



Speech by

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MEMBER FOR GREENSLOPES

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EVIDENCE [WITNESS ANONYMITY] AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (12.17 p.m.): It is a pleasure to rise in support of the Evidence (Witness Anonymity) Amendment Bill 2000. We must recognise that a significant reality of modern crime fighting, especially when fighting organised crime, is the use of covert operatives. Indeed, I understand that these operatives are used not only by the Queensland Police Service but also by the Criminal Justice Commission and the Crime Commission.

Those who perpetuate crime like to keep their activities secret. Indeed, the sophistication of those more abhorrent criminal activities, such as those committed within the drug trade, means that we place a great reliance upon covert operatives to determine the objectives of such criminal organisations. For example, in the drug trade it is important for those covert operatives to engage in those crimes and particular actions because there is a chain of command, there is a division of labour, there is a separation of tasks and significant communication between those individuals in order to achieve their criminal objectives. Within the drug trade there is coherent organisation involved in the acquisition of materials, whether that involves precursors for amphetamines or importation of drugs, through to processing and distribution. In that sense it is no different from any other organisation in that it manages itself and executes complex objectives. Therefore, the bigger the organisation becomes, the more secret it must become and the more deadly, in a sense, it must become in terms of keeping its corporate objectives in place while maintaining the secrecy of its internal communications and the operations driven by those communications.

That is the significant reality of organised crime. Those organisations must communicate and operate in that fashion. That is why crime prevention bodies must use covert operatives to penetrate these organisations to ensure that the real brains and financial support behind these organisations are found. That is an extremely complex task. It is one, as we have seen from the various court cases over the years, which requires substantial proof, especially if we are to get the Mr Bigs and Mrs Bigs of the world in terms of the people backing these organisations. Therefore, the testimony of covert operatives is critical to achieving prosecutions in this area.

Mr Paff: No, it is not. You have got that wrong.

Mr FENLON: The honourable member must not be following what is really happening within this sphere. These particular types of criminal operations are highly secretive and unless they can be penetrated through the use of covert operatives it is very difficult to get a prosecution. They are secret by their very nature and very special tactics are needed in order to get through the front door to find out what is really going on. They are not going to come out and reveal all to the police. Even if the police do find evidence of criminal activity as a result of undertaking a raid and discovering drugs on particular premises, that does not necessarily resolve the problem. The problem that law enforcement authorities are addressing in terms of organised crime is not to go out and bust one particular individual who might be found with amphetamines on premises, the objective of the policing operation is to go to the heart of the organisation, to kill the organisation, that organic body that is coordinating the operation. The police may be able to cut off an arm of an organisation, but that will not kill that organic body that will grow back its arm and will continue to operate. The whole purpose of modern law enforcement in this sphere is about going out and killing those organisations. That does rely on secrecy; it does rely on the use of covert operatives and that is why those covert operatives ultimately need to be protected.

I am pleased to see that in the Attorney-General's second-reading speech he indicated that the Bill does indeed provide an appropriate balance between the need to protect the identity of the covert operative in certain circumstances while at the same time ensuring that an accused's right to confront his or her accusers is not unduly prejudiced. This balance is founded on the New Zealand Evidence Act 1908, section 13A. That is an Act which, I understand, has operated well and has found some significant balance in achieving what can be very conflicting objectives in terms of ensuring that these insidious organisations are nailed down and that those organic organisations are infiltrated and identified and stopped from operating, whilst on the other hand ensuring that those very fundamental common law rights of citizens are protected and given an appropriate balance.

Covert operatives do indeed perform a very difficult job. The member for Crows Nest provided a valuable contribution to this debate in setting out what those people go through in terms of being exposed to extremely dangerous substances. They put their lives in danger and, indeed, their mental health in danger. They are highly stressful, dangerous jobs and the after-effects of some of those jobs can be akin to the post-traumatic stress disorder that people go through after being in war zones. That is because of the potential for 24-hour a day situations during which the operatives do not have a chance to switch off; they have to be alert all the time to be able to do their job effectively. These people need to be well protected and appropriate allowance for anonymity, therefore, when giving evidence is absolutely fundamental and essential. Common law in this context is not adequate to deal with the complexity of these situations and deal with the appropriate set of checks and balances needed to ensure that such anonymity is properly executed.

The main mechanism provided in this legislation to execute that anonymity is via the witness anonymity certificate. That has been outlined extensively during this debate. I will touch on those items. They include the name of the witness; the stated period for which the witness was a covert operative; that the witness has not been convicted of any offence other than the stated offence; if the witness is a police officer, whether the witness has been found guilty of misconduct or a breach of discipline within the meaning of the Police Service Administration Act 1900 or its Commonwealth counterparts; and if, to the knowledge of the person giving the certificate, a judge or court has made any adverse comment on the credibility of the witness and, if so, what was said about that witness.

They are fairly significant provisions in terms of giving the court and the proceedings in question a genuine sense of who that person really is and their fundamental credibility. Further review of the certificate is also provided via the CJC, the Parliamentary Commissioner, and the PCJC pursuant to the provisions of the Criminal Justice Act 1989. So, there is a great deal of fundamental scrutiny available through this anonymity certificate arrangement, and ultimately this Parliament has an ongoing role in ensuring that it is properly used.

I commend those officers in the field who continue to do this important work to try to rid society of these organisations which really are doing so much damage to the youth of this State and to this country in general. I believe that this legislation will go a long way towards ensuring that they are protected whilst also further equipping our law enforcement authorities to get on with their very important task of ridding us of those organised criminal activities.
