



Speech by

ANDREW McNAMARA

MEMBER FOR HERVEY BAY

Hansard 7 August 2002

CIVIL FORFEITURE OF THE PROCEEDS OF CRIME BILL

Mr McNAMARA (Hervey Bay—ALP) (8.43 p.m.): At the outset, I congratulate the member for Southern Downs on his thoughtful effort in bringing this bill before the House. I think it would be common ground among 82 of the 89 members of this parliament that the member for Southern Downs is the brightest and most dynamic member of his party and he deserves to lead it. Certainly the bill which the member for Southern Downs has placed before us bears his trademarks of progressive thinking and hard work, which regretfully seven of his frontbench colleagues either do not recognise or, perhaps worse, do not welcome. I assure the member for Southern Downs that the 77 of us who do not have a vote in the Nationals' party room value his contribution and offer encouragement for him to stick with us, not to head off to greener pastures in the federal parliament in frustration at his own party's underutilisation of his skills.

Regretfully, however, while I acknowledge the good intentions which underpin the member's efforts on this occasion, I cannot support the bill before the House. It is my view that any bill to expand forfeiture as a preventive measure or a deterrent to crime has to involve a complete rewrite of the criminal forfeiture laws as well or it risks setting up unacceptable contradictions in the law in this regard. As good a first effort as this bill is, it is fundamentally flawed by not having a single piece of legislation which sets out a uniform approach to balancing the complex issues which arise when the state is proposing to take the property of citizens without paying any compensation, or indeed in circumstances where no-one has been found guilty of a crime. I imagine that a significant proportion of what the member for Southern Downs is proposing will find its way into a joint criminal-civil forfeiture bill which the Attorney will introduce in due course, but more work and consultation needs to be done on the civil liberties aspects of such an approach.

The bill before us deals only with the proceeds of crime, not instruments of crime. This is the case with the criminal forfeiture legislation currently in place, and any civil forfeiture extension should complement this legislation and be consistent in this regard. I am also of the view that other discrepancies between the existing criminal forfeiture regime and the honourable member's proposed civil forfeiture regime are too numerous and important to allow this bill to proceed in its current form. For example, different statute of limitation periods are not acceptable, and the issue of forfeiture covering all of the property of a person found to have been engaged in serious crime related activity at any time needs more consideration.

In common with the member for Gladstone, I also feel that we need much greater discussion before passing a bill which affects the property of relatives of a person when that person has not even been charged with an offence. I congratulate the member for Gladstone on bringing this issue before the parliament and trust that the members of the National Party do not consider that to be condescending.

The issue of different standards of proof needs work. Rebuttable presumptions need to be lined up, and the reversal of the onus of proof needs to be consistent and far better considered. Accordingly, I cannot support the bill before the House, and I will vote against it, although I look forward to the Attorney's subsequent legislation picking up a number of the ideas put forward by the member for Southern Downs in this bill.