Speech by

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MEMBER FOR LYTTON

Hansard 13 April 1999

JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) BILL

Mr LUCAS (Lytton—ALP) (4.16 p.m.): I rise in support of the Justice Legislation (Miscellaneous Provisions) Bill introduced by the Attorney-General. A number of areas of law in the Justice portfolio need tidying up. I wish to take the opportunity to comment on two issues that are of concern.

The first issue relates to the proposed amendments to the Bail Act. There is a significant degree of concern in the community about the damage that can be done to society as a result of serious violent offenders being granted bail inappropriately. Bail decisions are often made by magistrates and, unfortunately, in some cases errors can be made. Errors can occur as a result of incorrect or incomplete information or through someone having an incorrect view of the world. In the interests of society, it is very important that erroneous decisions in relation to bail applications are able to be corrected on appeal. At present, only breaches of bail orders can be corrected by magistrates. One can appeal in relation to the breach of a bail order. In the public interest, it is very important that there be a general power whereby, if a court has erred in relation to the granting of bail, a review court is able to correct that error. It is not in the community interest that an incorrect decision of law be left to stand. If an incorrect decision is made to grant someone bail who should not be granted bail, the community is potentially put at risk. We must bend over backwards to make sure that the law is applied correctly in the community interest.

The other point that I wish to speak on in significantly more detail relates to the amendments to the Crimes (Confiscation) Act. This Bill makes a number of corrections to the existing law, particularly in relation to placing restrictions on access to legal fees except where specifically ordered. I will comment a little more about that aspect later, but I wish, firstly, to take the opportunity to speak about the whole issue of proceeds of crime legislation.

One of the great achievements of the Fitzgerald inquiry that perhaps a lot of people did not think about was the fact that people from the Taxation Office were sitting at the back of the inquiry and day after day were finding out about the huge amounts of money that were being earned through organised crime, for example, moneys in bribes and ill-gotten gains. They were there for the tax office to assess and finally get something back for the taxpayer with various penalties imposed. That sort of attack on money laundering hits the Mr Bigs. That was a great benefit of the Fitzgerald inquiry.

Often in this place we sit here talking about sentences, but at the end of the day increasing sentences does not mean that courts will increase sentences, nor does it actually put any more bad people in prison or hit them where it really hurts. In this place I am interested in looking at legislation that hits organised crime and hits it hard, because the people who benefit from organised crime at a high level are people who make a fortune out of it. There are huge profits to be made from criminal conduct and drugs.

Traditionally, the Queensland law position was that a conviction before the court was needed before money could be forfeited. Once that conviction occurred, then there was a reverse onus situation so that the people who were convicted had to show that the money was properly earned. But the problem is that modern organised crime is very, very effective and that in modern organised crime detection we do not always get the Mr Bigs. People can see that there is a money trail, but unfortunately, due to their cleverness in the system, they are in the situation where even though it is known that the money is there, it cannot be got at.

I am saying that we ought to be in the situation in which we get tough on the proceeds of crime and we make sure that people are not entitled to benefit from their ill-gotten gains. I think that the House would be very interested to hear about a case involving a Mrs Flack from New South Wales. It was reported in the Sydney Morning Herald last year. I will just read a little bit from the case for the benefit of the Parliament. It is headed "Woman's mystery $433,000 windfall". It states—

> "A judge ordered the National Crime Authority ... yesterday to return a briefcase containing $433,000 to the mother of a former criminal associate of the Sydney underworld figure Arthur 'Neddy' Smith—even though the woman told police she had not seen it before."

The money was found hidden in a cupboard in her home. It goes on—

> "... Mrs Flack told Federal police who searched the house with a warrant to look for cannabis resin in April 1994 that she had not seen the briefcase before and did not know who owned it.
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> The judge said that when shown what was inside the briefcase, Mrs Flack had exclaimed: 'Oh, my God.'
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> When asked if there was anything she could tell the police about the bag with the money in it, she said: 'No, nothing. I've never seen it before, I swear.'
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> ... the police search was related to Mrs Flack's son Glen, who had a key to her house and visited about twice a week. He is a convicted armed robber."

