



Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 16 October 2001

CRIME AND MISCONDUCT BILL

Hon. P. D. BEATTIE (Brisbane Central—ALP) (Premier and Minister for Trade) (12.32 p.m.): I move—

That the bill be now read a second time.

Twelve years ago the Criminal Justice Act 1989 was introduced to implement reforms recommended by Commissioner Tony Fitzgerald, QC. Today I introduce the Crime and Misconduct Bill:

- to recognise and build on the progress made since those tumultuous times; and
- to deliver an updated framework to take public integrity and law enforcement to a higher level in the new millennium.

In other words, this bill starts a new era for the Fitzgerald reform agenda.

In the last 12 years public administration in Queensland has undergone nothing short of a revolution, and so it should have. It has emerged stronger, more accountable and better equipped to serve Queenslanders. This bill marks the beginning of a new era for public integrity, accountability and cooperation on the one hand, and law enforcement on the other. It again unites the fight against major and organised crime—and misconduct—under one roof. This will be a more effective fighter against organised and other crime.

This merged body will benefit from combining the separate research and intelligence resources of the CJC and the Crime Commission, and sharing expensive and limited surveillance resources. This cohesive approach should also produce efficiencies by reducing unnecessary duplication, and enhance cooperation in the law enforcement community by eliminating replication. In a nutshell, both these bodies have a budget of about \$30 million. I am not talking about taking money out of them, but we are ensuring efficiencies for the future which will save money in the long term, and that money can be spent in other areas of law enforcement like extra police and in areas like education and health.

The name 'Crime and Misconduct Commission' reflects this change and heralds the emergence of a revitalised, refocused commission better equipped to serve Queensland into the future. Past references to the CJC and the Crime Commission in legislation are deemed to be references to the Crime and Misconduct Commission.

Like the CJC, the new commission will be constituted by a full-time chairperson and four part-time commissioners. The appointments of current part-time members of the Criminal Justice Commission are being carried over in the bill to the new commission, which will benefit from their corporate knowledge and experience. The government values the investment that the commissioners have made in their work with the CJC, and is confident that they are best placed to steer the commission smoothly through the transition to a renewed method of operation.

The two major functions of the CMC, major crime and misconduct, will be performed by an Assistant Commissioner, Crime and an Assistant Commissioner, Misconduct. Both office bearers will have the right to attend commission meetings but will not have voting rights. That is because we want the community representatives to represent the community and to have that power in this very powerful body which is, in effect, a standing royal commission.

Appointment processes for the CJC chair and commissioners have largely been retained. The CMC chair must be a person qualified for appointment as a Supreme Court or High Court judge. The position can be filled after national advertising and gaining the bipartisan support of the parliamentary committee.

The four part-time CMC commissioners must have a demonstrated interest in civil liberties, or qualifications or expertise in public sector management and review, criminology, sociology, research related to crime or crime prevention, or community service. Part-time commissioners are appointed after a statewide advertising campaign, consultation with the chair, and gaining the bipartisan support of the parliamentary committee.

The commission is accountable for the discharge of all its functions to the parliamentary committee—which will be called the Parliamentary Crime and Misconduct Committee and maintains the membership of the PCJC. This means that the commission will once again be accountable to parliament for its major crime functions, and so it should be.

The Criminal Justice Legislation Amendment Act 1997 removed the powers of the CJC chairperson to make many basic managerial decisions. This created a cumbersome, inefficient process whereby minor managerial decisions had to be decided by the commission as a whole. The bill restores to the chair, as chief executive officer of the commission, the clear powers necessary to make day-to-day management decisions. The Assistant Commissioner, Crime and the Assistant Commissioner, Misconduct will be responsible to the commission through the chairperson.

The chair of the commission will be required to conduct all public hearings of the commission. If he or she is unable to do so, an acting chair of the CMC must be appointed not only to conduct the hearings but also to act as chair of the CMC for the duration of the hearing.

Other than the officers mentioned, the internal structure of the commission is not defined by statute. This allows the commission to establish the organisation in the best way to perform its legislative functions, while allowing the commission to most effectively manage its operations.

The bill focuses the new commission on its core functions of combating major crime and continually improving conduct in public administration. The powers of the Crime Commission and the CJC have been carefully drafted to maintain the status quo for the crime and misconduct functions respectively—to ensure that there is no increase in powers. There is one exception to this rule. Based on a compelling case, the crime fighters will be able to conduct electronic data surveillance, which does not require telecommunications interception. With increasing use of the Internet and data transmission, including encryption by organised crime and paedophiles, this will enhance the capacity of the CMC to investigate these illegal activities. In other words, we are allowing the bugging of computers within the limitations and accountability mechanisms available through the Supreme Court.

