Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (7.44 pm): I rise to support the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018. I support the range of reforms in this bill improving the operation of several elements of law enforcement and the criminal justice system. I congratulate Minister Ryan and the committee for these reforms. My remarks today will be focusing on the amendments outlined in the police minister's second reading speech.

These amendments provide effective and legally robust reforms to our system of reporting. The Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 implemented by a Labor government currently requires all convicted offenders of child sexual abuse to become reportable offenders for a minimum of five years with escalation to 10 and life depending on offending. Under the CPORA, a reportable offender becomes subject to extensive reporting obligations. That act ensures that reportable offenders must report to the Queensland Police Service where they live, where they work, the car they drive, any distinguishing marks, including tattoos or removal of those marks, clubs or associations they belong to, which telephone or internet services they use, which social network sites they belong to or have access to, what email addresses they use as well as the passwords to those accounts, any planned travel and, importantly, any reportable contact with children.

The amendments to this bill seek to extend the significant reporting obligations to all child sex offenders who are currently dangerous prisoner sex offenders immediately upon their orders under the Dangerous Prisoners (Sexual Offenders) Act ceasing. Importantly, these reportable obligations will apply to this particular cohort for life. The amendments are not intended to be punitive. The intent of the amendments to the bill are to provide for the ongoing monitoring of child sex offenders to enhance the protection of children. An offender who has been subject to an order under the Dangerous Prisoners (Sexual Offenders) Act 2003 will be required to make an initial report to the Police Commissioner within 24 hours of them no longer being covered by a DPSO order. They will also need to advise the Police Commissioner of any change of their residence or locality within 24 hours of that change occurring.

In addition to the amendments to the reporting obligations under the child protection legislation, these amendments also make significant and important changes to part 3A of the act which provides for the making of offender prohibition orders. Under part 3A of the child protection legislation, the Commissioner of Police may apply to the Magistrates Court for an offender prohibition order if he or she has reasonable grounds for believing a reportable offender is engaging in concerning conduct during their reportable period.

The amendments will amend the meaning of 'concerning conduct' to permit offender prohibition orders to take in a broader range of circumstances—that is, an act or omission or a course of conduct the nature or pattern of which poses risk to the safety or wellbeing of one or more children or of children generally. Concerning conduct does not need to amount to an offence and can include behaviour such

as loitering near a children's playground. The amendments also make it clear that in issuing an offender prohibition order a court can require, among other conditions, that the offender wears a tracker, is required to attend counselling and is required to reside at a particular residence.

Importantly, these changes to the OPO will apply to all child sex offenders, not just those previously bound by a DPSO. The amendments preserve safeguards that are reasonable and responsible in these circumstances. These are tough but measured amendments that will ensure ongoing monitoring of known child sex offenders in the community once they have finished a sentence of imprisonment and a period of post sentence supervision or detention.

I take this opportunity to remind all members that recent history demonstrates that passing legislation that is heavy on hyperbole and light on legal rigour in the end does nothing to protect the Queensland community. In 2013 the former LNP government enacted the Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013. The effect of the PID act was to amend the Criminal Law Amendment Act 1945, on which they say their current proposed bill is based, to provide the Governor in Council with the power to declare, on the recommendation of the Attorney-General, a person to be detained if the Governor in Council was satisfied that the detention is in the public interest, thus the public interest declaration. Within a few months the Queensland Court of Appeal unanimously declared the operative provisions of that act to be invalid on constitutional grounds.

It would be difficult to argue that a single Queensland child gained any further protection through that futile exercise. Unfortunately, it appears that those opposite have learnt little from their past mistakes. We had the shadow Attorney-General say over the weekend, 'We know there will be serious discussions about the validity of these laws, but doing nothing is not an option.' Therefore, their view is that it does not matter if it is knocked off by the court; it is worth giving it a go.

Those opposite simply refuse to understand or accept that if a piece of legislation, surrounded by whatever rhetoric they like, cannot be upheld in the courts then it does not protect the safety of a single child. There are serious concerns with the opposition's proposed bill and its constitutionality. It is important that in 2006 the then chief justice noted in a *Proctor* article on the DPSO legislation—

The Premier recently expressed the view, with which I agree, that the stringency of this legislation could not be further strengthened without courting the real risk of its being struck down by the High Court ...

An opposition member: Chief justice deferred Baden-Clay.

Mrs D'ATH: He continued—

There is no doubt this decision-making lies at or very close to the very boundary of the orthodox concept of the judicial role.

Mrs D'ATH: I take the interjection that made reference to the chief justice. It was the then chief justice, chief justice de Jersey, and now Governor of Queensland, if those on the other side want to criticise the quote I just referred to.

However, almost five years later, we again find the opposition proposing very similar constitutionally dubious laws. The proposed bill challenges the very constitutional integrity of the DPSO framework which has been challenged unsuccessfully in our nation's highest court. I repeat: the proposed bill challenges the very constitutional integrity of the DPSO framework which has been challenged unsuccessfully in our nation's highest court. This is really important for those who say that it is worth giving it a go, even if we think that the laws will fail. That statement is very irresponsible and dangerous, because any significant change to the dangerous prisoner sex offender framework puts at risk the entire act and not only could lead to the possible release of those offenders members on the other side say they want to cover; it could also see the release of every single person on a dangerous prisoner sex offender order, including those on continuing detention orders who are still in prison after their sentence has expired.

Let me make this clear: if they fundamentally change this law, the court will not be able to say that this one little provision is invalid, because they will have changed the framework of the dangerous prisoner sex offender legislation. That is what they are seeking to do. If it is found to be invalid, the whole act—the framework—is invalid and everyone under an order of that act would no longer be covered by it. I repeat: they would no longer be covered by it. That is how serious the consequences could be when they say, 'What does it matter? Give it a go. What could happen if it gets knocked over? There is no risk.'

Unconstitutional and unenforceable laws cannot and do not protect our children. These types of complex issues require a mature, intelligent and measured response, which is what the amendments proposed by the bill before us today represent. I finish by saying how disappointed I am that in this debate many opposition members have criticised the child protection reportable offender legislation as an 'honesty scheme', as if it is voluntary.

First of all, a breach of offending obligations carries up to five years imprisonment—for that breach alone. This legislation has been in operation for 14 years. Today it monitors over 2,800 people in the community. Any criticism of this scheme by those opposite sends to the people of Queensland the extremely dangerous message that they can no longer have faith in these laws. It undermines public confidence in the existing act and its ongoing enforcement. That is an extremely irresponsible position for the LNP to take, especially as many opposite happily spoke in support of the same legislation, the child protection legislation, just last year when it was before the parliament.

I urge all members to support the amendments to the child protection reportable offender legislation that the Minister for Police and Corrective Services has proposed be moved during the consideration in detail. They are strong laws, they are legally robust laws and they are the type of laws that the people of Queensland expect us to introduce, pass and ensure that they will stand up to challenges, so that they can deliver real protections for our community and for our most vulnerable young people.