



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr ML Furner MP (Chair)
Mr MJ Crandon MP
Mr DJ Brown MP
Mr JM Krause MP
Ms JE Pease MP
Mrs JA Stuckey MP

Staff present:

Ms E Booth (Acting Research Director)
Mr G Thomson (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE SERIOUS AND ORGANISED CRIME LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 13 OCTOBER 2016

Brisbane

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Committee met at 8.30 am

CHAIR: I declare open this public hearing into the Serious and Organised Crime Legislation Amendment Bill 2016. Thank you all for your attendance. My name is Mark Furner. With me today are Mr Michael Crandon, Mr Don Brown, Mr Jon Krause, Ms Joan Pease and Mrs Jann Stuckey. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard. The committee intends to publish the transcript of this hearing.

Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should turn off their mobile phones or switch them to silent mode. Also, you may be filmed or photographed during the proceedings. Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee.

The Serious and Organised Crime Legislation Amendment Bill 2016 was introduced by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon. Yvette D'Ath, on 13 September 2016. The purpose of today is to assist the committee with its examination of the bill. The program for today has been published on the committee's web page. From 8.30 am to 9 am we have the Crime and Corruption Commission.

FLORIAN, Ms Kathleen, Executive Director, Crime, Crime and Corruption Commission

CHAIR: We welcome Ms Kath Florian, Executive Director, Crime, Crime and Corruption Commission. Thank you for attending today. We would like you to provide an opening statement and then we will turn it over to questions.

Ms Florian: Thank you for receiving our submission and for providing an opportunity for the Crime and Corruption Commission to give evidence before this committee in relation to the Serious and Organised Crime Legislation Amendment Bill. As you know, the bill is quite broad in its scope and seeks to amend multiple pieces of legislation. The CCC has confined its submissions to the proposed amendments to the Crime and Corruption Act and to the definitions of 'criminal organisations' and 'participants' contained in the Penalties and Sentences Act due to the fact that they are highly relevant to the Crime and Corruption Act provisions. The CCC has not made submissions in relation to the broader policing implications of the bill as it has taken the view that the QPS, the Queensland Police Service, is best placed to address and to give evidence on these issues.

The CCC largely supports the bill and acknowledges and thanks the Department of Justice and Attorney-General for consulting with the CCC in the development of the parts of the bill that are relevant to the Crime and Corruption Commission. Our submission therefore has focused on a number of issues which the CCC considers important in order for the CCC to effectively perform its major crime and corruption functions. These include some minor suggestions around the definition of a 'criminal organisation' and a 'participant' in a criminal organisation to more effectively capture the evolving, agile and opportunistic nature of modern organised crime as opposed to the more structured and hierarchical models of organised crime. This, as you would appreciate, is entirely consistent with the explanatory notes in the statutory intent.

The most important issues for the CCC, however, relate to the fact that the current bill ties the use of intelligence hearings and the immediate response function hearings to circumstances where there are reasonable grounds to suspect that a criminal organisation, as defined, is involved. This is problematical for the Crime and Corruption Commission for a number of reasons which are expanded upon in our submission and which I am happy to expand upon in more detail today.

For similar reasons, the Crime and Corruption Commission is also concerned about any requirement that a person served with a notice of attendance in relation to an immediate response hearing can apply to the Attorney-General for legal assistance beforehand. This is in no way intended to prevent in any way anyone having legal advice or legal representation for such hearings but rather,

because the nature of emergent or emergency response hearings are that those hearings need to be dealt with urgently in the public safety, by applying for the Attorney-General's legal assistance, this can introduce significant delays which may defeat the very purpose of those provisions.

That concludes my opening statement. I would like to make myself available for any questions that you have.

CHAIR: Thank you very much. I go to your submissions. You indicate that the CCC is satisfied about the scope of the power and you have referred to the Kuczborski case. What was the power in that particular case that concluded the satisfaction of the CCC in respect of the bill before you?

Ms Florian: Could you direct me to what part of the submission you are looking at?

CHAIR: It is page 5. It is the third paragraph under the heading 'Amendments to "criminal organisation" definition'.

Ms Florian: In this part of the submission we are acknowledging that in the past there were three separate routes, as it were, to define a criminal organisation. One was under the Criminal Organisation Act, which was a route which had not been used for approximately seven years. One was to define someone or a group as a criminal organisation pursuant to regulation. In the Kuczborski case, which was the case that challenged the previous piece of legislation, some question was put in place about whether a justice was the appropriate person to oversight that aspect of the legislation and whether in fact it raised some Kable questions. On that basis, the CCC does not oppose the proposal that the regulation aspect not continue. However, we do support the third route which is the criminal organisation definition.