In returning major crime to the commission, the intention is not for that function to be merely tacked onto the CJC's operations. The bill integrates the crime function as one of the two main core functions of the organisation. It is vital that Queensland have a potent capacity to combat major crime, organised crime and, of course, paedophilia. The commission's duty in this new body will be to ensure that the crime function is given the priority it deserves, is fully incorporated into the CMC's operations and that it is appropriately resourced within the organisation's internal budget.

The bill makes little change to the crime-fighting model in the Crime Commission Act 1997. The crime function remains reference based. In other words, only major crime, including criminal paedophilia and organised crime, which is referred for investigation by the reference committee is investigated using the commission's powers of compulsion. The decision to refer matters for investigation is made by a committee of law enforcement experts and community representatives once they are satisfied that the investigation is unlikely to be effective using normal police powers and if they think that it is in the public interest to do so.

The management committee is renamed the reference committee to reflect the shifting of its management functions to the commission and its concentration on references. The composition of the reference committee remains the same except for the removal of representatives of the Parliamentary Criminal Justice Committee. Given the accountability of the crime function to the parliamentary committee under the bill, representation on the reference committee was no longer necessary. The remainder of the current members of the management committee are transferred to serve on the reference committee. The services of the members of the Crime Commission Management Committee are specifically recognised and valued.

Paedophilia becomes reference based, like major and organised crime, to reflect the commission's role in concentrating its efforts on significant criminal activity to supplement the work of the police. This change was suggested by the Crime Commissioner.

One of the most significant achievements of this bill is to move the misconduct functions of the CJC to a new level. In addition to continuing to investigate relevant misconduct and official misconduct,

which I will outline further, the commission will take up a proactive role in raising standards of integrity and conduct in units of public administration. This approach will be built on cooperation and aims to build the capacity of individual agencies to deal with misconduct themselves in a way that promotes public confidence in the process.

In recognition of reform within the Police Service since the Fitzgerald inquiry, the bill returns responsibility to police for investigating and dealing with police misconduct. To ensure appropriate supervision and control of the exercise of this function, however, the commission must still be notified of and maintain a monitoring role over police misconduct. In this monitoring role, the commission can:

- issue guidelines for the conduct of investigations;
- review or audit investigations; and
- assume responsibility for and complete an investigation.

The commission retains the ability to investigate of its own initiative the incidence of misconduct—police misconduct and official misconduct—generally in Queensland, or in particular cases.

The commission's responsibility for investigating and dealing with official misconduct is preserved not only within the Police Service but across all units of public administration. All complaints of official misconduct or suspected official misconduct must be notified to the commission. The commission can either investigate official misconduct itself, refer it to a unit of public administration for investigation, or jointly investigate it with the agency. The commission has stronger powers of supervision and control over official misconduct investigations where they have been referred to agencies to investigate solely or jointly. It can act, as outlined previously and, in addition, can require a unit of public administration to:

- report to it in a way and at the times the commission directs; or
- conduct further investigations.

When making decisions about how both police misconduct and official misconduct is best investigated, the commission is required to have regard to:

- the capacity of, and resources available to agencies;
- the nature and seriousness of the misconduct; and
- the public interest in the commission investigating the misconduct itself.

The misconduct functions of the commission have been structured to achieve several goals, to:

- build the capacity of units of public administration, particularly the police, to investigate and deal with misconduct in their own agencies;
- maintain commission oversight of the investigation of misconduct;
- encourage cooperation between the commission and agencies; and
- achieve timely and efficient results.

The current system compels police to funnel all complaints through the CJC first and wait for the CJC to refer matters back to them for investigation. This entails a considerable amount of double handling between the police and the CJC, and it means delays, which we are resolving. One aim of requiring police to investigate police misconduct in the first instance is to improve the efficiency and timeliness of all investigations by freeing up commission resources to focus on oversight and more significant investigations.

A strong client focus is built into the bill, obliging the Commissioner of Police and the commission to respond to complainants, to advise them of the action taken, the reason why the action is considered appropriate in the circumstances, and the results of any action to date. A key driver of this shift is the recognised need for senior management to take responsibility for day-to-day management issues so that they are resolved in an effective and timely way—and I repeat that: a timely way. This approach reflects practice over the last several years where the CJC has referred the bulk of police misconduct complaints to the police for investigation, and makes that process transparent.

The Assistant Commissioner, Crime and Assistant Commissioner, Misconduct will be recruited through a national advertising campaign and will be selected after consultation with the commission chair and the Leader of the Opposition. In addition to its crime and misconduct functions the commission continues to have responsibility for prevention of misconduct and major crime as well as research and intelligence functions which support all its other operations. The commission will maintain its responsibilities under the Witness Protection Act 2000.

