



Speech by

**Hon. TOM BARTON**

**MEMBER FOR WATERFORD**

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Hansard 29 February 2000

### **POLICE POWERS AND RESPONSIBILITIES BILL**

**Hon. T. A. BARTON** (Waterford—ALP) (Minister for Police and Corrective Services) (2.30 p.m.): I move—

"That the Bill be now read a second time."

This Bill is the product of some 10 years of consultation and preparatory work. The history of the Bill will recount that its predecessor, the Police Powers and Responsibilities Act, was passed with Labor's support in 1997. Unfortunately, the time lines set by the previous Government did not allow for a full and proper consolidation of police powers. The 1997 Act was little more than a milestone in a lengthy and arduous legislative process. Therefore, this Government was left with the task of reviewing the success of the 1997 Act—and it is a success—while amalgamating police powers from myriad other Queensland Acts into this one Bill.

The consolidation process this Government has undertaken culminates today in the Police Powers and Responsibilities Bill 2000. When Parliament passes this Bill, Queensland will be the only jurisdiction in Australia, if not the Western World, with such a comprehensive police powers and responsibilities statute. I am sure that honourable members will agree that the Beattie Government can yet again say that Queensland is leading the way. In fact, the Beattie Government has set a precedent for the rest of Australia with this legislation.

At the outset we set the following objectives—

to consolidate and rationalise the powers and responsibilities that police officers have for investigating offences and enforcing the law;

to provide powers necessary for effective modern policing and law enforcement;

to provide consistency in the nature and extent of the powers and responsibilities of police officers;

to standardise the way the powers and responsibilities of police officers are to be exercised;

to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Bill; and

to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

This Bill achieves each of those objectives. They are reflected in the purposes of the Bill at clause 4. No longer is there a library of Acts dealing with police powers. Instead, the Bill provides a central reference point for police and the general community, enabling them both to understand the nature and extent of police powers. This consolidation results in the added benefit of consistency both in the extent of police powers and in the respective safeguards.

I do not intend to address each and every clause of the Bill in this speech as they are many and the Explanatory Notes adequately cover them. Therefore, I will confine my comments to a number of issues which are of particular significance.

It is to be noted from the outset that many sections have altered from the present Act in terms of the circumstances in which a police officer may exercise a power. For example, the clauses in the Bill

dealing with the search of a person or vehicle now extend to the likes of gaming, racing and betting, and corrective services offences. The extension to the current Act has been necessary to accommodate the consolidation of police powers. Consequently, although a clause may appear at first glance to be wide reaching, one must take into account that the power is generally found in the statute from which it was derived.

To complement the consolidated provisions of the Bill, clause 9 seeks to limit the effect other Acts have on the Bill. This is to ensure that there is no doubt as to which Act is to take precedence insofar as police officers are concerned. The clause states that any inconsistency between the provisions of the Bill and another Act is to be resolved by giving preference to the provisions contained in this Bill. In this Bill the Government is offering police the proper tools to perform their duty. Parliament must not discourage the performance of that duty by regressing to an endless series of Acts that police must pore over in order to find a power to use in a given situation.

While I am the first to acknowledge that honourable members cannot limit the legislative competence of future Parliaments, we can give a clear indication of the intent of this Parliament. However, no one Act can hope to provide a remedy for all ills which a police officer may face in the line of duty. Therefore, the Bill provides that a police officer may continue to do things that he or she can lawfully do other than provided for in the Bill. For instance, the Bill does not in any way prevent a police officer, not otherwise authorised under this Bill, from entering a private place to save the life of a person drowning in a swimming pool.

Additionally, removing police powers from other Acts and providing a centralised source of reference will not mean that assistance currently provided to public officials by police will wane. The Bill allows a police officer to utilise his or her powers and, where necessary, to assume any unique powers of a public official while assisting that public official. For example, if there is a need to quarantine an area because of the outbreak of an infectious disease in stock, police will assist DPI inspectors to establish quarantine roadblocks under the Exotic Diseases in Animals Act.

Nevertheless, the powers provided in the Bill are counterbalanced by adequate safeguards to ensure their proper use. They begin as early as clause 5, which states that it is Parliament's intention that police officers should comply with this Bill in exercising powers and performing responsibilities under it. To ensure compliance with Parliament's intention, a police officer who contravenes this Bill may be dealt with as provided by law. Action may range from cautioning to the imposition of criminal penalties, depending upon the seriousness of the breach. Having said that, I do wish to stress that it is not the intention of the Government to instigate a witch-hunt on the vast majority of honest and hardworking police officers. Those performing their duty within the parameters of the law will receive the Government's and especially my full support and assistance, as the passage of this Bill indicates.

On that point, a power provided to police under the 1997 Act allows them to direct a person to move on in circumstances where the person's presence or behaviour causes anxiety to another person. I am pleased to note there is little, if any, recorded abuse of the power on the part of police officers. Moreover, the history of the use of the move-on power has clearly indicated to the Government that it is an effective, preventive tool in minimising criminal disturbances, particularly assaults.

