



Speech by

Jann Stuckey

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CRIMINAL CODE AND OTHER ACTS AMENDMENT BILL

Mrs STUCKEY (Currumbin—LNP) (4.04 pm): I rise to speak to the Criminal Code and Other Acts Amendment Bill 2008. This bill, which was introduced into the assembly on 1 May this year by the honourable Attorney-General, addresses some pertinent issues that have come to the fore in recent times. With respect to my portfolio area of Child Safety, it would appear that the government has awoken from its slumber and now intends by virtue of this bill to further afford the protection that our children are often denied. As members opposite have heard from the honourable member for Toowoomba South and shadow Attorney, the LNP supports the intent of this bill but has concerns about section 364A and will be moving an amendment to clause 64.

The bill amends in five broad manners acts affecting the safety of children. The acts amended in these respects include the Criminal Code Act 1899, the Criminal Law Amendment Act 1945, the Criminal Law (Sexual Offences) Act 1978 and the Penalties and Sentences Act 1992. The majority of amendments proposed in this bill take the form of changes to the Criminal Code, with unlawful assaults on public officers, the failure to provide necessities and leaving children unsupervised for an unreasonable period being either amended, replaced or introduced under the code.

Further, under the amendments to the Criminal Law Amendment Act 1945 and the Criminal Law (Sexual Offences) Act 1978 detainees at the Crown's pleasure will lose their right to an unqualified pardon if they are released early on parole. I see the Attorney nodding his head, so we are right so far. Lastly, amendments to the Penalties and Sentences Act 1992 will ensure that judicial discretion when deliberating on sentences takes into account the mental wellbeing of any instances of persons under the age of 16 witnessing an offence.

A recent spate of child safety cases within Queensland has become the trigger for what has become a dire need for the implementation of this particular bill, or some aspects of it. Currently, under section 340 of the Queensland Criminal Code an offence of serious assault is provided for. This serious assault carries with it a maximum penalty of seven years imprisonment. A litany of unlawful assaults is provided for under the section where assaults are committed against particular persons including the elderly, the blind, the disabled, police officers and other emergency service personnel.

Section 340, as amended by the bill, includes assaults on public officers who are performing a function of their office or employment. According to schedule 1 of the code's dictionary—

public officer means a person other than a judicial officer, whether or not the person is remunerated—

- (a) discharging a duty imposed under an Act or of a public nature; or
- (b) holding office under or employed by the Crown; and includes, whether or not the person is remunerated—
- (c) a person employed to execute any process of a court; and
- (d) a public service employee; and
- (e) a person appointed or employed under any of the following Acts—
 - (i) the *Police Service Administration Act 1990*;
 - (ii) the *Transport Infrastructure Act 1994*;
 - (iii) the *State Buildings Protective Security Act 1983*; and

- (f) a member, officer, or employee of an authority, board, corporation, commission, local government, council, committee or other similar body established for a public purpose under an Act.

That is quite comprehensive, I am sure you would agree, Madam Deputy Speaker.

In his second reading speech the Attorney-General stated that the amendment ensures that public officers such as those employed by the Department of Child Safety who are vulnerable because of their employment receive the protection of the section. Some would argue that this current definition of a public officer presently encompasses those employed by the Department of Child Safety as well as emergency services personnel as a category of a person discharging a duty of a public nature. However, as the Attorney-General illustrates, an inclusive definition of public officer is inserted in section 340, which provides that it includes a member, officer or employee of a service established for a public purpose under an act. This provision will presumably put the issue beyond doubt.

These amendments come as a result of recent events which have occurred in the Torres Strait and have been brought to light by extensive media reports in recent months. They will ensure that our front-line health workers, including doctors and nurses working in our public hospitals and our child safety workers, receive the protection they so richly deserve.

I would like to place on record my sincere admiration for child safety workers. Despite the regular untruths fielded by the minister who chooses to misinterpret my comments which are almost exclusively directed at her and her government, child safety officers have my upmost respect. This morning the minister once again misrepresented me in the parliament saying that I would like to slash support services to these public officers which is a baseless, untrue statement with no facts to back it up. If she had any decency she would apologise.

Without diminishing my positive comments about child safety officers, I do find it amazing that the minister would make comments that these public officers have the toughest job of all or the most dangerous job of all public servants. We are talking about these public officers here. That is playing wedge politics and pinning staff against staff as to whose role is more dangerous or more important or more worthy.

Section 340 includes a range of public officers. We have to consider here the dangers of those who work in these public positions equally. In emergency departments, or casualty departments, staff deal with disturbed mental health patients, people who are under the influence of substances or drunk and wielding knives. Look at the high risks that our police officers face every day, some paying the ultimate sacrifice of their life, being tragically killed in the line of duty. At a recent Police Remembrance Day I showed my respect for these brave people and for the thankless work that they do to keep us safe. Also under this section fall our ambulance officers who, on an increasingly frequent basis, have to tolerate patients who assault and abuse them. As I have said, it is poor form for a minister to attempt to leverage one group of public servants as more important than another. It is actions that speak louder than words.