CHAIR: Furthermore in your submission on the same page, and as I think you have indicated in your opening statement, you do not have issues with the definitions; you have issues with how they are structured in terms of bringing about the powers of the CCC. Is that correct?

Ms Florian: We have some minor suggestions in relation to the definition of both a 'criminal organisation' and a 'participant', but the issues for us in relation to the intelligence hearings and in relation to the immediate response power is more the fact that both of those powers and the ability to conduct hearings under them is tied to a position where you have to reasonably suspect that a criminal organisation is involved. I can take you through those issues in respect of each if that would be helpful.

CHAIR: As you appreciate, both the definition of a 'participant' and a 'criminal organisation' differ in terms of their description. If you can go to that, I would appreciate it so we can understand your concerns on those two particular definitions.

Ms Florian: We are largely supportive of those definitions. The slight changes that we have suggested to those definitions appear at page 14 and onwards in our submission. In relation to the definition of a 'criminal organisation', subparagraphs (a) and (b) retain the identical form of the previous legislation but, in respect of our working experience with those provisions, it is our suggestion that we remove the words 'unacceptable risk' and replace them with 'threat' in the context of who, by their association, represent an unacceptable risk. We would say 'threat to the safety, welfare or order of the community', given that that is a threshold that is more objectively satisfied.

The other aspect of it is that further we would suggest that the phrase at the end of that provision could be broadened by including a reference to the safety, welfare and order of the community 'or members of the community'. This definition of 'criminal organisation' was really well structured to address incidents of violence or threatened incidents of violence to the community but for criminal organisations who are engaged in drug trafficking, for example, more broadly to demonstrate that that drug trafficking was a threat to the safety, welfare and order of the community is more difficult. If we say a threat to 'the order of the community or members of the community', we felt that was more appropriate to capture the range of criminal activities that persons may be involved in.

Mr CRANDON: Going back to the immediate response function, I thought you were going to flesh that out a little bit and I am not sure that you did. Part of it states, 'In recent times there has been a spate of "lone wolf" attacks.' That is in the second last paragraph. You talk about are there likely to be more attacks, is this a terrorist attack and all of those sorts of things. In the heat of the moment you are trying to come to a conclusion on something. You then talk about that example of the lone wolf, highlighting how problematic the whole thing is. Could you expand further on that for the committee so that we can get a full understanding of where the CCC is coming from?

Ms Florian: Certainly. In order to use the immediate response function which would allow us to serve immediate attendance notices or requiring people to attend straightaway and to give evidence, at the moment we need to demonstrate that there is a threat to public safety, either that a threat is imminent or that it has already occurred, and that we reasonably suspect that it involves a criminal

organisation. This provision is a provision that has been the subject of discussions between ourselves and the Queensland Police Service in terms of our readiness for a terrorist attack in this state firstly as a prevention means in circumstances or a scenario where we may identify that there are people who are planning to conduct a terrorist attack and this provision could be used to call them immediately into hearings and to disrupt that in circumstances where the Queensland police may have some concern that they are not able to control the movements of targets. Secondly, if a terrorist attack were to actually occur, there are some quite crucial and immediate questions that need to be answered, such as who is responsible for that attack, is it broader than the persons who are immediately involved, are there other attacks already in play, either in this state or other states are there other devices that may already be in position? These are questions that urgently require answers. The difficulty we have is that by tying this provision to the existence of a reasonable suspicion of a criminal organisation it may be impossible for us to use that power in those circumstances.

Terrorism or terrorist groups can exist in a number of situations. They can be criminal organisations, organisations involved in drug-trafficking or money-laundering activities, who are also involved in terrorist activities. In those circumstances we may more readily be able to meet that definition. Equally, they could be a small group of people or individuals who are radicalised or who are merely influenced by a group such as ISIL. In those circumstances we would not be able to meet that definition. The proposal here is that to give us our best response capacity in the event of a threat to public safety or the realisation of that threat we untie this from criminal organisations.

Mr CRANDON: On page 10 under clauses 46 and 47 of the CC act you state—

The CCC does not support in-principle the proposed removal of the current ss 185(3A) and (10) and ss 190(4) and (5). The CCC reiterates its submission to the Taskforce into Organised Crime Legislation (August 2015) ...

You go on to say—

The CCC considers that the current provisions effectively address the issues targeted and promote the public interest in a timely way.

Could I ask you to expand on that for us? Could you flex that out?

Ms Florian: The CCC understands that the amendment is intended to return the legislation to its previous position and is not intended to give any stronger ground for a viable claim of a reasonable excuse founded on fear of retribution. We feel that it would be useful to get some clarification of that point in the explanatory notes. If that is the case, we note that the current case law in relation to what may constitute a reasonable excuse sets the threshold quite high. Our only concern in this is that we may see as a consequence an increase in the refusals to produce or to answer relevant CCC hearing questions on the grounds of fear of retribution, which would ultimately need to be determined by the court in circumstances where that case law already sets that threshold very high. I would put it no higher than that.

