



Speech by

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POLICE POWERS AND RESPONSIBILITIES AND OTHER ACTS AMENDMENT BILL

Mr LUCAS (Lytton—ALP) (9.03 p.m.): I am pleased to speak to the Police Powers and Responsibilities and Other Acts Amendment Bill 2000. This Bill will provide a number of important legislative initiatives to equip the Queensland Police Service with the power to take a tough stance against crime and its debilitating effect on society.

There is a fundamental right for law-abiding citizens to conduct their affairs free of harassment, injury or loss from those who choose to break the law. As a Labor member of Parliament, I am proud to say that we are both tough on crime and tough on the causes of crime. In relation to the causes of crime, we realise that it is morally wrong and also a false economy not to concern ourselves with targeting social inequality and inequity as root causes of crime. However, it would be an insult to reverse this logic and suggest that social deprivation necessarily leads to antisocial behaviour. The absolute vast majority of battlers—and I am talking about those who come from very deprived circumstances—never commit criminal conduct but, regrettably, they are more likely to be victimised by it by their inability to afford the protection or the conditions that the wealthy possess. The essence is to ensure that there can never be the excuse for people drifting into a life of crime that one lacks adequate or proper social conditions in the first place. We must take steps to ensure that that never happens.

I am proud to represent the people of my electorate, many of whom are people from lower socioeconomic backgrounds but who pride themselves on their sense of family and community. The problem with social deprivation is that it eliminates many choices in society that are available to the more affluent. For example, antisocial behaviour at railway stations will affect those people who use public transport as their primary means of getting from point A to point B. The wealthy can drive, or have someone else drive them, or catch taxis. The pensioners, the unemployed, the low-income earners, the shift workers and the casual workers must use the train station.

I reject out of hand any suggestion that philosophically we will not take a tough stand on antisocial behaviour in public places. I talk every day to real people—pensioners, workers, shopkeepers, schoolchildren—who cannot afford to allow their Labor Government, or indeed any Government, the luxury of ignoring social problems that directly impact upon them. That is why I am fully supportive of this Government's firm stance on crime issues, particularly when it comes to the important package of reforms that are contained in this legislation.

This legislation deals with a number of important policy areas, including covert operations, diversion of persons found drunk in a public place, pre-court diversion of minor drug offenders, DNA profiling procedures and other matters. I want to devote the majority of my speech to DNA procedures. Prior to doing that, I wish to make a few short points about two other areas.

This legislation contains a number of very important initiatives with respect to controlled operations and activities. Essentially, these activities are where the police and other law enforcement agencies need to get inside organised crime and other serious crime groups to collate and gather evidence to ensure that the Mr Bigs are charged and dealt with. Drug traffickers, organised crime syndicates and major criminals do not play by the rules that ordinary people in the street play by. They have a code among themselves and are highly suspicious and organised.

A number of years ago, the High Court indicated that it would exclude evidence of criminal activity involving covert operatives, except where that breach of the law had been excused by the

authorities. This legislation completes the picture, along with the Commonwealth and other States, along that path. A classic ploy that is adopted currently by criminal syndicates when dealing with persons whom they suspect could potentially be an undercover police officer and who is seeking to buy drugs from them is to require that person to first sell them a quantity of drugs. That is a criminal offence. At present, the police officer involved would break the law if he or she did so. The refusal to do this then puts the police officer at risk of detection, serious injury or worse. I am glad that there are very important safeguards installed in this legislation that time does not permit me to describe. I know a number of my colleagues will be discussing those in more detail.

I am also delighted to note that the legislation will extend the police move-on power to apply to war memorials. That will mean that police will have the power at any time of the day or year to move on individuals who are disturbing the peace around these most sacred and important of memorials to the fallen and their comrades. This sort of legislation is well thought out, proper legislation that attacks the problem of misbehaviour by drunks around the time of the Anzac dawn service that, luckily, we have seen in only a few instances in recent years. Stupid legislation proposed by those opposite sought to restrict late-night trading on Anzac eve. However, what about at other times of the year, such as Remembrance Day or Vietnam Veterans Day? What about people who create a disturbance at a memorial as a result of getting full at home on takeaway alcohol? The Opposition's populist policy prescriptions did not work. This legislation will ensure that anybody, drunk or not, who seeks to harass, interfere with or disturb persons around war memorials at any time of the year can be moved on. Naturally, that power would be in addition to any other powers the police might possess in relation to the commission of offences.

