not say 'man'.

Honourable members interjected.

Madam SPEAKER: Order! I appreciate that the hour is late and that the issues are being debated in a heated way.

Ms PALASZCZUK: I turn now to the consideration of the specific provisions of the bill. This is an extraordinary piece of legislation.

A government member: It sure is. It's fantastic.

Ms PALASZCZUK: For goodness sake! Honestly, if members want to stand in this place and make a contribution, please do so. But at least give some courtesy to a person who is on their feet and trying to contribute to the debate on this piece of legislation which makes this person judge and jury.

Honourable members interjected.

Madam SPEAKER: There are too many interjections in the House. The issue is a heated one and I appreciate that members are contributing across the floor, but it would help the House, given the lateness of the hour and the issues to be debated, to cease interjecting. I call the Leader of the Opposition.

Ms PALASZCZUK: Thank you very much.

Mr BLEIJIE: I rise to a point of order. Madam Speaker, I thank you for your ruling. Earlier this evening the opposition leader called me a megalomaniac, among other things. I just ask that if the opposition leader requests—

Madam SPEAKER: What is your point of order?

Mr BLEIJIE: My point of order is that if the opposition leader requests the silence of other members and the respect of other members, perhaps she should give the same courtesy to other members in this House.

Madam SPEAKER: I ask the Attorney-General to take his seat. That is not a point of order. I am not ruling on issues that were before the House previously.

Ms PALASZCZUK: As I said, this is an extraordinary piece of legislation. It amends the Criminal Law Amendment Act 1945. I understand there are currently three prisoners detained under that legislation in Queensland. This act has not been used since the 1980s because there have been alternative schemes for the indefinite detention of prisoners and their release date in operation. The

Penalties and Sentences Act allowed for a court to make an indefinite sentence. Then in 2003 the Labor government introduced the Dangerous Prisoners (Sexual Offenders) Act. It applies to a relevant person, which is defined in the bill to mean a person who was under a continuing detention order under DPSOA or who has been under such an order but has been released on a supervision order. The minister is then able to make a recommendation to the Governor in Council to declare that a relevant person can be detained if satisfied the detention is in the public interest. In deciding that question the minister or Governor in Council may have regard to any matter he or she considers relevant. The matters that may be relevant cannot be limited by the provisions of this act or any other act. There are no guidelines that the Attorney must take into account. There are no matters that the Attorney is not permitted to consider. The Attorney may consider anything. This is in contrast to the obligations of the courts under the Dangerous Prisoners (Sexual Offenders) Act 2003 which must have regard to set criteria. In making an order under that act the paramount consideration is to be the need to ensure adequate protection of the community, and rightly so. The court must also consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and whether the requirements can be reasonably and practicably managed by corrective service officers.

Under this act currently under consideration the only information that the Attorney is required to provide to a person against whom he wishes to recommend the making of an order is the serving of a notice on the person advising that he intends to recommend that the Governor in Council makes a public interest declaration, the grounds on which he considers detention would be in the public interest and notice that the person may make a written submission to the Attorney. But despite these safeguards the Attorney need not comply with those requirements if he considers it necessary because of urgent circumstances. The Attorney decides what are urgent circumstances. Decisions as to what are urgent circumstances are not included in the limitation of review section so I ask the Attorney to please explain during consideration in detail what review rights exist in relation to that decision.

The bill then provides for annual examination of the detained person by two psychiatrists appointed by the CEO of the Department of Corrective Services. They must provide a report to the CEO. The CEO must give a copy of the report to the person detained, their legal representative and to the Attorney as soon as practicable. Once the Attorney receives the report he must consider the report and decide whether to make a recommendation that the order should end. If an order is ended, either through this process or if a Supreme Court finds there is jurisdictional error, the DPSOA order that applied prior to the declaration is reinstated. This is similar to the provisions that will apply if the act is declared invalid.

The second most extraordinary aspect of this bill, other than the provisions which apply if the bill is invalid, is the limitation of review set out in division 6. The only grounds on which a decision can be reviewed are under part 5 of the Judicial Review Act 1991 to the extent that the decision is affected by jurisdictional error. As the Attorney can have regard to any matter the minister considers relevant, and as the matters that may be relevant cannot be limited by any provision of this act or any other act, the opportunity to review a decision will be extremely narrow. Other than this very narrow opportunity for review, the bill provides that the decision (a) is final and conclusive; (b) cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. I guess the Attorney is also contemplating that he would make a lot of mistakes because he recognises his lack of capacity to be entrusted with his extreme powers and in contemplation thereof has limited the capacity of people to challenge his decisions even on justifiable grounds.

Another unusual aspect of the bill is the fact that the Attorney can make a declaration provided any appeal has been finally dealt with and, if there is no appeal, provided any appeal period has expired. There is no requirement for the Attorney to have exhausted his appeal rights. If he is unhappy with the decision of a Supreme Court he can ignore that decision. He does not have to appeal the decision in the usual way. He can merely make a declaration that the person continue to be detained. The Attorney has said that the laws will only be used as a last resort. However, he can use the powers instead of asking the courts to review the decisions he is unhappy with.