Mr CRANDON: I refer you to a submission by the CCC to the Wilson report dated 17 December 2015 and the concerns of the CCC in terms of criminal gangs actively recruiting members on the Gold Coast. It states—

It is clear from the recent developments that several clubs (including three of the major clubs) have been actively recruiting new members on the Gold Coast. The timing of the recruitment activities suggests that, following the change of government in January 2015, it is perceived by clubs that there is a softening of the stance against OMCG activity.

That was December 2015. We are now into October 2016. Can you just reaffirm the CCC's concerns in that regard or could you provide us with some commentary on that?

Ms Florian: In response to the introduction of the 2013 legislation there were, of course, a number of outlaw motorcycle gangs present on the Gold Coast and they reacted to the introduction of that legislation in very different ways. Some members upped and moved from the state. Some clubs attempted to deal with the legislation by morphing into another club which was not covered by regulation. Some went underground and continued to commit their criminal activities underground and without notice and another club legally challenged the legislation and went down that path. Each of the clubs responded to that situation in different ways. It is not unusual in our experience to see organised crime very aware of the environment around them and the potential in the environment around them and to respond to potential changes in that. For example, the club who challenged the legislation was indicating that they would like to resume their previous club activities if they were successful in that challenge.

It remains the case that there are outlaw motorcycle gangs on the Gold Coast who are of particular interest to the Crime and Corruption Commission and to the Queensland Police Service—three in particular that we are monitoring closely: two who previously existed on the Gold Coast and one which has come to the Gold Coast since. Outlaw motorcycle gangs obviously remain an issue.

The intelligence hearings that the CCC have is one way that we continue to monitor how outlaw motorcycle gangs continue to evolve and to respond to changes in the legislative environment or perceived responses to that.

Mr CRANDON: Just to clarify, your intelligence continues to confirm that there is ongoing recruitment?

Ms Florian: There are three outlaw motorcycle gangs in particular that we have under observation on the Gold Coast. One of them has gone to the Gold Coast in more recent times.

Ms PEASE: I just want to flesh out some information around the comments that you make about terrorist acts. Have you ever come across any instances where terrorist acts are actually linked to outlaw motorcycle gangs?

Ms Florian: That is probably a subject matter on which it would not be appropriate to answer questions in a public hearing. Great caution is taken in relation to expressing in any public forum intelligence in relation to national security issues and organised crime. If you thought it appropriate to go in camera, I am happy to discuss any aspect of that that I can.

CHAIR: Maybe rather than referring to any specific case if it is possible to identify a number or give the committee an indication that it is a significant issue?

Ms Florian: I would not say that it is a significant issue, but there is always potential for there to be a crossover between the membership of outlaw motorcycle gangs and people who are radicalised.

Ms PEASE: Further to that, you have couched your responses in a terrorist vein—I suppose that is the path you are going down. We have the counterterrorism act. Does that not adequately cover the terrorist side of things?

Ms Florian: No, it does not. The CCC has been identified in legislation as an agency that is to assist in the event of a terrorist incident through coercive powers. We do have a terrorism general referral, but that does not provide the sort of immediate response function and the preventative capacity that this provision does. For that reason we would see this provision as very useful in the event of an anticipated or actual terrorist incident.

Mrs STUCKEY: I am looking at the introduction of the submission that you gave us. It states—
Out of necessity and to assist the Committee meet these strict time-lines the CCC has limited its submission to key matters ...
Were there any other aspects that you could have addressed if there was more time, or are you satisfied you have been able to address everything?

Ms Florian: We have obviously focused on the aspects of the legislation which directly impact the CCC in the exercise of its functions. The CCC does have a research capability and our research function does allow our research officers to conduct research into criminal justice matters if requested by the minister or into issues in relation to the prevention and detection of organised crime. That may be something that the committee could be mindful of if the committee took the view that down the track there may be value in a review of the legislation or any part of it.

Mrs STUCKEY: Is there anything further you can say to us as to why you would have used the term 'strict time lines'? Is this stricter than other inquiries that you would be involved in?

Ms Florian: No. I cannot really add anything as to why that would be a strict time line other than a time frame was provided obviously for the submissions to be met, so we were working in accordance with that.

Mr KRAUSE: Ms Florian, I want to take you to page 15 of the CCC's submission in relation to information sharing arrangements. On that page it says that the CCC does not support the proposal for the heads of certain agencies to be able to enter into information-sharing agreements because, from what I understand, it may enable sensitive information from CCC investigations to be released to parties that it should not be released to. Could you expand on that submission and how it may impact on the CCC's ability in undertaking investigations?