As I said, I want to devote the majority of my speech to discussing Part 4 of the Bill, which deals with DNA procedures. There is no doubt that the use of DNA profiling is the most important advance in criminal detection since fingerprints. DNA profiling not only is fast, accurate and unique but also protects the civil liberties of those two most important groups in society. Firstly, it protects victims, as it greatly increases the chances of perpetrators being identified and found guilty, and it protects society from reoffence due to that person being incarcerated.

Mr Kaiser: And protects the innocent.

Mr LUCAS: Secondly, it allows persons who are suspects in police investigations—but innocent—to quickly be eliminated from suspicion if their DNA profile does not fit the sample in question. As the member for Woodridge says, it protects the innocent.

Last year I was lucky enough to visit Sydney and Melbourne with other colleagues on the Minister's policy committee. In particular, we met with Detective Superintendent Robin Napper, a worldwide expert in the use of DNA forensics and law detection, who was seconded to the New South Wales Police Service from Scotland Yard. Superintendent Napper provided an enthralling presentation on how the use of DNA profiling in the United Kingdom has resulted in an enormous increase in the crimes solved. Since 1995, over a three-year period the United Kingdom national database has provided 300,000 suspect/offender samples, 32,000 crime scene samples and an average of 300 hits per week. Of these hits, some 30% were cold hits, where the links were established where police had no prior indication of a link. In other words, they had no suspect in mind. In Queensland that would equate to three to four cold hits per week.

But it is more than just that. Statistics do not paint the whole picture. The simple evidence is that those who commit serious violent offences usually have prior criminal histories. The use of this technology means that many serious offenders will be identified straightaway, rather than wreaking havoc on innocent members of the community.

In a New Zealand study of 32 intruder rapes, 85% of the offenders had prior convictions for a specified offence, namely, burglary, at the time of their first rape. Consequently, with the aid of a DNA database, each individual could potentially have been identified after the first rape where a crime scene body sample was available. For example, the Operation Park serial rapist commenced offending in 1983. Had DNA as a science been developed at that time and had DNA database legislation been in place, the rapist would have been identified after his first rape, which would have spared 49 further victims, 12 years of offending and millions of dollars in police resources. Again, it is easy to roll the phrase "49 victims" off one's tongue, but members should think of the horrific trauma that victims of serious violent offences and sexual crimes go through. This legislation will never have the ability to stop violent offences occurring, but what it will mean is that there is a massively increased chance of detection of these offenders and protection of innocent victims before they even become victims.

Many people mistakenly think that DNA relates only to blood samples. Naturally, blood can be used to provide a DNA sample. But basically a DNA sample can be gained from just about any source of human tissue. This can include hair roots, skin, saliva and other bodily fluids. DNA samples can be taken from saliva found on balaclavas worn during an armed robbery or from envelopes or stamps licked by the extortionist in an extortion claim. About 25% of all break and enter offenders cut

themselves on glass and leave a DNA sample. DNA can be found in saliva in chewing gum or on soft-drink cans. DNA has even been found on a partially eaten McDonald's burger and on cigarette butts. In sexual assault cases, DNA can not only be gained from semen samples being left on a victim's person or clothing; skin flakes from the perpetrator collected under the fingernails of the victim are also of great value.

A recent celebrated case in Queensland was the murder of the so-called cat woman, Kathleen Marshall, by Andrew Fitzherbert. Miss Marshall's murderer had left microscopic traces of blood, together with the victim's own blood, at her house. Fitzherbert denied ever having been to Marshall's home and refused to give a blood sample. The magistrate gave police permission to issue a warrant to search Fitzherbert's home, from which the police removed a toothbrush, socks and a pair of trousers. The trousers had a handkerchief in them containing Fitzherbert's mucus. According to the Sunday Mail, the DNA in that mucus matched the blood found at the crime scene with a chance of 1 in 14 million billion—that is, 14 with 15 zeros after it—of its belonging to anyone else.

One of the areas of contention has been who actually can take DNA samples. The question really needs to be determined on the basis of the nature of the sample itself. No-one would deny that a medically trained person would be required to take blood samples, but I am pleased to see that the Bill allows suitably trained police officers authorised by the commissioner to take DNA samples by way of mouth swabs and hair samples.

When practising as a solicitor, I witnessed many of my clients being fingerprinted. I have also seen a DNA buccal swab being administered. Without any shadow of a doubt I can say that having a mouth swab taken is much less uncomfortable than being fingerprinted. Indeed, the way that DNA sampling is going, one day the method of taking specimens may actually be by placing one's fingerprint on a special surface which would yield enough cells for single-cell DNA analysis. That is how exciting this technology is.

