Speech By

Tim Nicholls

MEMBER FOR CLAYFIELD

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Mr NICHOLLS (Clayfield—LNP) (4.32 pm): I listened to the Attorney's comments, particularly her comment in relation to the opposition members' statement of reservation regarding the treatment of the omnibus bill and her comment that this bill has been brought to the House with the usual respect for parliamentary process. I reflected only two weeks ago on where the usual respect for parliamentary process was thrown out the window after a business motion that was agreed to in good faith had been passed.

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order in relation to relevance. The matter is about the bill before the House and the parliamentary committee process of this bill, not unrelated bills.

Mr DEPUTY SPEAKER (Mr Hart): Member for Clayfield, I draw you back to the bill.

Mr NICHOLLS: In my defence, let me say this: it was the Attorney-General who said 'like other bills brought before this place'. It was not just in relation to this bill. The record will reflect what the Attorney said. The Attorney is obviously embarrassed enough to take exception to that comment.

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order. I take personal offence at that comment and ask that he withdraw.

Mr NICHOLLS: I withdraw. The government is obviously embarrassed to such an extent that the Attorney has felt it necessary to jump up and try to stifle any proper, reasoned and rationed debate in a house of debate like the Queensland parliament. The Attorney, who is more than willing to try to argue the case across the floor, takes exception when I point out this government's failings in relation to the parliamentary process only two weeks ago when they trashed their own human rights bill.

Mr Bailey: You'd never do that.

Mr NICHOLLS: I take that interjection, because I got up to speak on the human rights bill and I was guillotined when I wanted to speak on it. I was guillotined by the Labor lefty loveys, who said, 'No, human rights are so important we are going to guillotine debate on it.'

Mr BAILEY: Mr Deputy Speaker, I rise to a point of order. The member for Clayfield is straying even further away from the bill and I ask that he be brought back.

Mr DEPUTY SPEAKER: Minister, resume your seat. There is no point of order. The member for Clayfield is responding to a remark that you made.

Mr NICHOLLS: It is been a tough fortnight for the member—double penalties, cost blowouts.

Mr Bailey interjected.

Mr NICHOLLS: I remember the member for Miller going back a long way, and there is a reason that he was never appointed chair of a council committee and that he took his bag, packed up and disappeared.

Mr HARPER: Mr Deputy Speaker, I rise to a point of order under standing order 118 on relevance. Can you ask the member to come back to the bill?

Mr DEPUTY SPEAKER: Member for Thuringowa, the member for Clayfield is responding to continual interjections from the minister and I find that completely relevant.

A government member interjected.

Mr DEPUTY SPEAKER: Who was that? Was somebody reflecting on the chair? I will start warning people if I hear that again.

Mr NICHOLLS: In the interests of the decorum of the House, I will move to further discussion in relation to this bill. This is an omnibus bill amending 30 pieces of legislation and four regulations—

Mrs Frecklington: Not as many as two weeks ago.

Mr NICHOLLS: That is quite a substantial number of pieces of legislation but not as many as two weeks ago, as the member for Nanango points out. It also repeals the Court Funds Act 1973.

In a significant recognition of the hard work and persistence of Peter and Sarah Milosevic and the representations of their hardworking local member, Jim McDonald, the member for Lockyer, the bill acknowledges the devastation experienced by families who lose an unborn child as a result of the criminal actions of others. It does so by making the death of an unborn child an aggravating factor.

The bill addresses many and disparate issues and, arguably, some of these should be dealt with in specific and separate legislation. I will touch on that later. I again note the Attorney's sensitivity in relation to the statement of reservation filed by LNP members. The convenience to the executive and the bureaucracy of omnibus legislation should not be at the expense of parliamentary scrutiny and the consideration of individual significant amendments on their merits, particularly as there may be good reasons to amend or express a view in opposition to the bill. I do not dispute that omnibus bills have their place. Omnibus bills of non-controversial matters that make a series of procedural or less significant changes to a number of pieces of legislation have their place, but to continually rely on omnibus bills to make substantial and significant changes to legislation is the hallmark of a bureaucracy and an executive that does not invite or appreciate scrutiny and does not want reasoned and rational debate from the members of this place of any political persuasion or the members of the public who may have differing points of view and wish to express that point of view.

