



Speech by

Mrs LIZ CUNNINGHAM

MEMBER FOR GLADSTONE

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OCCUPANTS [HOME INVASION] PROTECTION BILL

Mrs LIZ CUNNINGHAM (Gladstone—Ind) (10.33 p.m.): In rising to speak to the Occupants (Home Invasion) Protection Bill 2002, I have to say that the majority of comments that I have had made to me, whether formally or informally, about the sense residents of this state and other states have with regard to their rights in the area of self-defence and defence of the home would be covered by this piece of legislation.

As legislation and case law have subsequently developed, people feel more and more disenfranchised. Indeed, whilst I acknowledge the need to consider the rights and liberties of the individuals, two questions that the Scrutiny of Legislation Committee put in its report on this bill encapsulate how many people feel. Point 14 deals with the rights of individuals. The report states—

The committee refers to parliament the question of whether these provisions of the bill have sufficient regard to the rights of occupants, intruders and the community as a whole.

I believe that the final comment made by the Scrutiny of Legislation Committee in its report—it is well within the constraints of the committee—totally encapsulates the sense the community has about the balance between the rights of individuals, in this case intruders, and their rights as honest individuals in the community and owners and custodians of their home. The committee said—

The committee refers to parliament the question of whether clause 10 has sufficient regard to the rights of intruders.

People feel that the rights of the intruder have superseded the rights of honest individuals in the community. That is, I believe, what has spawned this piece of legislation introduced by the member for Nanango.

Many government members approached this debate with some semblance of genuineness and raised serious issues which may be addressed by amendment. Others raised the most extreme and unlikely scenarios in order to either question the validity of the bill or ridicule the member's intent. The member for Redlands talked about the possibility of police executing their duty being shot as intruders. I am sure that the legislation that specifically covers police activities would override this legislation—that police in the commissioning of their duties in a lawful manner would have the right to entry. It would be very clear to all the citizens of the state that they could not harm police and use this legislation as a defence, particularly when the police are there to investigate illegal activity.

In relation to section 267, the member for Toowoomba North raised on a number of occasions, in his contribution and in his interjections on other speeches, the spectre that as a result of this bill people will be shot as a matter of course. From his contribution and subsequent comments it seemed that he thought the state would be littered with people who had been shot because they had dared to try to enter a house. He reminded me of a saying one of our relatives used to use: 'Trespassers will be shot and survivors will be shot again.' That is not what that bill says or intends at all.

People in the community generally feel that when it comes to protecting their home and family they are significantly constrained in their response to any situation they may face. Whilst some here will argue that section 267, which qualifies force with reasonableness, provides the appropriate amount of defence for a person and the appropriate powers to a person, there are incidents reported in the media whereby home owners have defended themselves in situations where an intruder has come in and, as the member for Surfers Paradise said, they have faced many weeks of uncertainty—not knowing whether they indeed will be the target of police action as opposed to the perpetrator who was entering their property illegally.

It has been said—it is how landowners feel—that the criminal has all the rights. It is borne out in the example the member for Nanango cited in her second reading speech. It has also been exemplified in other incidents that we have read about, such as the one involving an intruder who stood on a rake and sued for negligence because the rake should not have been left in the yard turned upside down. Another case involved a gentleman who was woken in the early hours of the morning by a person who was inside the home. He was shocked, he was surprised, he was scared and he responded and injured the intruder. He thought that the intruder had a weapon—a gun. Indeed it was a stick, but he was not to know. It was something like 3 o'clock in the morning. He went through months of uncertainty, not knowing whether he was going to face criminal charges as opposed to this young person who had broken and entered into the home.

It has also been said that this bill adds nothing to existing law. The Scrutiny of Legislation Committee stated at point 13—

The committee notes that clause 2(11) of the bill amends the current statutory criminal law provisions relating to the use of force by occupants of dwelling houses against intruders. The new provisions are in several aspects more favourable to occupants than the current provisions.

So this is not an unnecessary piece of legislation. It adds to the power of the occupants to defend themselves.

There is one element of the bill—and it is evident that we will not get to it—that I would vote against in the committee stage. The definition of an intruder includes two aspects: the standard definition that we would expect to see in legislation, an intruder who 'breaks or enters, the dwelling house', that is, enters a dwelling house illegally; and the second definition where a person is lawfully invited into the dwelling house and then subsequently fails to leave immediately on request or commits an offence in the dwelling house that the occupant finds out about and then subsequently reacts to that person.

I would not be able to support clause 4(b), particularly 4(b)(i), because there are too many possible situations. Earlier an interjection was made about domestic violence situations. I believe that there is that huge spectre and possibility that clause 4(b)(i) could be used in those circumstances in relation to an estranged couple—one visits the other but they are not domiciled together. There would be a real risk that—whether it was intentional or mischievous, I am not sure—somebody in that situation or an allied situation goes to a house with the right intentions and the situation becomes inflamed. It may become inflamed even because of the addition of alcohol, or whatever. An argument ensues and I do not believe that the situation should be available where a person, who is welcomed at the outset, can then be treated as an intruder or a criminal later on. There are other mechanisms to deal with that issue. I oppose clause 4(b)(i) and I believe that I would have to move an amendment to clause 4(b)(ii).

However, I believe that the other parts of this bill address the concerns that have been expressed by many in our community. These are law-abiding people who want to enjoy their homes in quiet comfort and confidence, knowing that they can protect the integrity of their homes and the safety of their families. I believe that the bill, other than clause 4(b), addresses those concerns. I would be supporting the bill with that exception.