But back to the present. The legislation requires that, before obtaining consent from any person, an explanation must be given of why the sample is wanted, how the samples will be taken, that the person may refuse consent, and that if they consent the sampler will take the sample. As a civil liberty safeguard, the explanation should be recorded, if practicable. There are also safeguards for persons with impaired capacity, children and persons under the influence of alcohol or a drug.

Where individuals will not consent to a sample and are charged with an indictable offence, police have one hour to obtain consent from a commissioned officer of inspector rank or higher to obtain a DNA sample. Alternatively, section 308 creates a DNA sample notice, where the officer does not consider it necessary to obtain the DNA sample immediately. The person must attend a stated police establishment between the stated hours within seven days. A court may also order that DNA samples be provided.

DNA profiling in Queensland is conducted at the John Tonge Centre for Forensic Science at Nathan in Brisbane. The system uses nine different loci, or parts of the DNA chain, together with the sex of the individual. This means the probability of a nine STR loci DNA random profile randomly matching anyone else in the population—as distinct from the actual person involved—is one in billions to one to one in tens of billions. The Western Australian Legislative Council Legislation Committee indicated that it was approximately 1 in 72 billion. That is 10 times more people than the number of people who have ever existed on this planet.

But for those who do not find one in 20 billion to be enough identification, all that they need to do is go to even more identifying loci to increase that chance even further. I am not aware of any case that has been defended on the basis of this current DNA technology where the individual suspect was not identified with sufficient numerical probability.

The Scrutiny of Legislation Committee takes issue with the Bill's important power to require persons currently serving a term of imprisonment for an indictable offence to be tested over the coming three-year period. This is not a punishment, it is a protective measure for society. To construe a requirement to provide a mouth buccal swab as being a substantial impost upon a prisoner is inane. Prisoners are subject to significantly greater—and quite appropriate—incursions on their civil liberties, most importantly being incarcerated against their will. They are liable to discipline, must wear prescribed clothing and have limits placed on their access to contact with the outside world, just to name a few of the controls.

The simple fact is that the requirement on prisoners to provide DNA samples is supported by the regrettable evidence of recidivism among prisoners. As the threshold, one wonders whether they care at all for the civil liberties of their victims prior to their offending. In any case, a study in relation to sex offenders in Western Australia for the period 1975 to 1989 found that, while approximately 50% of them had never returned to prison, 41% of those in prison for rape had a prior rape offence and 57% commit or go on to commit other violent offences. If that were true, if those results were taken across to

Queensland, what great social wrong we will be perpetrating if we did not allow samples to be taken from a group of prisoners, half of whom are statistically likely to reoffend.

A number of people have raised the Council for Civil Liberties' concerns with respect to a DNA database. It is extremely important to take seriously such concerns raised by the public and community representatives, as a tool as powerful as DNA profiling could be misused in the wrong hands. Therefore, there are a number of critical questions that we need to answer. Firstly, it is common knowledge that DNA can give rise to identification of a number of health and similar predispositions of an individual. With increasing technology this could only be even more likely in the future. We need to ensure that a criminal DNA database is used only for that purpose and never falls into the hands of private or other individuals.

Secondly, we need to satisfy ourselves that the method of collecting the sample is not onerous or unduly interferes with privacy, and has sufficient safeguards to ensure that we guard against tampering and swapping of samples. Next, we need to take into account the rights of the accused, but also we need to take into account the rights of victims, the rights of society and the public interest so that those persons who have committed crimes can be convicted and punished according to law. We need also to take into account the civil liberties of innocent persons who currently become suspects in criminal investigations and the extent to which traditional law enforcement methods unfairly invade their civil liberties.

To take this last point first—at present, police officers might have a particular case and a number of suspects, say, half a dozen. Quite probably in the course of the investigation they might execute search warrants on the homes or places of work of those individuals and would no doubt often question friends and work colleagues. The problem is that only one of them may have committed the offence, but under the current situation because of the very fact that their colleagues were questioned about a suspect's behaviour—perhaps their sexual proclivities, honesty and so on—these other people assume that where there is smoke there is fire. What about the civil liberties of a person who was wrongly a suspect but who under current practices—and this is not a criticism of the police—is subject in good faith to police questioning and the questioning of their associates? Under DNA profiling, the DNA crime scene sample may throw up an instant match with the person who committed the offence or, alternatively, allow the police to request of an innocent suspect the provision of a sample to clear themselves once and for all without search warrants and without their friends and work colleagues being questioned as well, with the resultant damage to their reputation.

