Speech by

GEOFF WILSON

MEMBER FOR FERNY GROVE

Hansard 26 February 2003

OCCUPANTS [HOME INVASION] PROTECTION BILL

Mr WILSON (Ferny Grove—ALP) (10.19 p.m.): I rise to forcefully oppose the Occupants (Home Invasion) Protection Bill 2002. When a member of parliament brings a bill before this House, it behoves them to set out a case that establishes the need for the legislation that they propose—not just any case but a convincing case. That is an obligation that applies not only to an individual member of this House acting in the capacity as a private member but also to the government should it wish to pass legislation in this House. Equally, it is an obligation that applies to the opposition if it puts forward a proposition in this House.

This House is the sovereign parliament of Queensland. It is not a garden party. It is not a committee of a community group. It is not the local bowls club. We are elected by the entire population of Queensland and are reposed with their trust. We have it placed in our hands to do all we can in the best interests of Queenslanders. When the member for Nanango introduces this legislation in this House, she needs to make out a case for why there should be a change to the current law. When the opposition supports this legislation, it too needs to make out a case for changing the current law—not just any case, but a convincing case.

The opposition has woefully failed to make out any case, let alone a convincing case. Indeed, so great is their failure that it is fair to say that—maybe innocently by the member for Nanango but wilfully by the opposition—they have abdicated their responsibility to make out a case. They are pandering to the basest level of popularism in the community that you can imagine. The existing law provides—as has been pointed out by previous government speakers, particularly the Deputy Speaker—that reasonable force is required, reasonable grounds must be shown; the person using the reasonable force must hold a reasonable belief and it must be force that is necessary to be used. In those circumstances, the home owner or the occupier can stop someone entering or eject someone who should remove themselves from a place and stop someone taking away moveable property, if you add the further qualification that the force must not bring about grievous bodily harm to the person.

Have any members of the opposition or any of the so-called Independent members of this House cited any concrete examples of where the existing law has failed? They have talked often about a view in the community that the law is not strong enough to defend the owner-occupier against home invasion. There is that view in the community, but what evidence has been presented tonight? There is none, and that is why no convincing case has been made out.

The innovations in this bill that it is claimed will solve a problem which no-one has even deigned to explain to us are that you can use any force whatsoever against any person of whatever age who may be unlawfully on your property. It is not only if they are unlawfully entering your property but also if they are taking property of yours away. The current requirement that you cannot use force to the point of grievous bodily harm is totally abolished in this bill. You can use any force at all. All that is needed is a belief by the occupant that they have unlawfully entered or they have refused to leave. That is a completely subjective test which totally abolishes hundreds of years of common law and statutory legal development in this state, in Australia and in the common law world that has established the objective test by the courts that it must be reasonable in the eyes of a reasonable person, not just the person acting on the particular occasion. Furthermore, you can exercise any force immediately after someone has failed to comply with your direction.

As some members have said, the prosecutor's onus of proof has been reversed and we do not need to establish a case beyond reasonable doubt—any doubt. For the prosecutor to establish that the occupant has exercised the section 7 entitlements in a way that does not conform with their entitlements, he or she has to show at a level of certainty that there was not the belief in the occupant that force was needed to be used.

As I said, no evidence has been put forward by any of the speakers in support of this legislation. There has been an abject failure on the part of the opposition in this regard. We have seen the cynical posturing which members opposite have adopted on this bill. They say that there may be some technical deficiencies in the bill, but they do not give us the benefit of their views as to what those deficiencies might be. The opposition then goes on to say that it supports the intent of the bill. If it supports the intent of the bill, then it wants to abolish the requirement of reasonableness in the force used. It wants to abolish the concept of reasonableness in terms of the belief that people hold when they exercise that force. It wants to abolish reasonableness whereas reasonable grounds have to be established at present.

When the opposition says that it supports the intent of the bill, what it is saying—but does not have the guts to say—is that it opposes the current law that requires the time-honoured standard of reasonableness. Some of the members opposite—certainly the two Independent members—go so far as to say that home invaders should have no rights whatsoever.

If we were so foolish as to pass this bill and visit it upon innocent Queenslanders, people whom many opposition members have failed to properly inform about their current legal rights, we would be foisting upon them legislation that in effect legalises home vigilantes. We will be giving these home vigilantes, either acting alone or in company with others on their premises—because the invitees are entitled to act the same way as the occupant—the right to execute the death penalty on a home invader. The death penalty does not exist in this state for any offence, but if this legislation were passed we would confer the power on the home occupant to bring about the death penalty for someone they believed was invading their residence.

This legislation also undermines the historical role of judge, jury and police. It makes the home occupant the police, the prosecutor, the judge and the jury. There is a total abandonment by those in support of this legislation to make out their case. In my submission, this legislation should get the result that it deserves, that is, it should be defeated in this House.