Speech By

Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 5 August 2014

CRIMINAL LAW AMENDMENT BILL

Mrs D'ATH (Redcliffe—ALP) (12.13 pm): I rise to make a contribution to the debate of the Criminal Law Amendment Bill 2014. At the outset I wish to advise that the opposition will not be opposing this bill, but I will be raising a number of issues with which we have some concerns.

This is an omnibus bill that contains amendments to a vast array of legislation covering multiple subject areas. Omnibus bills are not unusual in the parliament. They are often used to bring together amendments to many acts that are of a technical or non-contentious nature, and departments often have at least one such bill each year. Certainly this has long been the case for the Department of Justice and Attorney-General. For example, the explanatory notes to the Treasury Legislation Amendment Bill 2002 state—

The Treasury Department approved the implementation of a program of omnibus legislation in order to make a number of technical amendments to Acts administered by the Department on a regular basis. The amendments which will be included in the omnibus Bills will generally be of a technical nature ...

The Legal Affairs and Community Safety Committee has on a number of occasions referred to the omnibus nature of bills in its reports. In report No. 16 on the Guardianship and Administration and Other Legislation Amendment Bill 2012 the committee said—

Arguably omnibus Bills may breach the fundamental legislative principle in ss.4(2)(b) of the *Legislative Standards Act 1992* because they fail to have sufficient regard to Parliament, forcing members to support or oppose a Bill in its entirety when that (omnibus) Bill may contain a number of significant unrelated amendments to existing Acts that would more appropriately have been presented in topic-specific stand-alone Bills.

The committee then went on to comment 'that the amendments to the range of acts contained in the bill, while diverse, are relatively non-controversial and would not appear to constrain members' consideration of the bill when debate occurs in the House'. The committee had a different attitude in relation to the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012. It said—

The Committee's concerns with omnibus bills relate primarily to Members' feeling their ability to vote for or against such a bill in its entirety, as limiting their actions. These issues arise when bills such as this are presented containing a number of unrelated matters and unrelated amendments of varying significance, some of which a Member may agree with and others the Member may disagree.

…

There is nothing uncontroversial about the Bill. As outlined later in this part 2, there have been many submissions provided to the Committee raising substantial issues with both the youth justice component of the Bill and also the anti-discrimination aspects.

This is the case with the bill currently before the House. It is not merely of a technical nature—it contains some quite controversial amendments—and submissions have been received which are quite critical of certain aspects of the bill. To include amendments to a diverse range of acts over a diverse range of subject matter forces members to vote for or against the bill in its entirety, even though they may have a range of opinions on the separate parts of the bill.

There was an incident in the Canadian parliament in 1982 where the opposition parties were able to take a significant stand against such a piece of legislation. There was a dispute over whether an omnibus bill should be split and the parts voted on separately. The government would not agree. At that time it was the case that when there was a division in the Canadian House of Commons the bells rang for either 15 or 20 minutes, depending on the nature of the division. When the bell-ringing time had elapsed, the government and opposition whips advanced side by side to the Speaker and bowed, indicating that all was well and the bells could stop and the division begin. Because of the disagreement, the opposition whip refused to make the ceremonial entry. The bells rang for 15 days, until the government agreed to split the bill. As honourable members could imagine, the standing orders were promptly changed after that, but it was an extreme measure taken to illustrate how important it is that members of parliament are given the freedom to vote separately on individual contentious issues.

In its report on the youth justice bill the committee recommended that—

The Attorney-General and Minister for Justice limit the use of omnibus bills and ensure that substantive policy issues which are deserving of their own consideration by the Legislative Assembly be brought forward in stand-alone bills.

This is a recommendation which has considerable merit and one that I, again, urge the Attorney-General to adopt.

I note that the Attorney-General has circulated amendments to be moved during consideration in detail to restore the requirements for the chair of the Crime and Corruption Commission to only be appointed if they have the bipartisan support of the Parliamentary Crime and Corruption Committee. The amendment is in line with the statement by the Premier that he recognised his mistake in making that change and that he would reverse the decision. This backflip was in response to the absolute trouncing that the LNP received at the Stafford by-election, which resulted in us having the pleasure of witnessing Anthony Lynham being sworn in this morning as the new member for Stafford.

The Attorney-General has had the added embarrassment of the Premier acknowledging that virtually all of the mistakes he identified as having been rejected by the people of Queensland were decisions of the Attorney-General in this portfolio. The opposition is pleased that this amendment has been made. We consider it a start. The changes to the accountability and integrity measures in this state that have been made by this government are breathtaking and I suggest that the Premier and the Attorney-General look further than this limited—

Mr RICKUSS: I rise to a point of order. What is the relevance of this?

Mr DEPUTY SPEAKER (Mr Ruthenberg): Is your point of order relevance?

Mr RICKUSS: Yes.