The legal stakeholders have expressed extreme disquiet with these new laws, but they are not the only ones. The Premier himself has expressed reservations about the new laws. Even Hetty Johnston of Bravehearts has expressed concern about the amount of power it gives to one person. The essence of this bill is that the Attorney has set himself as Judge Judy, jury, jailer and the High Court.

Mr Bleijie: You've used that one before.

Ms PALASZCZUK: I enjoyed that one.

Mr BLEIJIE: I rise to a point of order. I find the comments offensive and I ask the member to withdraw.

Madam SPEAKER: Leader of the Opposition, I ask you to withdraw.

Ms PALASZCZUK: I withdraw. The President of the Australian and New Zealand Society of Criminology, Professor Rick Sarre, says the changes could have the opposite effect to how they were intended. He states—

Juries who are making a decision about a particular person who thinks 'yes, this person is guilty but I wouldn't want him being held at the ... discretion of the Attorney-General for the rest of his life' are more likely to find that person not guilty.

He further states—

That's not protecting the community.

The most appalling thing about this legislation is the lack of consultation that has been undertaken in respect of this bill. We see from the explanatory notes that consultation occurred with the Department of the Premier and Cabinet, Queensland Treasury and Trade and the Department of Community Safety. No consultation was undertaken with external stakeholders. The Queensland Law Society and the Bar Association of Queensland have called for the bill to be referred to the Legal Affairs and Community Safety Committee for its consideration. The Queensland Council for Civil Liberties, which seemed to be the stakeholder of choice to quote when the LNP was debating the Criminal Organisation Bill in 2009, also called for the bill to not be passed, but to be referred to the committee. The Council for Civil Liberties has called on the Premier to 'first thing today' order his Attorney-General to refer his new 'Judge Jarrod' laws to the Queensland parliamentary committee system for examination and review before it is put to a parliamentary vote.

Civil liberties council vice-president Terry O'Gorman said—

Reports in the *Courier-Mail* today that the legislation be passed by parliament without scrutiny by the committee system after Mr Bleijie stamped it urgent are disturbing. There is absolutely nothing urgent about this new law. We call on the Attorney-General to state the facts and reasons for the urgency. The urgency is a falsely manufactured con job by Mr Bleijie.

The President of the Bar Association, Mr Roger Traves QC, issued a media release on behalf of members. It states—

President of the Bar Association of Queensland, Mr Roger Traves QC, said in relation to the Criminal Law Amendment (Public Interest Declarations) Amendment Bill 2013: The Bar Association of Queensland opposes the Criminal Law Amendment (Public Interest Declarations) Amendment Bill 2013 and strongly encourages the government to let the bill lie in the parliament while it is given further consideration. Under the law as it presently stands the decision as to whether a sexual offender remains in prison is made by the court, after assessing, as the act requires, whether there are reasonable grounds for finding that prisoner is a serious danger to the community. There is legitimate public concern about the release of some prisoners but that is not a reason to disregard long-held principles.

This legislation means that the Executive, should the Court decide after the appeal process that the prisoner can be released, can overrule the Court and decide nonetheless that the prisoner should remain imprisoned.

Unlike the Court, which is to apply legislation which defines its discretion, the Executive may act solely on what it believes to be the 'public interest'. Unlike a judge's decision, which is subject to appeal, the legislation precludes review of the decision of the Executive save in the very narrow circumstances of jurisdictional error—

Madam SPEAKER: Leader of the Opposition, please pause the clock. Members, there is too much noise in the chamber, and there is also some electronic equipment in the chamber, if someone could turn that off.

Ms Miller: No, it is outside, Madam Speaker.

Madam SPEAKER: Right, OK.

Honourable members interjected.

Madam SPEAKER: It has been a day of too much amplified noise from the outside. I call the Leader of the Opposition.

Ms PALASZCZUK: Thank you, Madam Speaker. I will continue—

The Executive ought not to decide who stays in prison and who leaves prison, any more than it should decide who is imprisoned in the first place. That is the role of the Court. If the Parliament wishes to make it more difficult for sexual offenders to be released, then it ought to consider making the test for release by the Court more stringent.

What it should not do, whatever the perceived problem, is to put decisions about sentencing, which ought to reside with the Court, in the hands of the Executive, the decision of which is to be determined without right of challenge and according to an ill defined test of 'public interest.

Consultation on this bill should have been undertaken with the external stakeholders, but even consultation with the government stakeholders was limited. I notice that the institutions in which persons can be detained under the act include correctional facilities and the Park Centre for Mental Health. However, there was no consultation with the department of health on whether the Park Centre has the capacity to hold any additional prisoners who might be detained there. There was also no consultation with the Royal Australian and New Zealand College of Psychiatrists. The bill requires reports to be provided by two psychiatrists who are registered under the Health Practitioner Regulation National Law, yet the body representing those persons was not paid the courtesy of being consulted.

Wide consultation is the hallmark of good legislation and it is the hallmark of good government. This bill should have been referred to the committee to allow stakeholders to provide their input. On Tuesday night, the Attorney-General had to amend the bill because of deficiencies identified by the opposition. I will not be surprised when the Attorney is forced to come back to this House with amendments to this bill, nor would I be surprised if these laws were to be declared invalid.

The opposition is appalled by this bill. I believe Queenslanders are appalled by this bill. We will oppose this bill. This is not good government. This is an abuse of power.