Ms Florian: The object of this piece of legislation is a very positive one in the sense that it is attempting to improve information-sharing arrangements. I guess our concern is that it may have an unintended consequence in the sense that it allows for the exchange and disclosure of information despite another act or law. The difficulty is that a relevant agency for the purposes of this exchange and disclosure of the information includes the Police Commissioner as well as the chief executive of a department or a local government or prescribed by regulation. The concern is that we will provide Crime and Corruption Act information to an agency such as the Queensland Police Service or another department, and then because it has that provision, despite another act or law, the attempts by the agency to prevent how that information could be further disseminated or used would be irrelevant.

Mr KRAUSE: Yes, it is very concerning.

Ms Florian: Therefore, commission information could be passed on to other agencies in circumstances where we would not be aware of the reason or the purpose for that.

Mr KRAUSE: Or even potentially released into the public domain?

Ms Florian: I do not think that is the intent of the amendments because they are about information-sharing arrangements between these departments.

Mr KRAUSE: On another point, I seek your comment about the change to the Bail Act in this bill, which removes the presumption against bail being granted for members of criminal organisations where they are brought to court. Do you think this is less likely to encourage people to report extortion crimes?

Ms Florian: That is an aspect of the amendments which we have not addressed. I am happy to take that on notice and give it some consideration and come back to you.

Mr KRAUSE: That would be good. I have one other question. You mentioned earlier the ability for a person attending an immediate response hearing to make application to the Attorney-General for legal representation. I could not see in the submission where you addressed that. Am I correct in my understanding that when you bring people in for an immediate response hearing, it would be a matter of some urgency and that there is a proposal in the bill that would enable those individuals to whom the CCC wants to talk to delay that by seeking legal representation from the Attorney-General?

Ms Florian: Yes. Our purpose is very much not to stop someone having legal representation because in those very circumstances of an emergency response hearing I would imagine that that could be very important. The issue is more that there is then an administrative process that needs to be gone through, and that can delay sometimes for weeks or months.

Mr KRAUSE: Weeks or months?

Ms Florian: If we are looking at a hearing which needs to be conducted urgently to perhaps stop, in the terrorist incident or prevent an incident happening, that would remove the efficacy of the provision at all.

Mr KRAUSE: I think that is putting it mildly, Ms Florian. It would pretty much nobble the capacity altogether.

CHAIR: I would not be misleading the witness, member for Beaudesert.

Ms Florian: There may be other ways that we could achieve that. For example, if there was an ability for people who were attending before that hearing to have access to legal assistance in any event as a matter of course or something to that effect, that could perhaps overcome it.

Mr KRAUSE: One of your predecessors in your role, Mr Scott, in 2013—and I was a member of the PCMC at the time—expressed an opinion about the efficacy of the suite of legislative instruments that were being proposed by the government at that time. He gave an opinion to the PCMC at that time that the 2013 laws enhanced their ability to fight organised crime. Are you able to give an opinion about whether the suite of legislative documents before us today enhance the CCC's ability to fight organised crime or diminish it?

Ms Florian: I think they enhance our ability to fight organised crime. The 2013 amendments were very much directed towards outlaw motorcycle gangs. The definition of criminal organisation was very much about a structured hierarchical type of organisation. Outlaw motorcycle gangs are a very important part of organised crime, but they are not the only part of organised crime. Consistent with the recommendations of Mr Michael Byrne from the commission of inquiry, I think the ability to have a broader view and a more modern view of contemporary organised crime is essential.

I would like to also take up the opportunity of mentioning the issue about tying the intelligence hearings to criminal organisations. To develop a view of organised crime you can look at organised crime through a number of lenses. You can certainly look at it from the point of view of the groups, targets or syndicates that are involved, and that is the view that is expressed in this legislation. You can also look at it from the point of view of offence type. Cold call investment fraud is an investment type which has been a particular concern. You can also look at it from the perspective of commodities, and crystal methamphetamine is a commodity which is having an impact on our communities. You can also look at organised crime from the perspective of particular areas in which organised crime may develop a foothold and flourish—whether that is in within a particular industry. Constraining our intelligence collection to just criminal organisations means that we cannot use the intelligence hearing powers as innovatively as we would like to get that broader view of where organised crime is sitting in this state and how it is developing and evolving because it may very well be that the gap that we do

not know about is who the criminal organisations are within a particular area of organised crime. We then do not have sufficient information to start the very intelligence collection that would give us that response.

CHAIR: Ms Florian, unfortunately, the time has expired for this hearing. I thank you for your participation here today. The committee secretariat will provide you with a copy of the draft transcript once that is available for you to make any corrections if necessary. You have one question on notice, which is required by midday on Tuesday, 18 October. Thank you. I thank Hansard. I now declare the hearing closed.

Committee adjourned at 9.02