The idea of tying something that is positive with something that is controversial and may be subject to opposition or amendment in one bill is something that should be avoided in almost every instance, but it is something that this government seems to be continually relying on. It needs to be called out when it happens. It is not to say that every bill will be opposed or that every omnibus bill should not come forward, but it should be subject to a far greater degree of scrutiny. It is the laziness of government that allows it through and that lets the bureaucracy drive it through them. I have seen it happen before in this place and this is, again, why we make our statement of reservation. Anyone with experience—on both sides—knows that this is an ongoing and difficult matter to try to resolve. You are presented with a piece of legislation and 'if you do not do it within the next 30 days the world will come to an end', and in it comes. 'We have to fix it up tomorrow', and in it comes. It should not be as a matter of standard practice that that continues.

I want to deal with some of the major issues in the bill. The first one obviously is the amendments to the Criminal Law (Sexual Offences) Act 1978. Again, this goes to the point about an omnibus bill. This is significantly of importance and will amend four pieces of legislation. It could have been and should have been perhaps a separate bill, and I will explain why. Dealing with the changes as they are presented in the bill, a fundamental principle of the Queensland legal system is that legal proceedings be administered in an open court with public access where the parties can be named and the subject of fair and accurate reporting without fear of being sued for contempt or defamation. That is important for public confidence in the administration of justice because it demonstrates the integrity and independence of criminal justice proceedings by ensuring that they can be scrutinised and analysed.

We only have to compare places where that is not allowed and the outcomes in jurisdictions where that is not allowed to realise how fundamental this principle is. Closed courts where they are not subject to published scrutiny, they are not subject to questioning, where the judges are not subject to the oversight of elected representatives or a parliamentary process or media scrutiny are proceedings that cannot be fairly called fair and independent, and we can think of many countries around the world where that occurs. We used to have the show trials in Russia. We have the current proceedings in places like China where representation and court proceedings are all in camera, so it is a fundamental principle of our system that that occur. It is not absolute and there are certain exceptions to ensure that

the interests of justice are served, but they have to be clearly enunciated and the primacy of the principle is that in all cases that is the principle unless a very good reason can be made as to why that should not occur. Instances of this exception to the rule of open justice could, and do, include the protection of individuals where to name the accused may lead to a victim's identity being revealed and further trauma occurring. The law is especially aware of this when it comes to offences against children and we as a society accept that restriction.

In Queensland the issue has been in relation to the Criminal Law (Sexual Offences) Act, which has been in place since 1978. The identification of someone accused of a prescribed sexual offence is restricted before that person is committed for trial or sentenced on that charge. Members will no doubt be aware of a high-profile case in Toowoomba that is being reported where the name of the accused or the subject of that proceeding has not yet been made public but the case is drawing a lot of attention. Times have changed since 1978 when that legislation was introduced, as have community attitudes and the willingness of victim-survivors to tell their stories and to be part of highlighting issues around sexual violence which we would all agree, I am sure, is a good thing—that is, a victim-survivor's capacity to be part of highlighting those issues.

Apart from the Northern Territory, Queensland is the only state that does not currently allow for the disclosure of a sexual offence defendant's identity prior to committal. This proposed amendment comes following recommendation 83 of the second Women's Safety and Justice Taskforce report *Hear her voice*. In that report it is argued the provision is outdated and associated with an historical mistrust of sexual violence reporting, and we have had a number of debates in this place about the fallacy of that particular belief or state of mind, and we are now much more attune to and much more cognisant of the reality of the reporting and the difficulties that go with that reporting. The recommendation by the taskforce was for the Attorney-General to—

− remove the restriction on publication of the identity of an adult accused of a sexual offence before a committal hearing where it would not identify—

and this is the second part of the recommendation—

or tend to lead to the identification of a victim-survivor

− require a court to take the views of the alleged victim into consideration when deciding whether to order that the identifying details of an accused person should be suppressed.

There are two parts to it. Clearly the taskforce took the view that the provisions are outdated and there is a sound argument that they are inconsistent with the principles of open justice. Indeed, when we think of other serious offences such as murder and manslaughter where the accused is named almost immediately, along with similar serious offences, the logic of retaining the restriction seems even less tenable. As the taskforce pointed out—

Removing the prohibition would align the position in Queensland with the majority of other Australian jurisdictions—

with the Northern Territory being the only one similar to Queensland—

and with the United Kingdom and New Zealand. It would facilitate media reporting about people who are charged with sexual offences, which may encourage victims and other witnesses to come forward. It could help prevent further offending by the same perpetrator. Increased publication as a result of this option may contribute to constructive community discussion about sexual violence by removing protections that are not in place in most other jurisdictions.