Mr DEPUTY SPEAKER: Member, I am listening and I think the member for Redcliffe is sticking within the broader intent or parameters of the bill and I am going to allow her to continue at this point.

Mrs D'ATH: Thank you, Mr Deputy Speaker. I suggest that the Premier and Attorney-General look further than this limited change in order to win back some semblance of support from the Queensland public. In relation to the amendments that have been put forward by the Attorney-General today, the Attorney-General has taken the House to the fact that the chief executive position—a new position—with the Crime and Corruption Commission does not attract the requirement for bipartisan support and the explanation given by the Attorney-General is that, because it did not attract bipartisan support in the past because such a position did not exist, there is no need for it now. We certainly disagree with this position and would call on the Attorney-General when it comes to the appointments of the body that the bipartisan support required for the appointments should extend to the chief executive—the new position—as well as the commissioners, as has been outlined.

The most significant amendment contained in this bill is the change to the double jeopardy laws giving them retrospective application. The previous Labor government worked with the member for Nicklin to introduce a bill that received the support of every member in this House in 2007. Queensland was the second jurisdiction in Australia to make changes to this aspect of the law. That bill balanced the public desire for changes to double jeopardy to allow an acquitted person to be tried again where fresh and compelling evidence that was not available at trial later became available with the need for there to be finality of criminal proceedings. The bill did not operate retrospectively but applied to all persons acquitted after the date the amendments commenced. During the debate of the bill the then opposition supported the bill as it stood. The member for Gladstone did mention the issue of retrospectivity, although she fell short of saying she would prefer the act to be retrospective. Her concern, as she expressed it, was that this meant it will not be an answer for the Kennedy family. She

was of course referring to the family of little Deidre Kennedy whose brutal death captured the outrage of the entire Queensland community. It was the failed reprosecution for perjury of her alleged killer, Raymond Carroll, that sparked much of the call for changes to the double jeopardy laws. However, it is highly unlikely that there is any possibility that Raymond Carroll could ever be tried again for murder even if these amendments were to be passed and the law had retrospective operation. As the then Attorney-General, the then member for Toowoomba North, said during the debate of that bill—

It is important to note that whatever reforms are adopted it will not change the outcome in the Carroll case or enable any further action to be taken against Carroll. Even if the reforms are applied retrospectively, such as to leave Carroll vulnerable to a further prosecution, a retrial would only be possible if new evidence came to light that satisfied the requirement of being 'fresh and compelling'.

The existing evidence cannot support a retrial against Carroll. This is because both courts of appeal after the murder trial and after the perjury trial did not think the existing evidence was sufficient to convict Carroll. The Chief Justice of Queensland, the honourable Paul de Jersey, told the Queensland Law Society *Proctor* publication in February last year—

'It is noteworthy Carroll was not a DNA case. It is undoubtedly the virtually utter reliability of DNA analysis which gives teeth to push for this change.'

This view was repeated by the member for Caloundra—

I can certainly envisage that the immediate catalyst for this bill was in fact the tragic and very sad murder of Deidre Kennedy and the acquittal of Raymond John Carroll in a series of trials and appeals to the High Court and beyond. Concern in relation to this bill is that the bill itself will never attach to Carroll because all of the evidence had been put before the initial courts and therefore would not fit the definition of 'fresh' as contained in the bill presented here tonight.

It is disappointing that when the Attorney-General announced the proposed change to make the law retrospective that announcement was reported as—

The man accused of one of Queensland's most shocking murders could be retried under proposed changes to the state's double jeopardy laws.

Police would be able to again pursue former RAAF recruit Raymond Carroll for the alleged abduction, rape, and strangling death of Ipswich toddler Deidre Kennedy.

This gives false hope to the family of Deidre Kennedy and others who expect that Carroll will again be tried under these law changes. That could only occur if fresh and compelling new evidence became available that was not available in the original trial and could not have been ascertained with proper diligence.

In his speech on the bill, the then independent member for Maryborough said that he was pleased that the amendment has not been made retrospective. The member for Lockyer described it as a good balance of the double jeopardy law. The retrospective application of these laws is opposed by the legal stakeholders that made submissions on the bill. The Queensland Law Society, the Bar Association of Queensland, the Queensland Council for Civil Liberties and the Aboriginal and Torres Strait Islander Legal Service all opposed the amendments. The Law Society in its submission said—

The Society is concerned that the double jeopardy exception will now apply retrospectively. We particularly note that section 4(3)(g) of the *Legislative Standards Act 1992* states that legislation should not 'adversely affect rights and liberties, or impose obligations, retrospectively.' The Society submits that it is not an appropriate answer to this breach of legislative standards to state that Queensland will otherwise be the only state which does not have a regime operating retrospectively.

An accused may have conducted his or her previous trial in a particular way (such as making a decision to give evidence or not) understanding that the law as it then stood provided that an acquittal prevented a retrial. It would be unconscionable for this to be altered by retrospective application of this provision. In this regard, we note that such an approach would not accord with the principles of natural justice and procedural fairness.