The commission will be able to make policy recommendations about the Police Service to the Police Minister. If the Police Minister decides not to follow such a recommendation, the minister must table in parliament his or her reasons for not doing so.

The CJC retains a strong research function. It will continue to be responsible for research:

- to support its core functions—crime, misconduct, paedophilia and prevention;
- into the incidence and prevention of criminal activity;
- into any other matters relating to the administration of criminal justice referred by the minister; and
- into police operations, powers, law enforcement and the continuous improvement of the Police Service.

The CJC will still be requested by government to conduct significant independent research projects from time to time. For example, the CJC will still review the operation of the Prostitution Act 1999 in 2003.

One discrete aspect of the research function is being relocated—research on the criminal justice system. In the 12 years of its existence the CJC has not reported specifically on the effectiveness of the criminal justice system. Since completing the Fitzgerald research agenda, the CJC has produced very few reports on this area. Reports on criminal justice issues, like the prisoner numbers report, were produced at the request of government and other agencies.

The need for cohesion between criminal justice agencies has been identified nationally and internationally. Ensuring the safety of our communities and protecting law and order in Queensland is a priority for this government. Our ability to make sound decisions about law and order issues is dependent on receiving high-quality advice based on rigorous research not only from the Justice Department, police or corrections but relevant across the criminal justice system. We need research to be done on core policy issues like what rehabilitation is most effective, does diversion from the criminal justice system have long-term benefits, and how can the government most effectively redress the current imbalance where our indigenous population constitutes 3.2 per cent of the Queensland population but 23 per cent of the prison population.

These are issues which governments need to be informed on to shape the future—to ensure that we have less crime and safer communities. They are issues about the effectiveness of the criminal justice system, but they were not core business of the CJC nor should they be core business of the CMC.

The criminal justice research unit will be located within government and will inform government policy and resource decision making. The purpose of this unit is to have better informed decision makers, not to somehow cover up information on the criminal justice system, as has been suggested today, I understand, by the Leader of the Opposition and some who have no history and no understanding of research in this area.

At the moment the Justice Department, Police and Corrections all have databases that mostly serve their own purposes. This unit will draw from that vast bank of information and actively encourage information sharing between criminal justice agencies. Rather than stifling information on the criminal justice system, the unit will make it more accessible and intelligible. I make no excuse for this change. This change is in the interests of Queensland. We will not be deterred by those who do not understand what it means or who have some self-interest in being simply critical.

These are the facts. The CJC has approximately 28 staff working on research and prevention. Current estimates are that approximately four to six researchers may be relocated to government to staff the new research unit. It is hardly a reduction of any significance.

Conducting criminal justice research within government is not a new concept. Both New South Wales—the Bureau of Crime Statistics and Research—and South Australia—the Office of Crime Statistics—have specialist criminal justice research units established within government. So I say: let us have some honest debate about this, not paranoia. Let us have some honest debate about what is good for Queenslanders. This is a good outcome for Queenslanders and people should not look up hollow logs to find things that are not there. Paranoia is all very well, but it does not produce a good outcome, and we will not have a bar of any of it. Criminal justice research is integral to achieving criminal justice coordination and to sound government decision making on law and order issues. This particular aspect of the CJC research function is therefore being relocated into government where these aims can be more effectively achieved.

To date, the CJC has been the only public agency that has not been subject to the requirements of the Criminal Justice Act 1989. There is a need to remedy this. Like any other unit of public administration, the commission and individual officers within the commission should be held accountable for misconduct or official misconduct. To date the CJC has reported such matters to the parliamentary committee pursuant to an agreed protocol. This arrangement is now given legislative force, requiring the commission to report to its committee all conduct of a commission officer that the chairperson suspects may involve improper conduct.

Commissioner Fitzgerald reported at length about the then police culture and recommended, amongst other things, that officers should be rotated through sensitive or high-risk areas on a three to

five-year basis. The CJC was established in part to combat the unhealthy police culture that was exposed during the Fitzgerald inquiry. Since then, the CJC has endured and survived many testing times. Over the last few years, however, concerns have been expressed about the CJC itself developing a defensive culture. The commission must actively guard against this and ensure that it remains openly accountable for its actions and the actions of its officers.

To ensure that the commission benefits from a periodic infusion of fresh blood into its senior officer ranks, all senior positions are subject to tenure limits. The maximum period of office for the chair and part-time commissioners remains at five years, and for assistant commissioners and senior staff, eight years.

The minister's ability to monitor the commission's performance is enhanced in the bill. The commission is required to report to the minister on the efficiency, effectiveness, economy and timeliness of its systems, processes and operational procedures to satisfy the minister that it is operating to best practice standards. The minister will fully review the commission's performance no sooner than two years after commencement to assess, amongst other things, whether it:

- is operating to best practice standards;
- is appropriately resourcing its crime fighting functions;
- is dealing with complaints in a timely way, which is a matter of considerable interest; and
- has adapted to its oversight and capacity building role.