I would very much encourage the minister to support her staff through this amendment. Instead of mouthing platitudes of praise in the parliament at every opportunity and handing out a few certificates, I wish she would actually take steps to reduce the attrition rate amongst staff. Perhaps this amendment may go some way to doing so.

I would also ask the minister to not put her staff in the position where they are making decisions with little or no training, denying them the confidence they desperately need to make life-changing decisions about a young person's living arrangements. An investment into support programs for staff so that they are mentored and able to develop confidence as well as knowing they have protection under section 340 would also assist them, as would competence in a career role knowing they are not out on their own making enormous decisions that result in the removal of children from their families. So much for standing up for your staff. I am very glad that the Attorney is showing he is doing that.

The minister also says she is seeking changes to the Child Protection Act proposing to increase the maximum penalty for offences against staff to six months imprisonment, saying this will send a clear message that this type of behaviour will not be tolerated. She also notes that child safety officers were specified in proposed changes to this act in April which would increase penalties for serious assaults on public officers. I find it difficult to fathom why the minister seems to think that six months imprisonment is satisfactory when in this, the Criminal Code, we will see punishment extended to up to seven years. This is simply another example of more talk from the minister about something that is already being done in another department.

In recognition of the tough jobs that child safety officers undertake, surely they should be given the same level of protection as we give to police and other public officers. I applaud the provisions in this bill which will do just that. I stand in this House today and pledge the LNP's support and also genuine respect for all staff who work in the Department of Child Safety. I extend our deep gratitude to each of them for the tremendous job they do under extraordinarily difficult circumstances. It would be remiss of me not to offer the same appreciation to the other front-line public officers that this bill is speaking about—that is, our police and our health and emergency services personnel.

The second amendment affecting my portfolio includes the replacement of current section 364, which relates to cruelty to a child under the age of 16. As per the present section 364, a person who, having lawful care or charge of a child under 16 years, causes suffering to the child by failing to provide adequate food, clothing, medical treatment, accommodation or care commits a crime punishable by seven years imprisonment.

Clause 64 replaces section 364—cruelty to children under 16—with new section 364. This new section requires proof that the child was harmed, which is defined to mean any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing whether temporary or permanent. This element of harm replaces the previous concept of suffering. The definition is based on the definition of harm according to the Child Protection Act 1977, thus facilitating the ease of use of both acts.

New section 364 requires proof that the carer knew or ought reasonably to have known that their conduct would be likely to cause harm to the child. The amendment ensures that the section applies only to carers who are aware of the likely consequences of their conduct or where a reasonable person in the position of the carer would be aware of the likely consequences of such conduct.

Causing children to witness an offence will be given due weight in the arbiter of facts decision when handing down a sentence for any crime. The bill, via clause 136, will provide that a sentencing court must have regard to whether a child under 16 years of age was a witness to the offence in question or was directly exposed to the offence. Without question, the minds of children are highly vulnerable, especially in their early, formative years of rapid development where their milestones mark important stages in their lives. In the event that children witness serious offences which endanger their short-term and long-term health and wellbeing, they may not be a direct victim of the offence but the witnessing of the act may be detrimental to their health and future.

While the court often takes these factors into account in sentencing, the amendment to section 9(2) of the Penalties and Sentences Act 1992 recognises the particular vulnerability of children who are exposed to a criminal offence. Delayed effects may take months or even years to present as recognisable behaviours. The damage may well be building inside the child, only becoming obvious when a trigger of any sort, at any time could expose it and reveal the extent of harm caused to the child.

Child protection is everybody's business. The LNP believes that the government has dropped the ball, with not enough support coming from across government agencies with early intervention and prevention strategies. I would like to reinforce the need for this latest amendment that we have discussed here as far as children witnessing offences is concerned. I am sure everyone in this House is well aware of the recent cases of children who have been abusing other children in primary schools. It has highlighted the urgent need for the Department of Child Safety to get its house in order if it is to remain the lead agency for child protection.

The attitude of the department to date has been to wash its hands of any responsibility here, in effect suggesting that it cannot interfere if a child has a parent at home able to care for them. What narrow-minded thinking! Kids are sexually abusing each other and the minister does not bother to find out why. She does not care enough to investigate whether these children have been previously abused by adults or exposed to pornographic material or activity and she does not lift a finger to amend the laws to protect them. It is all too hard, so she flicks it out of her domain. Meanwhile this disturbing trend that some members of this House obviously do not care about seeps through our the primary schools, inflicting untold damage on innumerable innocent lives.

The Department of Child Safety has been publicly criticised for not stepping in when these reports have been made, albeit sometimes a week or more after a principal has been made aware of the assaults. That is disgraceful in itself.