No-one can help but be moved by the case of Deidre Kennedy. No-one can help but be moved by the courage and tenacity of Faye Kennedy, who has pursued her desire for law changes to this point. There are undoubtedly Queensland families whose immeasurable pain in losing a loved one to an horrific crime has been compounded by the person charged with their murder having been acquitted and no person having been held responsible. I could not even begin to imagine their pain and their heartache and would not pretend to be able to. In the same way I could not expect that they would understand how anyone could not support a change to the law that gave them some hope, however intangible, of justice. As has been said, the rule against double jeopardy is not a rule designed to protect the guilty but to protect the innocent. The state with all its resources and powers has many advantages over the defendant in a criminal trial. That advantage is compounded after the passage of time. The prosecution in a criminal offence starts from the advantage that many jurors will say, 'If there was nothing in this case the police would never have brought it.' The criminal justice system rectifies those imbalances by the presumption of innocence and placing the burden on the prosecution. In addition, this attempt to correct the imbalance is supported by the rule against double jeopardy.

Bringing a person to trial many years after they have already been acquitted means that they are also at a disadvantage in respect of any evidence that might adduce in their defence or to explain any new evidence. They might have disposed of evidence after their previous trial believing they would never again have need for it. Because of the time that has elapsed, potential witnesses might have died or they might have lost contact with them, not realising they were required until they were acquainted with the new evidence. Anyone convicted after the 2007 amendments knew their position at the time they were convicted. They were aware of what the law was. Making the laws retrospective means that the position of acquitted persons changes when the laws are passed. The decision therefore as to whether to support the retrospectivity of these amendments is a complex one. It is necessary to balance the overwhelming desire to ensure that persons who have committed horrific crimes are held accountable for those crimes with the reluctance to overturn legal positions that have stood the test of time for over 800 years.

When Queensland introduced the exceptions to the rule against double jeopardy in 2007, we were, as I said, the second jurisdiction to do so. Since then, all of the other states have done so. The original position was rightly very cautious. Overturning 800 years of legal principles should be approached with caution. Since those changes, there have been no cases where these laws have been used in Australia. I have found three cases in the UK, which has utilised its changed double jeopardy laws to reprosecute murderers. There has not, however, been a surge of cases using the laws. The approach has been cautious and only cases where the fresh evidence has been compelling can be entertained by the courts. Being mindful of the concerns expressed about making these laws retrospective but also being mindful of the strong community support for the changes, the opposition will not be opposing these amendments.

In relation to the terms 'chair' and 'deputy chair', these amendments allow chairs and deputy chairs of various government boards, tribunals and similar entities established under an act to choose their preferred title—whether it be chair, chairperson, chairman or chairwoman or another similar chair title, irrespective of what chair title is used in the act.

These amendments are in response to community concerns expressed in consideration of the amendments made to the crime and misconduct act, where the head of the CCC was renamed chairman. They are virtually identical to section 18B of the Commonwealth Acts Interpretation Act. The Attorney-General said during his speech to the CMC bill that the changing of the term 'chairperson' to 'chairman' was the subject of concern in 12 of the submissions to the committee on that bill and had also been raised in media reports. He said further—

> The government's position is that the term 'chairman' does not refer to any gender and given section 32B of the Acts Interpretation Act 1954, words indicating a gender includes each other gender. The use of the term 'chairman' will not prevent an appropriately qualified woman from being appointed a chairman of the commission. However, having listened to the concerns of the community, in a bill to be introduced into the parliament in the not-to-distant future we will move amendments to the Acts Interpretation Act to ensure in future people who take on positions in government on any board or body can use their preferred title. That way we are not individually addressing each particular piece of legislation, we are addressing it through the Acts Interpretation Act and people can refer to themselves as they wish in the future.

In its submission to the bill the Queensland Law Society did not support the change and queried whether the public expenditure related to the introduction of this amendment is needed when a gender-neutral option is currently in place. In fact, section 24 of the Reprints Act 1992 provides the following—

> If the name of an office established by a law uses a word indicating a gender or that could be taken to indicate a gender, the name of the office may be changed.

It is the government's rationale that the proposed amendment will avoid the matter being addressed in a fragmented fashion in individual pieces of legislation. However, since 1992 it has been possible to address the issue in any reprint of legislation. There is no similar provision in Commonwealth legislation. The gender-neutral form of legislative drafting has been in place since 1992 and there is no need to change the position now. If the government is true to its word, it would change the title of head of the CCC back to 'chair' and then this section, which allows anyone to call themselves their preferred option of title, could apply. It would also give an undertaking to stop any further changes that change the titles of government positions from their current gender-neutral terms.