The problem was that the court said that, because the NCA could not show any better title to the money than Mrs Flack had, she was entitled to keep the $433,000. If attacking that sort of ridiculous view of the law is not in the community interest, I do not know what is. It might have been a correct application of the law, but I do not think we can allow that sort of situation to stand. That is why it is very important that we are able to look at legislation which says that, when looking at these sorts of factual situations, that money should be forfeited. Mrs Flack did not know where the money came from; she just happened to have $433,000 in a suitcase that she had never heard of before. Not too many pensioners in my electorate would be fortunate enough to do that. I table that article.

There was also an article in the Courier-Mail on 3 February this year which was headed "Crime profits targeted". It talks about a submission from the Criminal Justice Commission, the Queensland Crime Commission and the Queensland Police Service. It states—

> "... the state's 'confiscation of profits of crime laws' were a major impediment to combating organised crime."

They called for legislation in Queensland along the lines of the New South Wales legislation, which is based on the US anti-racketeering legislation. I will just indicate that the legislation in New South Wales was introduced by a Labor Attorney-General, Jeff Shaw, QC, in 1997 in the Drug Trafficking (Civil Proceedings) Amendment Bill. It is very important that we have a look at some of the main features of that legislation because I think it is very important for us to consider very strongly in this State the need to look at that sort of legislative mechanism.

What happens in that State is that no longer is a conviction needed to forfeit money as a result of serious crime-related activity. The court must make an order to forfeit money if there are reasonable grounds for the suspicion that serious crime-related activity took place. It is not always easy to show what serious crime activity took place, and New South Wales has the provision that they do not actually have to specify a particular instance but can generally indicate it. Of course, people have to convince the court that that serious crime-related activity took place, but when they do get to that situation, then the onus shifts back onto the individual—the person who has allegedly made the profits from this organised crime. If they want to keep that money, they have to show that that property was not acquired illegally. In other words, they have to show to the court that they did not get that money illegally. That is something that most people in our society can do. I can certainly show all my sources of income, as can most people in the community. So we are talking about situations in which people can show large amounts of money, the origins of which they cannot explain. This New South Wales legislation has a reverse onus to make sure that they can justify to the court where they got the money, and if they cannot justify it then it is forfeited.

The other thing that the New South Wales legislation entitles the court to do is to take into account a person's expenditure over the preceding six years. The portion of that expenditure which cannot be demonstrated to be derived from lawful sources will be deemed to be proceeds of illegal activity. So again, a person looks at an expenditure test and sees how much money is spent. If someone is on the dole but has been living a good lifestyle, spending $150,000 a year over the past six years, then one might ask where they got that money from.

Mr Schwarten interjected.

Mr LUCAS: The tax office can often do that. They have assets betterment tests and tests such as that, as the Honourable Minister points out. It is very important that they have those powers. But we

need those tough powers for confiscation of money if we want to get serious on organised crime and we want to hit them where it hurts—where they are making the money.

Another area in the legislation that is worth while us examining in Queensland is in relation to the issue of legal fees. In New South Wales they allow regulations to prescribe the maximum allowable costs for legal services. In the New South Wales Minister's second-reading speech in relation to the amendment Bill, he referred to a Queensland case. It was a terrible case. I think it was the case of operation Tableau in which more than $1m was spent from restrained property, in other words, property that was restrained by the court and then allowed to be used for the defence of these people. $1m was spent on the committal proceedings of the defendants. When it was all gone—they had the biggest committal since Ben Hur—they went to the higher court and all pleaded guilty on legal aid. That was an absolute and utter disgrace.

The fact is that it is about time that the law realised that that sort of stuff is no longer sustainable. The community will not wear it. At the very least I think it is important that we follow this New South Wales action and perhaps even look at situations in which there are restrained proceeds of crime available for legal representation. Perhaps there should be some role for the Legal Aid Office. The New South Wales legislation is tough, but so is the US anti-racketeering legislation. We need to be tough on organised crime. We need to hit them where it hurts—where their cash flow is. As Attorney-General Jeff Shaw, QC, said: the reason for this is that experience has shown that major criminals often live a lavish and expensive lifestyle whilst their legitimate income is very low—often just unemployment benefits.

The legislation that we are enacting today in relation to proceeds of crime is important. It is important legislation and I support it. I suggest to the Government that we should be looking towards a significant strengthening of our organised crime legislation to help the Government carry on its fight against organised crime; that we ensure that criminals do not benefit from their serious crime-related activities; that the proceeds of crime are forfeited to the State; and that we hit these organised crime groups where it hurts—in the wallet.