People are entitled to seek every satisfaction that the genetic material kept on any DNA database is used appropriately. We would not want a situation in which insurance companies can gain access to the database to decide whether to knock back certain people's insurance proposals. This cannot happen for a number of reasons. Most importantly, the law provides very strong privacy safeguards. Secondly, it is essentially a physical impossibility. This is because only extremely small parts of the DNA chain are used on the database. The nine loci are specifically chosen to be from the non-coding parts of the DNA chain. This means that they are from parts of the DNA chain that do not associate themselves with major characteristics, such as particular health conditions or appearance. This is the case not only for civil liberty reasons but also for the simple fact that non-coding parts of the DNA chain are more likely to be variable because they are not required to have any genetic consistency compared with a part of the chain that, for example, determines the production of a certain enzyme in one's stomach.

DNA is an extremely powerful method of identifying perpetrators of criminal offences, but its civil liberty benefits go much further than that. It is also an invaluable tool in exculpating innocent people who have been wrongly convicted. I have read an excellent publication by the US National Institute of Justice which provided some 28 cases of individuals being exonerated after being convicted of serious crimes and often jailed. One case in point is that of Kirk Bloodsworth.

In 1984 a nine year old girl was found dead after having been beaten with a rock, sexually assaulted and strangled. The prosecution evidence at Bloodsworth's trial was based upon a police tip-off by an anonymous caller, a witness identification of him from a police sketch compiled from descriptions of five witnesses, a shoe print found near the victim's body that was made by a shoe that matched Bloodsworth's size, and him telling acquaintances that he had done something "terrible" that day that would affect his marriage.

Bloodsworth was convicted and sentenced to death. The Maryland Court of Appeal later overturned his conviction because the police withheld information. However, he was retried and again convicted and sentenced to two consecutive life terms. In 1992, Bloodsworth's lawyers successfully sought to reopen the case to take advantage of the new DNA testing. The report concluded that Bloodsworth's DNA did not match any of the evidence received for testing. A second report confirmed that. Bloodsworth was finally released after serving nine years of a second sentence, including two

years on death row. What about his civil liberties had the death sentence been carried out before he could clear his name?

Another case was reported in the Sydney Morning Herald dated 1 April 2000, which is in relation to an African American, Herman Atkins, who was released from jail in February this year after DNA evidence cleared him of a 1988 rape. He had spent 12 years in jail. Those civil libertarians who oppose DNA databasing should bear in mind the words of Clyde Charles, who was released after 19 years in jail after DNA evidence cleared him of a trumped up rape charge. He said—

"The price on human life—I can't put a value on that."

Mr Charles said—

"I lost my mamma. I lost my father. I lost time with my daughter. I lost many many things."

The fact is that, with a proper DNA database, those people would have been excluded immediately and the true perpetrator potentially caught, rather than being allowed to continue to roam the streets and possibly commit offences for the 19 years that someone such as Clyde Charles had been in jail.

Another great use of DNA profiling is in the identification of missing persons. The DNA database itself will have a number of particular separate indexes, such as crime scene, serious offenders, suspects and volunteers indices. It will also contain a missing person index and an unknown deceased persons index. These two latter indices will be of invaluable use in cases where human remains are found. Where a person goes missing, it will be possible for a sample of their DNA—perhaps from a hair brush or their clothing left at home—to be inserted on the missing persons index which will then throw up a match with a person whose remains are found and entered onto the unknown deceased persons index. Where foul play is involved, the identification of the deceased person will obviously assist with the investigation of the crime. Even in cases of suicide or natural death, it will at least give families peace of mind to know the final location of their loved one, who may have gone missing many years before.

A very important part of the database will be the volunteers index. Many of us would have heard of the recent situation in Wee Waa in New South Wales in which a lady in her nineties was brutally raped. The nature of the crime led police to believe that the suspect was probably a local within a certain age group. The police did not have a particular suspect but organised a mass voluntary provision of DNA samples by residents of the town within that target age group. Even before all the samples had been analysed, a male resident of the town who had given a DNA sample came forward to admit his involvement in the crime. What do people say about the civil liberties of the next old lady whom he might have attacked had this investigative tool been unavailable?

But it is legitimate to seek assurances about the privacy rights and liberties of individual volunteers. I know a lot of people say that they have no objections to their DNA being kept on the database permanently, but that is not the point. It is important that we have strong safeguards that provide that anyone who voluntarily provides a DNA sample for a particular purpose, that is the investigation of a particular crime, will be given every assurance that that sample will be destroyed if it does not match with the relevant suspect's sample in the investigation.

