



Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 24 May 2016

PENALTIES AND SENTENCES (QUEENSLAND SENTENCING ADVISORY COUNCIL) AMENDMENT BILL

Second Reading

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (4.46 pm): I move—

That the bill be now read a second time.

On 15 March 2016, the Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Bill 2016 was introduced into the Queensland parliament. The bill reinstates the Sentencing Advisory Council, delivering on a central election commitment of the Palaszczuk government. The bill amends the Penalties and Sentences Act to establish what will be known as the Queensland Sentencing Advisory Council. It sets out the new council's functions, structure, membership arrangements and reporting requirements. Enshrining the council in legislation ensures transparency, accountability and clarity and the council's roles and responsibilities.

This bill does more than deliver on an election commitment; it represents this government's ongoing commitment to promote public confidence in the administration of justice and, in particular, the sentencing practices of Queensland courts. Sentencing will quite rightly always be a matter of significant public interest. Our courts are charged with the important task of acting on behalf of the community when sentencing those who have broken its laws. That task is often a difficult one, with judicial officers required by law to balance a number of competing considerations, just some of which are the need to punish an offender in a way that is just in all the circumstances; to fashion sentences that the court considers will help the offender to be rehabilitated; to deter the offender or other persons from committing the same or similar offence; and to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved.

Our system of justice requires that the power to review or challenge those decisions will always be carried out by appellate courts with no role for executive interference or influence in that process. As a government that understands and respects the doctrine of the separation of powers, we will never seek to breach that model.

However, this government believes that public confidence in sentencing will be greatly strengthened by the reinstatement of the Sentencing Advisory Council. We believe that sentencing policy can be enhanced and our criminal justice system strengthened by reinstating a body that combines independent research with the practical experience and expertise of its diverse membership.

I will turn to the specific functions of the council in due course, but first I will turn to the hardworking members of the Legal Affairs and Community Safety Committee. Upon introduction the bill was referred to the committee for consideration and its report was tabled on 29 April 2016. I now table the government's response to the committee report.

Tabled paper: Legal Affairs and Community Safety Committee: Report No. 25—Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Bill 2016, government response [\[762\]](#).

I thank the committee for its timely and detailed consideration of the bill. I would also like to thank those who made written submissions to assist the committee in its consideration of the bill, as well as all of those who contributed to the development of the bill in the earlier stages of this process. Whilst the committee was unable to reach an agreement on whether or not the bill should be passed, two recommendations were made for amendments to the bill. The Queensland government has accepted both recommendations.

Firstly, the committee recommended that an amendment be made to remove the word 'suffering' from the example provided in clause 5, proposed new section 201(3)(d), which relates to the appointment of council members. The council will comprise up to 12 members. In making recommendations to the Governor in Council for the appointment of council members I must be satisfied the proposed appointees have expertise or experience relevant to the functions of the council. Proposed new section 201(3) includes a new non-exhaustive list of relevant areas of expertise or experience relevant to the council. The list includes persons with experience or expertise in relation to vulnerable persons facing the criminal justice system. One of the examples of vulnerable persons set out in the bill is 'person suffering mental illness'.

The committee concluded that the use of the term 'suffering' was inappropriate in the context and recommended that the bill be amended to delete the word in proposed new section 201(3)(d) in favour of appropriate terminology. I will be moving an amendment to clause 5, proposed new section 201(3)(d), during consideration in detail of the bill to omit the word 'suffering' and instead provide the example as 'persons who have a mental illness'. This approach is consistent with the wording used in the Mental Health Act. I take this opportunity to thank Queensland Advocacy Incorporated for bringing this important matter to the committee's attention.

Secondly, the committee recommended that an amendment be made to clarify the operation of clause 5, proposed new section 203F(3), which provides how a presiding member for a council meeting will be selected if neither the chairperson or deputy chairperson is in attendance. I will be moving an amendment to clause 5, proposed new section 203F(3) during consideration in detail of the bill to clarify that in the absence of both the chairperson or deputy chairperson it is the members who are present at the council meeting who select a presiding member.

The committee report contains a comment made by the government members of the committee that the bill mandate at least one member of the council be a woman. This comment was not supported by the non-government members. The recommendation of members for appointment to the 12-member council is at the discretion of the Attorney-General and allows for as many women to be recommended for appointment based on experience and expertise as the Attorney-General sees fit. This government is committed to the Queensland Women's Strategy 2016-21 which includes a commitment to deliver on women's leadership initiatives, including to proactively increase the number of women on boards to achieve the government's 50 per cent target by 2020. While I appreciate the good intentions of the committee members in this regard, I fear that a target of one could grow to be seen as the standard or a limit rather than an absolute minimum of participation of women on the council. Far, far greater participation would and should be expected.

Upon passage of the bill I will be seeking expressions of interest for members of the council with the aim of the council being operational later this year. Information about how to submit an expression of interest will be placed on the Department of Justice and Attorney-General website and advertisements inviting expressions of interest will also be placed in newspapers around the state.

As some may recall, Queensland previously had a legislatively established sentencing advisory council which commenced operation in 2010. This valuable resource was lost when it was dissolved in 2012 by the former government. The bill provides a council that has been modelled on its predecessor which represented a comprehensive approach to the establishment of a sentencing advisory body. At the time of the dissolution of the 2010 council there was ongoing public support for its continuance and praise for the work it had undertaken. I want to take a moment to quote a Queensland Law Society 22 May 2012 media release headed, 'Society opposes abolition of Sentencing Advisory Council'. It states—

Queensland Law Society is disappointed to learn of the Government's decision to disband the Sentencing Advisory Council.