The Parliamentary Crime and Misconduct Committee will largely continue the functions of the PCJC but will also oversee the outgoing Crime Commission functions.

The most significant change for the committee is the role of the parliamentary commissioner. The bill makes it clear that the parliamentary commissioner is an agent of the committee who acts on directions from the committee and has no powers to act of his or her own motion. Consistent with this relationship, reports prepared by the parliamentary commissioner at the request of the parliamentary committee are subject to parliamentary privilege.

The position of parliamentary commissioner is currently, and will continue to be, a part-time role. The primary purpose of the parliamentary commissioner is to improve the level of accountability of the commission to the parliamentary committee. The parliamentary commissioner's powers are substantially retained; however, its royal commission powers have been codified and tailored to suit the oversight role. The ability to compel answers or to require the production of evidence, despite the possibility of self-incrimination, is now limited to commission officers and people appointed in units of public administration. If it is necessary to compel other witnesses, the PCMC will be able to do so under the Parliamentary Committees Act 1995. The parliamentary commissioner will still be able to hold hearings but only when all other means of obtaining information have been exhausted, and only with the support of a non-partisan majority of the PCMC.

This bill addresses many of the issues raised by the PCJC in its report No. 55 Three Yearly Review of the Criminal Justice Commission. A formal response to each recommendation of that report will be provided shortly.

The proposed commencement date for this act is 1 January 2002. The transition period for the amalgamation of the CJC and the QCC, and for appointments to be made to the top statutory positions is, therefore, very short.

To ensure that the best person available leads this important new commission through its transition and into its reformed role, I propose an open appointment process for the chairperson of the Crime and Misconduct Commission, the Assistant Commissioner, and the Crime and the Assistant Commissioner, Misconduct. Without such a process the head of the commission would not have the legitimacy and respect necessary for the task ahead. This appointment process will be open and fair, but I will ensure that it is done decisively in accordance with a very tight timetable. This is necessary because I will have less than two months in which to advertise these positions nationally, finalise selections and get the commission up and running. In addition, the appointments of the assistant commissioners cannot proceed until the chair has been appointed, as the chair is to be consulted in their selection process.

To achieve this task I will appoint a panel that includes the chair and deputy chair of the Parliamentary Criminal Justice Committee or the Parliamentary Crime and Misconduct Committee as part of the selection process for the chairperson of the Crime and Misconduct Commission. That means Geoff Wilson and Howard Hobbs, the relevant members, will be represented. This will ensure bipartisan support and, therefore, supplant the need to obtain bipartisan support from the committee for this initial appointment of the chair.

I am happy to advise the House that the committee will consist of Dr Glyn Davis, the head of the Premier's Department and soon to become the Vice-chancellor of Griffith University, Gary Crooke from the National Crime Authority, Cathy Sinclair, who has been involved in administration and is a

consultant in the criminal justice area, and His Grace the Catholic Archbishop of Brisbane, Archbishop John Bathersby. The Leader of the Opposition and the CMC chair will be consulted about the proposed appointments as assistant commissioners.

As I have already indicated, the membership of the Criminal Justice Commission will continue, as will that of the Crime Commission Management Committee, as the new Reference Committee. I have kept disruptions to these very important institutions to a bare minimum to facilitate a smooth changeover. All staff will be transferred with full entitlements and an option for Crime Commission employees to remain public service employees. There will be no jobs lost due to the amalgamation.

This bill has been developed in close consultation with both the Crime Commissioner and the chairperson of the CJC. We have consulted extensively and widely with both bodies as well as the Police Commissioner. I am indebted to both the Crime Commissioner and the chairperson of the CJC for investing a considerable amount of time personally into the development of this legislation, in the interests of getting the blueprint right for the next 10 years. Accepting the policy of amalgamation, both the CJC chair and Crime Commissioner have expressed their satisfaction with this bill.

The CJC chair and the Crime Commissioner have particularly assisted with the technical aspects of the bill in which their organisations have expertise. This is a very complex piece of legislation that is the subject of ongoing and intense scrutiny. It is predictable that in a bill of this size and complexity some further technical amendments may be needed prior to passage.

Finally, I would like to thank staff in my department who have laboured hard over this bill, especially Philip Green, Tony Keyes and, in particular, Louisa Pink. As always, I appreciate the excellent work of the Office of Parliamentary Counsel, particularly Steve Berg, in this instance. This bill starts a new era for the Fitzgerald reform agenda. No doubt there will be critics from various areas, from the reactionaries, those lacking vision and those with self interest. We will not be deterred. This is in the interests of the state. I commend the bill to the House.