There is very good reason for this: the essence of volunteer screening is that it needs to have broad-based support. One could imagine that many people would be more than happy to provide volunteer samples in ordinary cases, but would become very reluctant if they thought that it could be misused for another purpose, such as paternity testing, or perhaps implicating them for a minor offence that they may have committed some years before. The main game is to catch the perpetrator of the serious violent crime and the volunteer index and its civil liberties protection is important.

Queensland has some of the best facilities in the world for its DNA sampling and profiling. But not only that, we have university researchers who are leading the world in developing DNA analysis even further.

Recently I was honoured to attend the University of Queensland and have a lengthy discussion with Dr Ian Findlay from the Australian Genome Research Facility, Brisbane Division. Dr Findlay is the world leader in research for single-cell DNA profiling. As DNA technology has evolved we have gone from requiring a body sample of , for example, blood the size of a 20 cent piece to currently a sample the size of a pin head—about 200 cells. But Dr Findlay's research goes further and it allows DNA to be profiled from a single cell.

Mr Speaker, one cell alone. Of 226 single-cell samples, a full DNA profile was obtained in 55 per cent of these samples, and an acceptable profile in 64 per cent. The remaining 30 per cent of cells gave incomplete, partial profiles, although those partial profiles could provide sufficient information to exclude potential suspects.

Dr Findlay notes that these results could be applied to smudged fingerprints, single flakes of dandruff, single sperm in multiple rape cases, and small samples left on weapons, vehicles, etc. The State Forensic Laboratories have many exhibits stored out there with smudged fingerprints. With current DNA technology there are insufficient cells in a smudged fingerprint to do a sample. With Dr

Findlay's exciting new technology, within a few years we will be reaching back in time to catch even more perpetrators and provide justice to society and peace of mind to victims and their families.

Additionally, single-cell DNA profiling has a number of even further advantages over current technology. Because it requires only a single cell, it means it is even more possible in cases of a small number of cells for extra samples to be made available to the defence for their own testing.

One person who I spoke to about DNA expressed their concern about the possibility of planting people's DNA evidence at a particular crime scene. But if one thinks this out logically, the chance of it actually happening is small. First of all, you need someone who wants to frame a particular person. Secondly, a crime needs to be committed where the actual perpetrator is not identified either by DNA or other evidence. Thirdly, the person wishing to plant evidence has to have the knowledge that an offence was committed, that there is no-one immediately a suspect, and most importantly, the opportunity and motive to get into the crime scene and plant the sample. Fourthly, they have to ensure that they have a sample of the person whom they wish to wrongly implicate. There is a difference chemically between day-old blood and two-week old blood—are they forced with a situation where they have to daily collect a blood sample from the innocent person in order that they have got some up their sleeve to implicate them at the future crime that they don't yet know about.

Fifthly, presumably they have the sample of the innocent person, they have to plant that at the crime scene in a manner that is consistent with it being there with the innocent people having committed the offence in question. To elaborate, a sperm sample would be no good at most murders. A blood may or may not be valid at a rape. Even if blood was relevant to the particular offence, it would need to be planted in an amount and in a manner consistent with guilt. It is basic forensic knowledge that different types of crimes cause forensic evidence to be deposited in different ways.

Blood spray patterns and the like depend upon the method in which the victim is attacked. Blood is deposited on a broken window in a particular way and in an unusual quantity.

Sixthly, the person planting the evidence needs to ensure that they themselves do not leave any of their own DNA behind, such as would implicate them with presence at the scene of a crime.

Finally, the person planting the evidence needs to ensure that the innocent accused does not have an alibi or other evidence to show that they could not possibly have been at the scene at the time in question.

Police frame ups have happened in the past and will happen again, regrettably in the future. But one thing DNA testing does is substantially reduce the ability for this to take place. With single-cell DNA testing around the corner, it reduces this possibility even more as it would be nigh too impossible to plant a single-cell DNA without the perpetrator identifying themselves as well.

Mr Speaker, in closing I would like to commend the Police Minister for this revolutionary and important legislation. It will ensure that many more people guilty of offences do not escape justice and the law. It will ensure that many people who are innocent are not unreasonably subject to police investigation or, worse, conviction and jail. More than 6,000 people have been sent to death row in the United States since 1976, 80 of them have later been cleared on the basis of DNA and other evidence.

The greatest public interest of all is that those guilty of criminal offences be convicted according to law and that those innocent be acquitted.

On both counts, DNA profiling at a DNA database deserve our unanimous support.
