Speech by

JEFF SEENEY

MEMBER FOR CALLIDE

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POLICE POWERS AND RESPONSIBILITIES AND ANOTHER ACT AMENDMENT BILL

Mr SEENEY (Callide—NPA) (11.49 a.m.): The opposition will be supporting the Police Powers and Responsibilities and Another Act Amendment Bill 2001. This bill seeks to amend specific provisions of the Police Powers and Responsibilities Act 2000 and the Weapons Act 1990. The minister has outlined that the objectives of the first part of the bill are to ensure that there is no doubt of the power of a police officer to use reasonable force when exercising or attempting to exercise a power under any section of the Police Powers and Responsibilities Act 2000 and any other act.

The bill also amends the Weapons Act 1990, which requires the licensing of category H weapons rendered permanently inoperable and imposes greater controls on collectors licences for weapons rendered temporarily inoperable. The National Party opposition seeks to support the objectives of the two major components of this legislation as they have been outlined by the minister in his second reading speech. In particular, we see it as essential to clarify any ambiguity that has arisen with regard to the first objective of this bill. We see it as essential to clear up any doubt about the situation and the ability of the police to use reasonable force. This was noted by the minister to be the original intent of parliament when the bill was debated in the House last year and passed as the Police Powers and Responsibilities Act 2000.

Prior to commenting on the merit of the amendments to each act which this bill puts forward, I place on record our strong belief that the Queensland Police Service needs strong, clearly defined powers to do what is becoming an ever more difficult job of protecting the community. Those powers need to be clearly defined so our police officers are not under threat from opportunistic lawyers who seek to exploit any grey areas, and those powers need to be clearly defined so the general public know what the powers of the police are.

In that respect, we see the amendments contained in the first part of this bill to be a matter of priority. The bill should address the question that recently arose with regard to the wording within the Police Powers and Responsibilities Act 2000. This referred to whether the words 'to use reasonable force' as they appear in section 144(d) of the Police Powers and Responsibilities Act 2000 could in turn act to prevent a police officer using force to install, maintain and remove a surveillance device operating under a warrant issued by virtue of section 131 of the Police Powers and Responsibilities Act 2000. However, section 131 does not currently refer to the use of force and it has been contended that the parliament may have intended that that force could only be used with respect to a tracking device used pursuant to section 144. We support the provisions in this bill which will see what is really a technical defect resolved. However, it is still necessary for the minister to clarify what the exact definition is with regards to 'reasonable force' and in what situation it can be applied by an officer.

The minister has detailed the use of force to refer to—

... where forced entry may be needed for covert entry to a place to install a surveillance device. It may also be used to exercise powers relating to search warrants and roadblocks.

The whole issue of what is reasonable use of force and when it can be expected to be used appropriately is something that the Police Minister and the police force need to have clarified beyond any reasonable doubt. I will concede that it is a vexed issue. It is almost impossible to define every potential situation that police officers may find themselves in, but it is an issue that will continue to cause contention. It is an issue that will continue to produce situations where our police officers face

criticism and reprimand in some cases. For the sake of the police officers who operate in the field more than anything—for the sake of these people who have an extremely difficult job to do—everything possible must be done to clarify this issue. Everything possible must be done to clear up as much as is possible the vexed issue of what is a reasonable use of force and when a police officer can use that force appropriately.

With respect to section 375 and its inclusion of 'a person assisting a police officer' in their ability to exercise power, the National Party opposition views this as an appropriate step to ensure that members of the public are not unfairly judged in their efforts to assist the law. We are of the understanding that this would apply to a person providing necessary assistance to an officer carrying out his or her duties. I believe the provision in the bill arose from a need to address people assisting in the provision of monitoring devices.

The need to clarify this technical defect which appears in the Police Powers and Responsibilities Act 2000 is not doubted. However, we have to question why the former minister, now the Minister for State Development, did not seek the legal advice of the Solicitor-General over any misinterpretation that could arise over wording within the bill. Whether the issue of wording in the act may arise in the future or not, it is an oversight that the minister in the first Beattie government should take responsibility for. It is another example of sloppy legislation. It is another example of mediocre performance. This bill makes these provisions retrospective to clear up any doubts about actions that have been taken to date.

Every honourable member should be wary of retrospective legislation, because by its very retrospective nature such legislation can impose obligations retrospectively on people, something which we should all be very careful about doing. The Scrutiny of Legislation Committee, in *Alert Digest No. 1* of 2001, referred to this element of retrospectivity in the bill, and the opposition concurs with its conclusion. The committee concluded that it was probable that the current legislation confers these powers and that the amendment would not change the current legal position. The committee recognised also that this was one of the rare occasions when curative retrospective legislation is justified to correct unintended legislative consequences. We support that recognition of the Scrutiny of Legislation Committee and say again that the minister responsible for the original introduction of this legislation must take responsibility for this fault. It is of some concern that that minister is now the Minister for State Development in the current government. We can only hope that the legislation he introduces into this parliament is free from this type of defect.