The bill also amends the Bail Act to require a court or a police officer, when deciding whether to grant bail to a nonresident, to consider whether to make it a condition of the bail that they surrender their passport. Currently, under the act if the court or police officer is considering that the imposition of special conditions is necessary to secure that a person, for example, appears in accordance with their bail, they are required to impose such conditions as they think fit to achieve that purpose. This could include the surrender of a passport.

In 1992, the Queensland Law Reform Commission released a working paper on the Bail Act, which stated—

The Act also enables more specific bail conditions to be imposed. For example, the defendant may be required to ... surrender a passport.

A further amendment contained in the bill requires that, if a passport surrender condition is imposed, whether on a resident or nonresident, the person may be detained in custody until they physically surrender their passport. None of the submissions to the committee addressed this amendment in any substantive way. However, there has been some criticism in the media.

The issue raised is in relation to people who cannot immediately put their hands on their passport. If a person is detained in custody, how can they gain access to their passport in order to surrender it? Unless they have a friend or a family member who can gain access to their home and search for the passport, they will be detained in custody. This will often mean a night or a few days in the watch-house before being released. This problem is amplified when a person is arrested when in Queensland on holiday and their passport is at a home, which one would imagine it usually would be. Until someone searches their home and then sends the passport by some means to Queensland, this person will be detained in custody. There must be some way that the federal immigration authorities can be advised when an offender is released on bail so that their name is placed on an alert for immigration officials at all ports and airports.

I would like the Attorney-General to please explain what steps he has taken to investigate the action that could be taken to prevent persons released on bail from leaving the country without requiring their detention in custody until they physically surrender their passport. Also, what will happen if the passport has been stolen? A person can send their friend or family member to search their house for their passport only to be unable to locate it. This could be because the passport had been stolen earlier and no-one realises until they look for the passport. People could also have two passports. Australian authorities would not necessarily know whether a person has a passport from another country. Notification to immigration officials would be a much more effective method of restricting someone leaving the country, because it would not matter what passport they were travelling on.

In relation to match fixing, in June 2011 the anticorruption working party formed by the Coalition of Major Professional and Participation Sports, the body representing the seven major sports codes in Australia in respect of which betting takes place, released its working paper. The state and territory sports ministers subsequently agreed to implement nationally consistent legislation. Phil Reeves, the then minister for sport in Queensland, announced Queensland's intention to participate in this model. New South Wales, South Australia, Victoria, the Australian Capital Territory and the Northern Territory have subsequently enacted laws relating to match-fixing issues. However, following the election of the Newman government Queensland dropped the ball and failed to introduce legislation in a timely fashion like many of its counterpart states and territories did. That led the leading national newspaper in 2013 to describe Queensland as—

... the weak link in Australia's defensive line against match-fixing and a 'soft target' for organised crime gangs looking to capitalise on international sports events, according to officials in Canberra.

We were told the following—

Documents obtained under Freedom of Information laws reveal officials are concerned that the lack of consistent match-fixing laws will lead astute crime bosses to focus on games held in jurisdictions where they could avoid a conventional fraud prosecution.

The officials noted that Victoria, NSW, South Australia, the Northern Territory and ACT had introduced tougher laws but Western Australia and Queensland had decided to stick with their existing laws. Queensland was also holding out on the introduction of new sports betting regulations.

The Australian Crime Commission report titled *Organised crime and drugs in sport* identified an increasing level of association between professional athletes and organised criminal identities in Australia, leaving athletes vulnerable to corrupt practices such as match fixing. Late last year the member for Yeerongpilly introduced the Criminal Code (Cheating at Gambling) Amendment Bill 2013. His bill is similar to Victoria's legislation, but did not include some aspects of that other state's legislation. He subsequently wrote to the committee advising that he would introduce a number of amendments during the consideration in detail. This bill adopts his recommendations and is largely consistent with the national legislation.

The previous Labor government commenced the process that resulted in the national legislation and the Newman government has been embarrassed into introducing these amendments by the bill introduced by the member for Yeerongpilly. The opposition supports these amendments and is pleased that eventually the Newman government has been brought kicking and screaming to the table before Australia hosts the Cricket World Cup and the Asian Football Confederation's Asian Cup in 2015.

This bill also introduces a new offence of serious animal cruelty. At present, there is an animal cruelty offence in the Animal Care and Protection Act 2001 and section 468, titled 'Injuring animals' provides the following—

Any person who wilfully and unlawfully kills, maims, or wounds, any animal capable of being stolen is guilty of an indictable offence.

The offence carries up to three years imprisonment in the case of domestic animals and seven years if the animal in question is stock. There has been much discussion in recent times that these existing offences do not provide adequately for the case where a person intentionally inflicts severe pain and suffering on an animal—in effect, the torture of an animal. On 13 October 2011 the then Attorney-General, Paul Lucas, introduced the Criminal and Other Legislation Amendment Bill 2011 into the House. It included an offence of serious animal cruelty for which the penalty was seven years imprisonment. This offence was identical to the offence contained in this bill. That bill also contained identical provisions relating to an extension of the powers of RSPCA inspectors and the granting of interim prohibition orders.