Madam DEPUTY SPEAKER (Ms Darling): Order! Member for Currumbin, can I guide you to return to the purpose of the bill please.

Mrs STUCKEY: I would be more than happy to, Madam Deputy Speaker. The bill amends the Criminal Law Amendment Act 1945 to provide that, upon release on parole, a Queen's pleasure detainee loses the ability to be released unconditionally by the Governor in Council. Presently, section 18 of the Criminal Law Amendment Act 1945 provides a number of avenues whereby a judge can declare a person convicted of a child offence incapable of controlling their sexual instincts and order the person to be detained indefinitely. These are termed 'detainees at Her Majesty's pleasure'. By some bizarre stretch, the Beattie government in 2002 amended the Criminal Law Amendment Act 1945 to permit Queen's pleasure detainees to apply for parole while retaining their right to try for unconditional release by the Governor in Council. This was a ridiculous soft notion but typical of Labor's weak stance on crime.

I am pleased to see that the government has finally bowed to relentless public pressure and is taking a tougher stance on these despicable sex offenders. By virtue of the new bill, the Criminal Law Amendment Act 1945 will provide that, upon release on parole, a Queen's pleasure detainee loses that ability to be released unconditionally by the Governor in Council.

I well and truly agree with the urgency for review of the current abandonment laws but believe that the government has well and truly shown its poor understanding of today's society in trying to implement this amendment, and I speak of proposed section 346A. In so saying, I want to make it abundantly clear that I, like all other members, of the LNP abhor child abuse and the neglect of children in any shape or form and fully support provisions that protect children from these avoidable harms. With respect to leaving children in cars or, for that matter, anywhere unsupervised for lengths of time, the bill inserts the offence via the addition of proposed section 346A to ensure that a person who, having the lawful care or charge of a child under 12 years, leaves the child for an unreasonable time without making reasonable provision for the supervision and care of the child during that time commits a misdemeanour and is liable for three years imprisonment. Whether an offence is committed hinges on a judge determining the issue of reasonableness based on the—

Mr Lawlor interjected.

Mrs STUCKEY: I get very angry about child sex abuse, and it is a shame that some of these people in here do not feel the same. Whether an offence is committed hinges on the judge determining the issue of reasonableness based on the circumstances of the case, including the age, physical condition and intellectual capacity of the child.

This legislation follows closely the tragic death in May of a five-month-old baby left in the back seat of her mother's car as she picked up her other children from school. Sadly, the leaving of children in cars is not uncommon, although thankfully death is rare. We hear all too often of children abandoned in cars while mum or dad, or both, heads in to play the pokies, to gamble the family income away for a couple of hours. Unfortunately, this practice is way more widespread than parents just abandoning children in cars at facilities with pokies. We have children left in motel rooms while fathers patronise hotels, children left locked in cars at night on highways, babies being left in vehicles with air conditioning running, several children left at a camp, people dropping their children at swimming pools and sending taxis to collect them, and drugged-up parents found intoxicated and using illegal drugs sleeping off the effects while children were wandering in neighbourhoods. It is disgusting and it is disgraceful behaviour, and it is correct that with harsh penalties parents may think twice about abandoning their children. However, I do not feel that the introduction of this amendment will provide any real change in the manner in which these offences are committed. It will not remedy their parental skills and will not improve the family unit.

Proposed clause 64 does not provide care for children whose parents are incarcerated after having, say, left them at home during the school holidays while they worked. Jailed adults would be prevented from working, they would not be able to provide for their families, they would be shunned from society and they would be exposed to other criminal activities whilst imprisoned. This would only aggravate what may presently be lax parental skills. Honestly, what good can come from removing children from their parents who may on one occasion have acted negligently and may be willing to amend their ways with some counselling and direction? Studies, surveys and inquiries have proven time and again that the best interests of a child are most certainly not well served by removing them from their families. What hope does the child have of leading a normal life if their parents are incarcerated for up to two or three years?

Further, the burden falls on society to pick up the slack. Other family members will be expected to assist in their care. Currently, the underfunded and overworked Department of Child Safety would buckle under the weight of all of these cases which it will be forced to take on under this legislation. In addition, the taxpayer will have to foot the bill, with each prisoner costing the people a little over \$150 a day as well as untold expenses in counselling and housing services for fostered out children. How much counselling and support could you get for \$150 a day?

Resources would be well and truly better spent providing resources for poor parents, providing them with parental courses and support in what is becoming an ever-increasingly difficult venture, and this is why the LNP is putting forward the amendment today. The government's amendment before us does not offer any solutions to a growing problem and only delivers severe punishment. Punishment described in this legislation is not that different to sentences handed down to a recent murderer who rolled his car and killed his kids and is able to be out on parole in less than four years. I have said before that many people have commented that this is not the right path to be taking, and I will comment further on this issue when we debate the clauses. I commend the bill to the House.