The Sentencing Advisory Council is a useful channel for Queenslanders to be informed on sentencing trends.

The Council is an important public organ that serves essential public functions, in particular, the provision of information to the community to enhance knowledge and understanding of matters relating to sentencing; the publication of information relating to sentencing; the research of matters relating to sentencing; and publication of the research results.

Queensland Law Society President Dr John de Groot said that the Council's public education function means that the scope of the Council is broader than that of the Queensland Law Reform Commission.

'Queenslanders greatly benefit from the public education service provided, including newsletters and presentations,' Dr de Groot said.

'The Council has also been effective in its community consultations and has produced well balanced reports that feed into Government policy considerations.

'The Council has a diverse composition, including experts in law enforcement, criminal law and juvenile justice and Aboriginal and Torres Strait Islander justice issues and therefore has access to a range of views on sentencing policy matters.

'A properly established and functioning Council does contribute positively to the operation of the criminal justice system in Queensland and the Society would urge the Government to reconsider its decision.'

During its period of operation, the 2010 council reported on two terms of reference that had been issued by the then attorney-general and commenced work on a third terms of reference. The 2010 council undertook specialised research and statistical analysis on sentencing outcomes and published a range of information documents, including sentencing fact sheets and research papers. The 2010 council also hosted the first sentencing seminar series, as well as a national gathering of Australian sentencing advisory bodies.

This government has already committed to referring two sentencing matters to the Queensland Sentencing Advisory Council for consideration. The first of these matters is consideration of sentencing practices associated with domestic and family violence offences. The second matter is to review the system used to classify images of child exploitation material that is routinely used by the Queensland courts when sentencing offenders for offences involving child exploitation material.

I will also take this opportunity to address the utility of the council's proposed function to provide its views to the Court of Appeal if the court is considering giving or reviewing a guideline judgement. The council will be uniquely positioned to provide assistance to the court if requested should the court choose to exercise its judicial discretion to give or review a guideline judgement. Ultimately though the court must remain and must be seen to remain entirely independent of government and it is for that reason that the bill empowers the court to draw upon the council for submissions rather than requiring them to do so. During intensive consultation on the draft bill, legal stakeholders, including heads of jurisdiction, raised the significance of this distinction and that advice guided the government in arriving at this bill. May I remind those opposite that it is the role of the executive to provide the tools for the court to use but not dictate to the court when to use them.

As an independent, discrete authority with a dedicated focus on sentencing matters concerning adult and child offenders in Queensland's criminal justice system, the council will provide the conduit between the community, the judiciary and the lawmakers, as well as the means to educate and facilitate balanced and informed public debate on sentencing matters. The members of the council will bring the wealth of their own knowledge and experience to inform sentencing policy, as well as provide the general community with an accessible avenue in which they can contribute to sentencing policy development and reform.

A robust but fair sentencing regime is vital for creating a safe community for all Queenslanders. The community should have the opportunity to be properly informed about sentencing practices in Queensland and sentencing practices should be commensurate with community expectations. Through the establishment of this council, the government is giving Queenslanders greater access to sentencing information and a stronger voice in sentencing issues.

I advise the House that I will be moving an amendment to the bill that is not related to the establishment of the Queensland Sentencing Advisory Council. The amendment to the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013 will postpone the commencement of schemes aimed at excluding participants in criminal organisations from working in certain licensed industries until 1 July 2017.

Mr Bleijie interjected.

Mrs D'ATH: These schemes were deferred once by the former attorney-general, who is interjecting at the moment, in 2014. In 2014 they were conveniently deferred until 1 July 2015, which was well past the then proposed election. I wonder why that would be? It might have something to do with the fact that they knew—

Opposition members interjected.

Mrs D'ATH: Operation silence! He was allowed to come back into the chamber to do one thing, which was to move the postponement of this change. I suspect that the postponement had something to do with the fact that once they put it into legislation they realised how unworkable it actually was. In 2015 the provisions were further postponed by the Treasurer. As all sides of the House would know, these matters have been considered by the Task Force on Organised Crime Legislation and the deferral of commencement will allow the government to consider the task force's recommendations in this regard.

Mr Walker: You said things would stay the same until the legislation came in.

Mrs D'ATH: I will pick up on that interjection. The member for Mansfield said that I said things will remain the same. That is absolutely true. They will remain postponed. I thank the member for pointing that out. They were postponed by the former attorney-general, last year they were postponed by the Treasurer and they will remain postponed as a consequence of this amendment. I thank the member for Mansfield for pointing out the obvious, which is maintaining consistency and extending the postponement.

As I have said, when we consider the bill in detail I will move the amendment for the purpose of maintaining the status quo so that these provisions do not come into operation until the recommendations of the task force and any new legislation brought in have been considered. More than 100,000 licence and permit holders will be impacted if these amendments to the three acts are allowed to commence on 1 July 2015. Does the opposition want that on their head? If they want to talk about 100,000 jobs being impacted by a provision that they put into law, although they could not get it into operation and chose to postpone it themselves, let us have that discussion. I am happy to do that.

As I have said, the Sentencing Advisory Council legislation fulfils on election commitment and delivers on something that is supported across the legal sector. It is a good piece of law. We call on those opposite to support it. In the previous debate, I heard a criticism that this government seems to be reversing a lot of what the Newman government did. That is absolutely true. That is what we took to the election. That is what we promised the people of Queensland and, guess what? That is what the people of Queensland voted for! The Newman government did a lot of damage and we have spent the past 12-plus months fixing it. This is another example of that. I commend the bill to the House.