There is provision to make a prohibition order on conviction and an interim prohibition order where a person is charged. There have been cases, especially puppy-farming cases, in which the defendant has funded their prosecution by continuing their puppy-farming business between being charged and the charges being finally determined. The interim order will prevent this occurring in future. Brisbane Lawyers Educating and Advocating for Tougher Sentences—BLEATS—is concerned that there must be a prosecution launched before a prohibition order or interim prohibition order can be made. BLEATS suggests that, in some cases where a person has serious mental health issues that means that they cannot be prosecuted because they are of unsound mind and unfit for trial, even though there is evidence of animal cruelty no prohibition order could be made.

The department advised the committee in its correspondence that it has referred the issue back to the Department of Agriculture, Fisheries and Forestry for consideration. I would ask the Attorney-General if he might update the House on the progress of this matter and whether that department has provided any advice in relation to this aspect.

In relation to stealing by looting, on 21 March 2013 the member for Yeerongpilly introduced the Criminal Code (Looting in Declared Areas) Amendment Bill 2013 to extend the existing looting provisions in the Criminal Code to situations where a declaration has been made under the Disaster Management Act. The existing looting provision increased the penalty from five years to 10 years where the offence was committed during a natural disaster, civil unrest or an industrial dispute or if the thing stolen is left unattended by the death or incapacity of the person in possession of the property.

The committee, in considering the 2013 amendment, recommended that the issue be referred to the Attorney-General to consider whether an amendment was necessary. He advised the committee in correspondence that such an amendment would be beneficial and that he would progress the amendment during the next appropriate bill. It is unfortunate that the committee, which is meant to be bipartisan, cannot accept a private member's bill such as that introduced by the member for Yeerongpilly on its merits. This bill had considerable merit yet the committee could not support that the bill be passed. Instead it referred the issue to the Attorney-General who introduced his own bill. If the Attorney felt there could be refinements made to the bill there was a process that would allow him to move amendments during consideration in detail. To simply reject the private member's bill and introduce his own legislation is churlish and a sad indictment on the independence of the committee.

On the issue of procuring engagement in prostitution, I turn now to the amendments relating to that matter. The Criminal Code currently provides for an offence of procuring engagement in prostitution. This bill increases the maximum penalty for the offence from 14 years to 20 years where the person procured is a child or a person with an impairment of the mind. The bill also adds the offence to the schedule of serious violent offences in the Penalties and Sentences Act 1992. An SVO means an offender must serve 80 per cent of their sentence if sentenced to 10 years or more. The opposition supports these amendments.

The bill also amends the Criminal Code in relation to dangerous driving offences. Under the Criminal Code there are a number of offences where a person can be convicted of an alternative charge where the evidence does not prove the offence charged but if no alternative is charged on the indictment. For example, a person charged with murder could be found guilty of manslaughter if the evidence did not satisfy the jury as to murder. Similarly, a person charged with an offence arising from the driving of a motor vehicle, for example vehicular manslaughter, can be convicted of dangerous driving of a motor vehicle causing grievous bodily harm or death. The code has an offence of dangerous operation of a vehicle. This applies to a person who is operating a vehicle and is not

restricted to someone driving the vehicle, for example, if a passenger in a vehicle pulls on the handbrake causing the vehicle to go out of control. It also applies to all vehicles, not just motor vehicles. 'Vehicle' is defined in the code to include a motor vehicle, train, aircraft, vessel or anything else used or to be used to carry persons or goods from place to place. This bill amends the code to ensure that the wider definition of 'dangerous operation of a vehicle' applies to the alternative verdict provision rather than the more limited dangerous driving of a motor vehicle. There is also a corresponding amendment to the Penalties and Sentences Act to allow a court to order a licence disqualification where the offence is committed in connection with the operation of a vehicle rather than just driving. The opposition supports these amendments.

This bill also contains amendments to give increased power to the Attorney-General to appeal certain matters. Under the Criminal Code the Attorney-General has standing to appeal sentences imposed for indictable offences dealt with either on indictment or dealt with summarily. This bill amends the Justices Act 1886 to provide the Attorney-General with the standing to appeal sentences for simple offences disposed of summarily. According to the Attorney-General, the proposed amendment is complementary to the Attorney-General's existing appeal powers. No further explanation has been given for the amendment. This amendment is entirely unnecessary. The Queensland Police Service that prosecutes summary matters in the Magistrates Court has a right of appeal. They often seek the assistance of the DPP in exercising that power. No further appeal right is necessary. The real reason the Attorney proposed this appeal is that he was professionally embarrassed when he attempted to appeal a decision of a summary offence in the Magistrates Court when he had no standing and the Court of Appeal ridiculed him—in a very polite way, of course. He became the butt of quite a few jokes. Samantha Macey, who raised $23,341 by telling people the money would go towards the 2011 Premier's flood disaster appeal, was sentenced to a partly suspended jail term for fraud offences, together with 240 hours community service and restitution. She appealed to the District Court. The District Court judge allowed that appeal, rendering the term of imprisonment fully suspended and setting aside the order for payment of restitution. The Attorney-General purported to lodge an appeal to the Court of Appeal and was forced to abandon it when he was advised he had no standing. As the then Chief Justice said—