It is also important to note that there do not seem to have been any significant negative consequences in those many jurisdictions where publication of the accused person's identity has been permitted at an early stage. This is often a fear raised in relation to the early identification about trial by media, unfairness to the person alleged and a number of other issues, but the experience seems to be that that is not the case and that this is able to be managed sufficiently by the courts and by the media organisations themselves, so fears about the early identification of the offenders causing harm do not seem to have been realised.

Within the *Hear her voice* report, feedback from legal stakeholders originally was not positive towards the removal of this protection for defendants, and that is understandable. The legal profession has its job to do and it has views about it and, of course, the potential for trial by media should not be disregarded. These are serious matters to be considered, and that is why the committee report makes it clear there needs to be media guidelines in place to ensure the reporting is done fairly and accurately and with consideration of the principle of innocence until proven guilty. I will discuss that a bit more and a few other matters as I address some of the matters raised by the Attorney. There is more openness to these changes in the submissions made to the committee on this bill. The submissions that were against it tended to be in the *Hear her voice* report; the submissions in relation to this bill that went to the committee tended to be more supportive of it, and I note the Queensland Law Society now supports the proposal. However, a number of submitters to the committee noted that recommendation in relation to the guidelines.

The taskforce also recommended the amendments not commence until the Queensland government developed a guide for the media to support responsible reporting of sexual violence, which is recommendation 84, and this was included as a recommendation—I think recommendation 2—of the Legal Affairs and Safety Committee. I had here a whole series of questions which the Attorney will be pleased to know she no longer has to answer: has the work been done and, if so, has the guideline been released? I would not mind knowing that—that is, whether or not the guideline has been released for consideration. Can she inform the House when it is likely to be done and when the section will commence? We now know it will be 3 October. Will a draft be circulated for consultation before the final guideline is issued and has that been done? Will the Attorney table the guideline in the House for the information of members and, if so, will she be able to do that before debate on this bill is finished? I think it is as a courtesy to the House, if it is in a reasonably final format, for members of this place to know what those guidelines are going to be, given it was a part of the committee's recommendations and a part of the *Hear her voice* report recommendations, because at the time of the submissions to the Legal Affairs and Safety Committee a couple of months ago the guidelines had then not been produced and some submitters raised questions about it. In that sense it is heartening and reassuring to hear that those guidelines have been developed and are being consulted on and that they will be ready for the commencement of part 9 of the bill on 3 October.

I also just want to touch briefly on the fact that part 9 of the bill provides a process for a non-publication order. There is a provision there that allows an applicant to make an application to the court for a non-publication order, but that must be made on at least three days notice and there must be a good reason provided to the court or it must be in the interests of justice. The grounds for making that order—that is, the grounds the court must take into account—are set out in proposed new section 7B of the act. Importantly, none of the reasons specify reputational harm as being a reason for preventing publication. I think that is an outmoded form of defence or rationale for the provisions there. The ostensible reason was to protect victim-survivors, but in many instances people regarded it as protecting the reputation of the accused before the committal took place and that, I think we would agree, these days is now no longer a valid reason to do that, if it ever was.

It is easily foreseeable that this provision will be tested on a number of occasions and we know that because the current experience is that that is the case. The non-publication orders that are made are subject to review, including on the application of an accredited media outlet as well as by the court on its own motion and another person with sufficient interest. On balance, the LNP believe the provision adequately weighs up the rights of the accused to a fair trial and the presumption of innocence as against the importance of ensuring public confidence in the administration of justice as well as the protection and the support of victim-survivors.

Continued monitoring of the operation of these provisions may lead to change and improvement in the future. If I heard correctly, the Attorney said that would be an ongoing review although I am not sure if that was of these provisions. However, there will be a five-year review of the operation of the provisions. That was a suggestion on our radar in relation to seeing how they work. They may require change, they may not work as anticipated and there may be need for further work.

I turn to the death of an unborn child. This bill proposes to better recognise the death of an unborn child as the result of a criminal act. It amends four acts to do so: the Criminal Code, the Penalties and Sentences Act, the Youth Justice Act and the Victims of Crime Assistance Act. A major change to the Penalties and Sentences Act will make the death of an unborn child by a criminal act an aggravating factor for the defined relevant offence. 'Relevant offence' is defined to include murder, manslaughter, grievous bodily harm, wounding, dangerous operation of a motor vehicle, assault occasioning bodily harm and careless driving. Changes to the Criminal Code—and this is important—allow for the naming or a description of the unborn child in the indictment. This change to the Criminal Code may well be of some comfort to those who have lost a child, and their loved ones, as the result of a criminal offence. It gives recognition to the child and that very significant loss.