The second component of this bill seeks to achieve two primary objectives—to require the licensing of category H weapons that are rendered permanently inoperable and to impose greater controls on collectors licences for weapons rendered temporarily inoperable. In Queensland a category H weapon is defined to include a concealable firearm if it has not been rendered permanently inoperable. Whether or not a concealable firearm has been rendered inoperable is something that is almost impossible to ascertain at first inspection, especially if that inspection is from a distance. It is completely impossible to ascertain the operational status of such a weapon if it is being used in a threatening manner. It is totally impossible for someone who is having such a weapon pointed at them in a threatening manner to tell the difference between one that has been rendered inoperable and one that has not. In respect of its use as a threat, an inoperable weapon is just as threatening as an operable one, and its effect as a threatening agent can be devastating for those people who are threatened.

There is also the question of what constitutes a permanent modification to make a category H weapon permanently inoperable. In the current legislation a replica is defined under the Weapons Act to include a category H weapon rendered permanently inoperable. As a result, under this definition such a weapon does not require licensing, registration or any record of its disposal. Consequently, we support the amending of this legislation to ensure public safety and we support the comments the minister has made in his second reading speech. We support the objective of safe, reliable controls for such hand guns and we understand the concern with regards to the loophole that has been used by some unscrupulous gun dealers to proliferate the sale of replica pistols without any record of the purchasers.

As a result of other unscrupulous activity, we have seen weapons fully restored to working order found in the hands of criminals in Queensland, New South Wales, Victoria and Western Australia. The amendment made to the Commonwealth Customs (Prohibited Imports) Regulation, effective from 18 August 2000, to reduce the opportunity for licensed dealers to import seeks to stem this problem. However, we are aware that this form of legislation does not prevent those illegal dealings but merely acts as a short-term solution to a problem that could escalate and lead to a greater number of weapons being smuggled into Australia.

The amendment of section 6A, which deals with what is a replica, will omit from the definition the reference to category H weapons rendered permanently inoperable. It is the obvious answer to this problem, and we support that amendment in this bill.

The amendment to clause 10 will ensure that the commissioner can maintain a reasonable firearms register. It inserts a new subsection which provides for the definition of 'firearm', which will include a category H weapon rendered permanently inoperable. Furthermore, the insertion of section 77(2)(c) enables a person in possession of a category H weapon made permanently inoperable to obtain a collectors licence, whether or not for the weapon's commemorative, historic, thematic or investment value.

We agree with the concept of a three-month amnesty, which has been proposed, which will allow persons to obtain a licence during this period for such weapons that are in their possession at the time of the enacting of this legislation. However, we do harbour some concerns over how such an amnesty will be monitored and what, if any, degree of prosecution will apply for individuals failing to comply within this time period. There is a responsibility on the minister to ensure that gun owners are aware of this new intention of the act. The way in which that responsibility is carried out will be critical to the effectiveness of this new legislation.

To achieve support, it is important that consultation with relevant interest groups continues, in particular, with such groups as the Sporting Shooters Association and the Firearm Dealers Association, which currently support the amnesty. It is critically important that not only those organisations but also gun owners throughout the state and every person who might potentially be affected by this change to the legislation are made aware of his or her responsibilities during that three-month amnesty period. I urge the minister not to take that responsibility lightly.

We are dealing with an area in which misinformation and rumour are rife. There was enormous confusion during the federal government's gun buyback scheme in 1996. More than any other area of public administration, this area has an unequalled amount of misinformation and rumour, both among administrators and gun owners. Given the history of this issue, it is critically important that every step be taken to minimise any degree of confusion and any opportunity for misinformation and rumour to spread that may arise following the amendments of the Weapons Act 1990.

Lawful firearm owners who have undergone a most comprehensive checking system under the licence provisions and have been deemed fit to hold a licence should not feel uneasy about any of these new amendments nor should they feel alienated. The government and those who act on its behalf need to act responsibly in applying and monitoring the amnesty and in implementing this piece of legislation if it is to achieve the support it deserves from responsible gun owners. It is in their interests to support the licensing of category H weapons, whether permanently inoperable or not. It is in the interests of responsible gun owners to support a system in which the general public can have faith and a system that has absolute integrity. That is what this legislation does. It simply imposes greater controls over collectors licences by removing category H hand guns rendered inoperable from the definition of 'replica' in the existing legislation.

It is critically important that the message about what this legislation does is well and truly communicated to every one of those interest groups and every person who may be affected by it. The opposition supports the broad objectives of this bill and will, therefore, support this move to amend the Police Powers and Responsibilities Act 2000 and the Weapons Act 1990.