Speech By

Leanne Linard

MEMBER FOR NUDGEE

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MAKING QUEENSLAND SAFER BILL

Ms LINARD (Nudgee—ALP) (5.23 pm): In this House there are many things that are contested, but there are also those that are not. The community's right to feel safe is one of those that I am certain every member of this House—

Honourable members interjected.

Mr DEPUTY SPEAKER (Mr Martin): Pause the clock. Members, I cannot hear the member on her feet. There is way too much noise.

Ms LINARD: The community's right to feel safe is something that I am certain every member of this House agrees on, as is wanting to see fewer victims of crime wherever they live, whatever the crime and whomever the perpetrator. From the outset, I acknowledge the voices of victims across my local community and across the Queensland community, as well as those who sit in this chamber on both sides of the House. Their losses and grief are deeply felt and sometimes unimaginable. Their experiences and courage to share them deserve to be respectfully acknowledged.

I also want to acknowledge that Queensland voted and I respect the will of the people. For some, the now government's often used refrain of Adult Crime, Adult Time was the reason and, while having no real meaning at law, it was a slogan that appeared to capture genuine community concern over offences being committed by young offenders and debate over whether the penalties being imposed in response to those offences adequately reflected community expectations. The Making Queensland Safer Bill is the government's attempt to give effect to the sentiment conveyed by their four-word slogan. That is not an easy task and I acknowledge that.

I am well acquainted with the Youth Justice Act, the Childrens Court Act, the Criminal Code and the Penalties and Sentences Act. When we were in government they underwent continued revision to equally give effect to the concerns of the Queensland community. Chief among those amendments was to make the first principle of the Youth Justice Act that the community should be protected from offenders, in particular recidivist high-risk offenders, because we all believe that the community should be safe.

However, it is precisely because of that complexity that changes should be given the consideration they are due and the examination they deserve, because the impacts, intended and unintended, can have far-reaching effects on arguably vulnerable cohorts in our community, victims and young people alike. Many of these changes have not undergone such examination or scrutiny by the public, victim support and advocacy groups, the legal fraternity or members of this House because their rushed nature has not allowed for it.

Regardless, there are elements of this bill that I do not stand to oppose. As I said from the outset, I respect the will of the people and the voices of the victims who have called for more or different action in respect of serious and repeat offenders. However, there are other elements contained within this bill

that would have perverse outcomes for the very victims that it purports to serve and the community safety it claims to deliver. It is equally our job to call these out and hold the government to account. It is to those elements that I now turn.

The measure of any bill is its capacity to deliver the outcomes it purports to. As its name suggests, the Making Queensland Safer Bill is the government's attempt to make the community safer. In his own words, the Premier has said that this bill has one primary objective: fewer victims. However, by changing what a court must have primary regard to, the bill signals a significant change from a system focused on rehabilitation and breaking the cycle of offending to one prioritising punishment and retribution. While I appreciate keenly the desire of victims to see justice done and adequate punishment awarded, many victims first and foremost want to see the cycle of offending stop and the system work to prevent future victims. I can find no evidence that supports the efficacy of retribution and denunciation as the primary principles upon which the sentencing of a person is based to improve community safety or result in an overall reduction of future victims across our community. If the government is in receipt of such evidence then I respectfully ask that it table it or draw the attention of the House to it.

Clause 15 of the bill provides that section 150 of the Youth Justice Act sentencing principles be altered to remove the principle that detention should be imposed as a last resort. The proposed amendments are incongruent with section 9 of the Penalties and Sentences Act and create the perverse outcome where the court in sentencing children must have primary regard to the harm caused to victims for all offences, but in sentencing adults—and only for violent and particular sexual offences—the court must have regard primarily to victim harm in conjunction with other factors. Clause 15 also includes a direction that—

... a court must not have regard to ... any principle that a sentence that allows the child to stay in the community is preferable.

This principle exists in the PSA for adults. This direction contravenes section 33 of the Human Rights Act, which provides that—

A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

On the passing of this bill, children will be held to a moral and criminal culpability beyond that of adults. How is it defensible for the victims of adult crime, particularly given a majority of offences are committed by adults, not young people—that crimes perpetrated by those under 18 may see harsher penalties for certain offences, than those perpetrated by adults?

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Ms LINARD (Nudgee—ALP) (9.54 pm), continuing: How do we reconcile as a community that we do not believe children have the moral culpability of maturity to be left at home alone, drink alcohol, smoke, have a credit card, drive and now use social media until a certain age because they arguably are not mature enough to understand and manage the consequences but that they will now be held not only to an adult standard but rather above it in some circumstances in respect of offending?

Not every child who comes before the court is a serious offender, but every child will now have detention as a last resort removed. The government could have emulated the PSA and applied this change only to the 13 serious offences listed by the government in respect of their Adult Crime, Adult Time offences, but they did not. Clause 15 applies to all children who come before the court for sentencing for all offences.

Quite separately to explaining the incongruence in this House and to victims of adult crime, how do I go home and explain that to my 11- and 13-year-olds? How does any parent in this chamber explain to their children or young people across Queensland that they are growing up in a community that judges them at law more harshly than adults?

The bill removes the opportunity for orders of restorative justice for the 13 listed Criminal Code offences. Restorative justice is not appropriate for every situation by any means, but the efficacy of restorative justice is proven in respect of reducing reoffending and supporting victims to recover from their trauma when all parties indicate it as their chosen outcome. The bill removes that choice from victims. The criticism I most commonly heard from victims who wanted to participate in restorative justice related to delays to have their matter proceed. Victims want timely outcomes but they also want to be empowered with choice in the process. This does not honour those wishes. Victims have told me they want more choice, not less.

The final matter I want to raise in the time I have remaining is the inclusion of cautions in criminal histories. The Queensland Police Service has long used police cautions as a way to divert first or light-touch young people from the criminal justice system. Empirical studies have found that in the order of 65 to 70 per cent of first offenders—so a clear majority of young people—who have a first offence, often shoplifting, will successfully be diverted by the QPS using their continuum of diversionary measures. A record is kept in QPRIME, but to now require that such cautions are to form a formal part of a young person's criminal record may have the concerning unintended consequence of net widening.

Children make mistakes. We are arguably not talking about serious offences and offenders here. We are more likely talking about simple or summary offences such as public nuisance or regulatory offences such as shoplifting. Including cautions in a young person's formal criminal history discourages children from participating in these initial diversionary processes, ultimately increasing the workload of the court, delaying the resolution of matters for victims and including matters in formal criminal histories that have not been given the benefit of judicial scrutiny but may carry significant limiting effects as it relates to employment for young Queenslanders.

The elements I have just outlined have perverse outcomes for the very victims this bill purports to serve and the community safety it claims to delivery. To revisit these clauses of the bill does not in any way impinge or limit the government's Adult Crime, Adult Time slogan and asserted mandate, but they do give effect to the voices of submitters to the inquiry. They give effect to the voices of victim advocacy groups to the inquiry and they are worthy of being considered as the genuine contributions that they are intended as in this House.

To genuinely keep the community safe is something that we all agree on. The elements of this bill in its current form that I have outlined fail that test. They are worthy of being considered and the voices of the stakeholders to the inquiry, however short that was, are worthy of being considered so that the Queensland community can genuinely be kept safer, but the perverse outcomes, particularly for victims of adult crime and particularly for young children who are being brought into the system—not serious and repeat offenders—are not caught in a system too early and inadvertently brought into that system and this issue made worse.