'Unsurprisingly, the Attorney-General has this morning abandoned that proceeding and we ordered that the 'purported' notice of appeal, I suppose it should be called, filed on the 7th of January 2013, be struck out. Any appeal in this situation would need to have been instituted by the complainant, Christine Price, if granted leave to appeal under s 118(3) of the District Court of Queensland Act 1967.

The opposition does not support this amendment. The Attorney-General has provided no explanation at all for its inclusion in this bill and the current provisions are perfectly adequate.

The Criminal Proceeds Confiscation Act 2002 makes provision for interstate confiscation orders and warrants that are issued in other states and territories to be recognised in Queensland and vice versa. By way of example, if the department is advised that a confiscation order has been made in New South Wales in respect of a certain person and that person has property in Queensland, the courts in Queensland can recognise the interstate order and action can be taken against the Queensland property. Currently, these mutual recognition provisions require a criminal charge or conviction before such an order can be recognised under the scheme. This bill amends the Criminal Proceeds Confiscation Act 2002 to remove the requirement that interstate restraining orders and pecuniary penalty orders must be based on a criminal charge or conviction. Queensland has expanded its criminal proceeds scheme to include the ability to restrain property without necessarily relying on a charge or a conviction, such as through the unexplained wealth laws. Attacking the proceeds of crime is a major factor in attacking organised crime. The opposition supports these laws which strengthen the criminal proceeds scheme in Queensland.

On GPS tracking devices, under the Dangerous Prisoner (Sexual Offender) Act 2003 there is an offence of breaching a supervision order, punishable by a maximum term of imprisonment of two years. This bill changes the offence under the DPSOA of breaching a supervision order from a summary offence to an indictable offence. It then creates an aggravated offence of contravening the relevant order without a reasonable excuse by removing or tampering with a stated device, for example a global positioning system tracking device, for the purpose of preventing the location of the released prisoner being monitored. The new aggravated offence is a crime punishable by a maximum penalty of five years imprisonment with a mandatory minimum period of one year's imprisonment to be served wholly in a Corrective Services facility. Indictable offences can still be dealt with in the Magistrates Court if the penalty that can be imposed is sufficient. The maximum that a magistrate can impose is three years imprisonment. These offences follow the procedure normally adopted for dealing with indictable offences in the Magistrates Court. The opposition is not opposed to the change in the nature of the offence from summary to indictable and is not opposed to the increase in the

maximum penalty from two years to five years. We do not, however, support mandatory sentencing and are opposed to the minimum penalty of one year's imprisonment to be served wholly in a Corrective Services facility.

It is important to retain a discretion in the sentencing court. All offences are different and all offenders are different and there may just be a case where exceptional circumstances and the interests of justice dictate that the penalty is not appropriate and it would be an injustice to impose it. Both the BAQ and the QLS expressed opposition to the mandatory nature of the minimum penalty. The opposition has always maintained an opposition to mandatory sentencing and has always proposed an amendment during consideration in detail that retains a discretion in the sentencing court. I would like to foreshadow that I will be doing so again.

The bill also contains further amendments to the DPSOA. These amendments clarify the definition of serious sexual offence under the schedule to ensure that the regime applies where an offender has been convicted of an offence of a sexual nature and the person against whom the offence was committed is not necessarily a real person but they were represented to the offender as a real person and the offender believed them to be a child. For example, they might be a police officer posing as a child. The explanatory notes explain that the amendment is to overcome the challenges confronted in Dodge v. Attorney-General for the State of Queensland and ensures that the regime extends to prisoners convicted of offences such as section 218A of the Criminal Code, using the internet to procure children under 16, or section 218B, grooming children under 16, even where the conviction is based upon a fictitious child rather than an actual child, for example, a police officer posing as a child but the prisoner believed them to be a child. These are important amendments that ensure persons envisaged to be captured under this regime are so captured and strengthen the toughest sexual offender laws in the country, which were introduced by the previous Labor government.

Now, I turn to a favourite topic for the opposition: the Attorney-General and the boot camps. This bill contains amendments that will allow staff from the youth detention centres to work in the sentenced boot camp at Lincoln Springs in order to 'provide services to maintain good order and discipline at a boot camp centre'. In his introductory speech, the Attorney-General stated that youth detention centre workers will be engaged at the Lincoln Springs sentenced youth boot camp centre to supervise young offenders so as to better protect staff, offenders and property. Queensland Corrective Services officers are currently engaged in supervising offenders at the Lincoln Springs centre. Concerns have been raised with the opposition about the legal implications of this practice.