It is important to note, as I did in my introduction, the longstanding committed and passionate advocacy of Peter and Sarah Milosevic following the tragic loss of their baby in a motor vehicle accident. In Peter and Sarah's case, the court acknowledged that the driver's actions caused their unborn daughter's death but, ultimately, the penalty was $950 and the loss of a licence. Many would argue that that is insufficient for the tragedy that occurred. As parents we can only imagine the grief of losing an unborn child. It is something that I have seen and experienced firsthand. While many continue with their lives, the grief and hollowness of the loss endures and is a longing ache in your heart that I can imagine would be there forever. Jim McDonald, the member for Lockyer, obviously understands Peter's and Sarah's grief. He should be lauded for his determination and persistence and for the caring and considered way he agitated for this change to the law. I know that Jim has been doing that for the past five years.

It is a pity this change is included in an omnibus bill because, as I pointed out earlier, it could have been dealt with separately and been known as Sophie's Law in memory of Sophie, in recognition of the Milosevics' effort and as an enduring testament to the work that they have put in and the change that they have been able to effect in Queensland. Often times, as members of parliament we hear people say, 'What change can I make? How can I make things better?' Peter and Sarah, through their advocacy and with the assistance of their member of parliament, have been able to make a very significant change to a very longstanding part of the law. I think it would have been entirely appropriate for this law to have that name. We have seen other instances where that has occurred in bills.

Mrs Gerber: And other jurisdictions could then adopt this and call it Sophie's Law.

Mr NICHOLLS: And other jurisdictions; I thank the member for Currumbin. Of course, there is difficulty with any change to the Criminal Code. Indeed, as the Attorney mentioned in her contribution, the importance of preserving the born-alive rule, unless there is a very substantial reason to amend it, is a significant consideration and that rule is not being changed in this legislation. This change preserves that rule while ensuring consequences for criminal acts that cause the death of an unborn child. The LNP will obviously be supporting the legislation in that respect.

The changes to the Legal Profession Act are the other significant part of this package of changes, although as I have indicated there are many others in relation to the Oaths Act, the Supreme Court Act, the QCAT Act, the Magistrates Courts Act and the list goes on. The changes to the Legal Profession Act give effect to commitments made by the government as part of the lead-up to the 2020 election and that were mirrored by the LNP in relation to many of the changes. Of course, one change is in relation to increasing the threshold for complicated or complex cost agreements from $1,500 to $3,000.

Recently I had the—I was going to say 'misfortune' but that would be unfair—opportunity to engage lawyers on a relatively straightforward matter of granting probate on a very simple estate. That is not a difficult thing to do at all. However, the length of documents that you have to go to, simply to get the probate of a will, is longer than any other piece of paper you need. The whole process is unduly complicated for the simple administration of a will. It is confusing in and of its own volition. The very document you are obliged to look at in order to be able to do something relatively straightforward is more confusing than the thing you are trying to do in the first place. By the time you have looked through it you have already earned $1,500 worth of lawyer's fees. Many lawyers are great friends of mine and I come from a background in the law so I understand the value of getting an independent lawyer and paying them appropriately for the work that they do. This change is well overdue. Indeed, in my view, the whole system needs to be made a whole lot simpler than it is, not to remove its efficiency or effectiveness but simply to make it simpler.

I note again that the amendment proposed by the Attorney in relation to changing the threshold back to what it currently is, that is, back to $1,500 from $750, was another recommendation made by the LNP members in the committee stage of the process. They highlighted the difficulties with the $750 change.

Mr Krause: It's just more red tape.

Mr NICHOLLS: More red tape, absolutely; I take the interjection. It would have been more red tape and we are now back to where we were before the bill was introduced. Of course, we will support that because it shows that the government is listening to the ideas and the comments being put forward by the LNP in relation to these matters. That is a good thing.

The document retention rule is a good thing. I can remember back many years—more than I care to remember—to my first job as an articled clerk. At Christmas time, for the princely sum of $96 a week, I was sent down to the basement to shred the legal firm's files that were more than 20 years old. We had a little shredder that we put everything through. Those days are well and truly behind us. The volume of documents now is far greater. As anyone who goes to court knows, there are whole worlds of IT systems set up to keep track of documents. The information overload, as parliament itself knows, is enormous. Being able to sensibly move documents that have reached their use by date out of the system makes perfect sense. That is something that we will support as well, going as it does some way towards simplifying the process for businesses, particularly small businesses, which legal professions predominantly are throughout the state.

With those few comments, I will it leave there. No doubt we will hear from other members of the opposition in relation to some of the other provisions of the bill.