It is essential to good Government that law-abiding citizens are free to utilise public facilities without fear of harassment, intimidation or assault. Therefore, as part of the consolidation process, police will be authorised to use the move-on power in the interests of public safety at the following additional places—

- at a mall;
- at a racing venue;
- within the South Bank Parklands; and
- at a place where unlawful soliciting for prostitution is occurring.

Honourable members will be aware that Queensland is to host more than 100 Olympic teams who will undertake training in preparation for the Sydney 2000 Olympic Games and Brisbane will host a number of Olympic soccer matches. Next year Queenslanders will benefit from the Goodwill Games and the Commonwealth Heads of Government Meeting.

It is essential to maintain Queensland's reputation as a safe environment for international spectators and visitors to special events. Therefore, it is necessary to provide our police with specific powers to minimise the risk of criminal threats arising at these events. Consequently, this Government has specifically designed special events legislation which has been incorporated in this Bill. It provides necessary provisions for the preservation of public order and safety of persons involved in special events and the safety of other persons at special event sites. The legislation can only be activated by the Governor in Council for the duration of special events. A further prerequisite requires that the Minister must also be satisfied that there is a reasonable likelihood that the event may be disrupted if—

the special event powers are not exercised;  
the exercise of the powers is necessary for the protection of persons involved in the event; or  
the exercise of the powers is required as a condition of the holding of the event being held in Queensland.

Notice of a declaration will be published in a newspaper generally circulating throughout Queensland. Additionally, the organiser of a special event will be required to provide information to the public of the limits of a restricted area at the special event site. For example, the accommodation block of athletes at a major sporting event may need to be declared a restricted area for security reasons.

There will be a condition of entry to a special event site that a person must not take into or possess in the site a prohibited item and if asked must permit a search of their personal property or permit a frisk search of their person. If the need arises, provision has been made for the Commissioner of Police to appoint authorised persons to assist police in maintaining security arrangements at special events. However, the powers that may be exercised by an authorised person will not be as broad as a police officer's powers and will be restricted by the terms of the appointment. An authorised person will be required to carry and display or produce an identity card.

Division 5 of the Part provides the powers which may be exercised at a special event site. The initial part of the Division deals with the entry of persons to special events and provides security-related powers. It is intended that the powers be used in a structured and staged process ensuring the least inconvenience to genuine spectators. Consequently, a police officer or an authorised person may request a person to state their reason for entering or being in a special event site. While the clause is not aimed at genuine spectators who wish to enjoy the event, it is designed to establish whether a person may be entering the site in order to cause disruption to the event. Therefore, if the person fails to comply with the request, the police officer or authorised person must warn the person that they may be removed from or prevented from entering the special event site unless they have a reasonable excuse for failing to comply with the request.

As an additional security measure and in a similar fashion to those deployed at airports, a police officer or an authorised person may utilise a walk-through detector or hand-held scanner or ask a person to pass their belongings through an X-ray. An additional search power, again similar to that in use at an airport, is provided for occasions where it is reasonably considered necessary. This provision allows a police officer or authorised person to request that a person entering or who is on a special event site to do one or more of the following—

- allow a police officer or authorised person to inspect the person's belongings;
- request the removal of one or more outer garments, such as jackets or coats, worn by the person and allow a police officer or authorised person to inspect the garments;
- allow a police officer or authorised person to remove and inspect all items from the clothing of the person;
- allow a police officer or authorised person to open and inspect all items;
- allow a police officer or authorised person to open and inspect a vehicle or part of a vehicle; and
- allow a police officer or authorised person to remove and inspect an item from the vehicle.

These are not considered intrusive powers as the person is not physically touched during the inspection of items of clothing or belongings. Clearly, the volume of people entering a special event will not permit security personnel to conduct a search of each person.

It is acknowledged that occasions will arise where it is necessary to conduct a more complete search of an entrant to a special event. On those occasions, a police officer may request a person in or entering a special event site to permit a frisk search being made of the person by a police officer of the same sex as the person. Non-police security personnel will not be provided with this power. It is of note that a person may refuse to provide information or submit to any of the searches outlined. If this is the case, then a police officer or authorised person is entitled to refuse entry to the person or remove the person from the site.

I do, however, wish to make it clear that this law does not provide an out for a person who is reasonably suspected of being in possession of an unlawful item such as a firearm. Threats of this nature to the security of a special event will not be tolerated. The person will not be given the opportunity to leave the special event site and thus avoid prosecution for an offence. In these instances, a police officer may exercise a general power to detain and search the person without warrant. Should the person have violated other laws concerning the possession of weapons, for instance, he or she may be arrested and dealt with in a similar fashion as if the offence were committed in any other place.