I ask the Attorney-General to please explain why adequate security has not been able to be provided by the successful tenderer. Surely the provision of security would have been an important component of any expression of interest. Would the Attorney-General also please explain what powers those Corrective Services officers have been exercising at Lincoln Springs? It is curious that youth detention workers require legislative amendment to be able to exercise their powers at Lincoln Springs, but Corrective Services officers have been working there without any legislative support. These amendments again expose the bungling that has been a characteristic of the bungling-boot-camp Attorney-General.

The explanatory notes sugar coat what has happened and explain this amendment as addressing an emergent issue. The Attorney-General might like to explain to the House how this issue is an emergent issue, because although it might be emergent now it was entirely predictable and any person who has any idea about maintaining good order in youth detention facilities would have identified the issue and put measures in place before the situation become emergent. The Attorney-General is aware that his first boot camp experiment failed when the youths escaped and used weapons to threaten neighbours and staff within the boot camp. He would have been well aware of the need to maintain good order for the safety of staff, other participants and the community. To fix that particular bungle, the Attorney-General closed the boot camp and issued a new tender. He then chose not to award the tender to the best qualified organisation as selected by his own expert panel. Questions are flying around the place as to why the expert panel was ignored and why the Attorney-General met with the eventual winners during the tender process.

Mr BERRY: I rise to a point of order.

Mr DEPUTY SPEAKER (Mr Ruthenberg): What is your point of order, member for Ipswich?

Mr BERRY: Relevance.

Mr DEPUTY SPEAKER: Member for Ipswich, again the member for Redcliffe is developing an argument. I am listening quite carefully. I ask the member for Redcliffe to continue.

Mrs D'ATH: Thank you, Mr Deputy Speaker. The Attorney-General has never provided an adequate explanation of this. Therefore, it is not surprising that the capacity of Beyond Billabong to deliver the necessary security and protective services seems to have been found wanting, which has led to the Attorney-General seconding Corrective Services officers to the boot camp to try to maintain good order. The opposition does not believe that this was provided for in the boot camp contract and that the taxpayer is supplementing the private organisation to effect government policy. In effect, the taxpayer is paying twice: once to the private provider and then in the provision of staff to the boot camp. The boot camp amendments are required to address what the explanatory notes describe as—

The lack of a head of power to use proportionate force has prevented appropriate measures being taken to address several recent incidents at the Lincoln Springs boot camp centre.

The problem has always been that Corrective Services, youth justice and boot camp operators have lacked sufficient powers to use force against young people in the boot camp. The first 10 youths were volunteers, many simply removed from the Cleveland Youth Detention Centre. That is right: sentenced youths were removed from youth detention and put in the boot camp. The estimates process revealed that eight out of the 10 have already reoffended since being released. This amendment fixes up the issue that, if they had remained inside the youth detention centre, the staff could have used appropriate and reasonable force to deal with unrest, but the boot camp staff are powerless to act. I have already described how staff could not act in the Cairns boot camp debacle to stop neighbours being threatened and the behavioural issues have obviously not abated if the explanatory notes are accurate when they describe the measures as being necessary 'to address several recent incidents at the Lincoln Springs boot camp centre'. Can the minister fully explain the incidents that require these emergent amendments? We can only assume that the reports to the opposition office of youths on roofs staging protests with staff going to bed instead of dealing with the issue are accurate.

The explanatory notes state—

Youth detention centre officers are specially trained and experienced in working with young offenders and are able to appropriately employ a range of practices such as use of force, restraint, separation and personal searches.

The amendments are fairly general in nature and regulations will be made that we are told will restrict the practices that a youth detention centre officer may employ in maintaining good order and discipline at a boot camp centre. The explanatory notes state—

Clear guidelines around the use of practices such as use of force, restraint, separation and personal searches will be prescribed in the Youth Justice Regulation 2003, as well as the obligation to record all instances of their use.

This bill also contains amendments that allow information identifying a child as the subject of the Child Protection Act 1999 to be used in preparing and providing presentence reports ordered by the Children's Court. The QLS has expressed concerns that, as some youth justice matters will now be heard in open court, this information may be made public through this process. The department advises that restrictions under the Child Protection Act 1999 on the publication of this information will remain in force. Further, the use and disclosure of the information is subject to the relevant court's power to limit the disclosure of the presentence report.