The special events legislation, by necessity, contains offence provisions. These are of limited number but are essential to the good conduct of an event. Therefore, it will be an offence—

to enter or remain in a special event site unless the person has paid the entry fee, if any, has the consent of the organiser or is otherwise authorised to enter or remain at the special event site;

to enter or remain in a restricted area of a special event site without a reasonable excuse;

to disrupt, interfere with, delay or obstruct the conduct of the special event or an associated activity or interfere with the reasonable enjoyment of the special event or associated activity;

to take a prohibited item onto or possess a prohibited item at a special event site without a reasonable excuse; and

to assault or obstruct an authorised person exercising a power under this Part.

In addition to the special events legislation, there is a need for a general power to allow police to take immediate action to protect life and property where there is a threat which may or may not be associated with a special event. I refer to incidents which we too often witness through media accounts involving terrorist acts being committed on the passengers of transport vehicles, and in particular aircraft. Unfortunately, the holding of a special event increases the likelihood of these types of threats becoming a reality. Even where the threat turns out to be no more than the act of a crank, it is essential that immediate action be taken in the first instance to ensure there is no risk to life or property.

As honourable members would appreciate, the Queensland Police Service does not have the luxury of taking a calculated risk concerning action to be taken where a person's life may be in danger. Therefore, the additional provision provided in the Bill at clause 77 allows for the search of a transport vehicle without warrant where there is a risk to life or property such as a report of a bomb on an aircraft. All the powers of a search warrant apply, including the additional power to search any person connected with the transport vehicle, that is, a passenger. A transport vehicle is defined as an aircraft, a boat, a bus or a train.

There are two further issues I will address before concluding. The first relates to the search of persons in custody. Clause 232 of the Bill allows for the search of a person in custody. The clause is not new and is merely being transferred from the 1997 Act. However, it is essential to the safety of prisoners that persons who come into police custody either by arrest or under sentence of imprisonment be subject to a search. An initial search is usually conducted following arrest to seize anything from a person that a police officer reasonably suspects may provide evidence of the commission of an offence. Additionally, police officers have a duty of care to persons in their custody.

Consequently, there is a need to allow for the search of a prisoner to ensure that they do not have possession of anything that may be used to harm themselves or other persons while in custody or which may be used for the purpose of escape. Also, items of value in possession of a prisoner are kept in safe keeping while the person is in custody to ensure they are not damaged or stolen by other prisoners.

As unfortunate as it may be, there is a need for the legislation to allow for the removal of a person's clothing for the purpose of some searches. However, while allowing these searches, commonly known as strip searches, to be conducted, the Bill also provides considerable safeguards—

1. a search is to be conducted in a way providing reasonable privacy for the person searched;
2. the police officer must, if reasonably practicable, inform the person they will be required to remove clothing during the search and why it is necessary to do so;
3. unless an emergency exists, a police officer who conducts a search is to be the same sex as the person being searched;
4. the police officer must also, if reasonably practicable, give the person the opportunity to remain partly clothed during the search;
5. the search is to be conducted as quickly as possible with the person being allowed to dress as soon as the search is finished;
6. the police officer is not to make contact with the genital or anal areas of the person but may make a visual inspection;
7. if clothing is seized during the search the person must be left with or given reasonably appropriate clothing;
8. if a video camera monitors the area where a person is to be searched then it must be turned off or the search is to be conducted out of the view of the camera unless the person viewing the monitor is a police officer or the same sex as the person being searched; and
9. if the person to be searched is a child or a person who may not be able to understand the purpose of the search then a support person is required to be present.

Finally, I will deal with aspects of the issue of discontinuation of arrest, but first let me say how pleased I am with the success of the notice to appear scheme. When the scheme commenced it attracted the usual detractors who hypothesised doom and gloom and abuse by police. Based on Criminal Justice Commission research figures, what it has achieved, however, is a reduction of 40% in the number of persons taken to a watch-house. Offenders are still being charged and facing the courts, but without the need to first place them in custody.

I wish to draw attention to a significant alteration found in clause 173 which allows for the arrest of a person to be discontinued. The clause previously imposed a limited duty on a police officer to discontinue an arrest at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence. Uncertainty arose where there was insufficient evidence to charge a person but a police officer still suspected the person was responsible for the offence.

To clear up any doubt, subclause (2) requires a police officer who has arrested a person for an offence to release that person where the police officer considers there is insufficient evidence to bring the person before a court for the offence. It may be the case that at the conclusion of an interview or investigation, a police officer may not consider that there is sufficient evidence to continue the proceeding even though the police officer still suspects the person committed the offence. The duty on the police officer is to release the person.

As I have previously said, the process undertaken which culminates in this well-balanced Bill shows that the Beattie Government is committed to being tough but fair on law and order issues. It is a policy which is reflected in this Bill by not only making the powers and responsibilities of police officers clear and easy to understand but consolidates all these powers into one piece of groundbreaking legislation.

I commend the Bill to the House.

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