The then Chief Magistrate and now Chief Justice, Tim Carmody, wrote to the committee seeking clarification as to whether the confidentiality provisions, especially section 189, are breached if a member of the legal profession or an officer of a government department discloses to the court that an application is about to be made (a) to close the court; and/or (b) for a publication prohibition order because the child or young person is a person to whom the CPA is relevant. The department provided clarification to the committee on this issue. However, the views expressed where just a single view and, as the then Chief Magistrate identified, he had consulted with the President of the Children's Court, Judge Michael Shanahan, and the Children's Court Magistrate, Leanne O'Shea, who both supported his view that these issues could benefit from clarification. I still hold some concerns about the issue, despite the committee report.

There is another amendment in the bill that I would like the Attorney-General's clarification on. This bill seeks to amend both the Criminal Code and the Justices Act to provide that when sentencing an offender the court may treat a prior conviction as a circumstance of aggravation for the purposes of the Penalties and Sentences Act, even if it is not alleged. If the prosecution wishes to rely on prior convictions as a circumstance of aggravation, which increases the maximum penalty applicable for an offence, in the case of identifiable offences the allegation must be included in an indictment and in the Magistrates Court a defendant must be served with a notice alleging a prior conviction as a circumstance of aggravation. This allows the defendant to consider whether the allegation is correct and challenge it where it is not. Whilst certainly not common, it is not unheard of for police to allege a prior conviction where charges were dropped before trial or where it has been entered against someone with the same name.

In the case of Miers v Blewett (2013) QCA 23, a person was charged with breaching a domestic violence order. Under the domestic violence act, if a person has been convicted twice in the past three years the penalty is increased. As I have said, under the Justices Act if the prosecution seeks to rely on a prior conviction as evidence of a circumstance of aggravation they must serve notice on the defendant. In this case, the defendant was not served notice and the Court of Appeal held that the two prior convictions could not be relied on in sentencing, either to increase the maximum penalty applicable or under the provisions of the Penalties and Sentences Act which require a court to take into account prior convictions. Prior convictions for other offences were able to be taken into account, however.

The Court of Criminal Appeal overturned a prior decision of Washband v Queensland Police Service, which held that the entire criminal history could not be relied upon in sentencing because notice had not been given. The Court of Criminal Appeal in Miers v Blewett relied on the 1981 High Court decision of the Queen v De Simoni. These amendments seek to amend the law so that, where prior convictions are not alleged in the charge or indictment, they may not be relied upon to increase the maximum penalty as a circumstance of aggravation, but they can be relied upon to be considered by the sentencing judge or magistrate in considering whether higher penalties should be imposed, provided they are not higher than the maximum. The explanatory notes and the committee report both state that the amendment reinstates the understanding of the position prior to the judgement in Miers v Blewett. However, my understanding is that the position prior to Miers v Blewett was the decision of the High Court in Di Simoni and Washband, which was overturned by the Court of Appeal, went even wider.

Mrs D'ATH (Redcliffe—ALP) (2.44 pm), continuing: Before the debate was adjourned, I was taking the House to amendments to the Criminal Law Amendment Bill and particularly the explanatory notes and the committee report, both stating that the amendment reinstates the understanding of the position prior to the judgement in Miers v Blewett. However, my understanding is that the position prior to Miers v Blewett was that of the decision of the High Court and De Simoni. Washband, which was overturned by the Court of Appeal, went even wider and did not allow any prior convictions to be taken into account.

I would ask the Attorney-General to please explain whether these amendments change the law as enunciated by the High Court in De Simoni in 1981. If they do, then the statement in the explanatory notes that the amendment reinstates the understanding of the position prior to the judgement in Miers v Blewett cannot be accurate. The opposition does not necessarily oppose the amendments, but we do have some considerable concern about the accuracy of the explanatory notes.

It is imperative that explanatory notes accurately reflect the content of legislation because explanatory notes are referred to by the courts as an aid to statutory interpretation. This is perfectly illustrated in the Washband decision that I have referred to earlier. The District Court, in hearing the appeal from the magistrate, referred extensively to the explanatory notes to the amendments moved to the Justices Act in 1997 and 2003. Those explanatory notes assisted the court in discerning the intention of the legislature.

These explanatory notes would not be able to assist a court in interpreting these amendments because they are not an accurate reflection of the effect of the amendments. They also do not provide any assistance to persons seeking to make a submission to the committee on the effect of the legislation. This is not the first time the opposition has had to raise inaccuracies in the explanatory notes as a significant issue. During debate on the Child Protection (Offender Reporting) Act, the member for Rockhampton raised the issue that the description of the effect of the amendments contained in the explanatory notes was misleading.

I ask the Attorney-General to please clarify whether the explanatory notes contain an accurate statement as to the effect of the amendments and, if not, if he could clarify that fact for the parliamentary record so that any future court seeking to discern the intention of the legislature has an accurate record on which to rely.

In conclusion, there are various other uncontentious amendments contained in the bill which I do not intend to specifically address. These are matters which are rightly contained in an omnibus bill because they are of a technical nature or they clarify or simplify procedural matters.