Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard Wednesday, 12 May 2004

TERRORISM (COMMUNITY SAFETY) AMENDMENT BILL

Hon. P.D. BEATTIE (Brisbane Central—ALP) (Premier and Minister for Trade) (4.42 p.m.), in reply: I thank all members for their contributions to the debate. I will now respond to the issues raised. The member for Southern Downs raised several important issues which I will talk to in turn.

First, the member for Southern Downs focused on the role of the Crime and Misconduct Commission in relation to these new or extended law enforcement powers. The member questioned whether the Queensland Police Service should not have the predominant role. This bill does not reflect any diminution in the role of the Queensland Police Service in preventing and responding to terrorism. The reason there is an emphasis on the CMC in this bill is that its legislation has to be amended to incorporate a new role in relation to terrorism. However, the police legislation does not need amendment about this. Terrorism is clearly within the Queensland Police Service's charge. That is it in a nutshell. Indeed, under national counterterrorism arrangements the QPS is the body primarily responsible for responding to terrorism. That is where the Queensland Police Service is.

Secondly, the member for Southern Downs said that the CMC will need appropriate resources. The government agrees. The CMC already has these extended counterterrorism responsibilities as referred to it administratively by the crime reference committee. This amendment is about enabling parliament to give its endorsement to that extended jurisdiction. The CMC has not as yet reported to government any resourcing pressures due to this referral, and if it does we will consider them. The government will monitor that situation. As the minister responsible for the CMC I make that clear to the parliament. The government will of course consider any request for additional funding from the CMC, and most likely positively depending on the circumstances, should it receive a request from the CMC in the future for more finances for counterterrorism.

Thirdly, the member for Southern Downs said that it is difficult for him as a member of the public to assess how effectively the CMC is operating in relation to combating organised crime generally. I think he was saying that without any intended criticism. He was just saying that it is difficult to assess. As I said earlier in this debate, I am happy to write to the CMC to obtain statistics and other information that it is able to provide in this regard. Of course, the opposition is represented on the CMC's oversight parliamentary committee, and that is proper, so members from both sides can assess the CMC's effectiveness.

Mr Springborg interjected.

Mr BEATTIE: I understand that, but the important thing is that his point of view, in the sense of his shade of view, is represented.

Fourthly, the member for Southern Downs suggested that there is more room for a bipartisan approach to dealing with the wide range of state counterterrorism matters that the government is considering. The member said that, for example, government talking with shadow ministers about its response to terrorism would give a better sense of bipartisanship to the state's approach to counterterrorism. I appreciate what the member is saying. As I said earlier, we are not trying to pull any fast ones on anyone here. This is a considered and balanced approach to the threat of terrorism incidents. However, much of the information we deal with is security sensitive. Often it involves confidential

information that we receive from the Commonwealth or other state governments. My government is often tied until a measure, often a national measure, is publicly released. Members can understand that if we released information provided to us by the Commonwealth or from another state in these circumstances we would not be getting anymore information. That would be the end of it. We would be taken out of the equation. So we have to respect the information and its nature.

However, I take the member's point. I will instruct the relevant officers in my department that as the government develops counterterrorism measures they inform me of how and, most importantly, when we could brief or get the ideas of the opposition. Again, I am not sure how that might work given the sensitivity of the information we are dealing with and assurances by this government to other governments that we will protect the confidentiality of that information. I do not want to lift expectations too high here, but we will try to find a means to consult.

Fifthly, the member for Southern Downs raised the matter of telephone interception, saying that the Queensland law enforcement agencies—the QPS and the CMC—should be given phone tapping powers for terrorism, for organised crime. The member referred to the government's previous statement that state law enforcement can access telephone interception from federal agencies—the Australian Federal Police and the Australian Crime Commission—through joint operations. This is what we have said. However, the member raised concerns about whether this access to federal telephone intercept powers is as seamless as it might be. In relation to using telephone interception to fight organised crime generally, I said earlier in this debate that I have asked the Police Commissioner to develop a submission for the Police Minister to bring to cabinet so that we can again look at the matter of telephone interception generally, which we will do.

In relation to using telephone interception for fighting terrorism, I am pleased to assure the member that Queensland Police Service potential access to federal telephone interception capacity is indeed seamless. Queensland entered into a memorandum of understanding with the Australian Federal Police in January 2003 and formed a joint counterterrorism team. The team is tasked and managed by a joint Queensland Police Service and AFP management team. It was set up to investigate terrorist groups and their associates, both at state and national level. The joint QPS-AFP team would have very ready access to the AFP's phone tapping capacity if terrorism activity were to unfold in Queensland. So when it comes to terrorism there is no problem about QPS access to telephone intercepts capacity—no problem whatsoever.

During the debate the member for Southern Downs also shocked us by stating that he, too, was interested in civil liberties. I am delighted. I welcome him aboard. Specifically, he said that he was not calling for open slather phone tapping powers but rather for phone tapping with appropriate safeguards to represent the public interest appropriately. The member mentioned the Public Interest Monitor. I want to make some points about this, because there are some misconceptions we need to clarify.

The member has hit the nail on the head, of course. It would be imperative that the move include appropriate safeguards. However, we in Queensland cannot introduce telephone interception powers with those types of appropriate safeguards such as the PIM—that is, the Public Interest Monitor. This is because the Telecommunications (Interceptions) Act 1979, which prohibits listening in to the telecommunications system except for law enforcement, is a Commonwealth Act. It would trump any state legislation that was inconsistent with it, including providing for modifications of the warrant applications system such as PIM. Therefore, the Queensland government cannot constitutionally institute safeguards like the PIM into the telecommunications interception application process. This can only be achieved by amendment to the Commonwealth legislation.

We have not released this publicly but I will share it with the member: the state Attorney-General has written to the Commonwealth about this matter at my request asking whether the Commonwealth would consider amending the legislation to enable states to introduce additional safeguards in the warrant application process. Communication with the Commonwealth continues and I cannot really go any further at this stage. I do not want to embellish this any further, but as part of our accountability I want the member to know that that communication has been made. I also want him to appreciate the difficulty that exists under the federal legislation, because he made reference to the Public Interest Monitor and we need to put that in the legal framework, which I have just done so he better understands why we have limitations here.

In finishing up on telephone interception, I might add that this bill, rather than telephone tapping, provides an extended ability for the Queensland Police Service and the Crime and Misconduct Commission to access surveillance device powers by empowering them to obtain a surveillance warrant on the basis that it is likely that evidence of an offence would be obtained at a place rather than having to specify the name or identity of a person at a place, which is the current requirement.

The sixth point raised by the member for Southern Downs—he was very verbose today but appropriately so—

Mr Springborg interjected.

Mr BEATTIE: I am just highlighting that so he realises what an open and accountable government we are, responding to every one of the points raised by the Leader of the Opposition in painful detail. We do not want him to think for even one minute that his concerns have not been responded to.

The sixth point raised by the Leader of the Opposition was about the proposed exemption from the Freedom of Information Act. I shall discuss the FOI matter in a general sense a bit later on because it was addressed by a number of speakers to the bill. However, in particular, the member for Southern Downs raised concern about the ability for ministerial certificates to be issued in relation to this new exception. Earlier I said that I will write to the Commonwealth Attorney-General and provide a copy to the member asking the Commonwealth Attorney-General to consider the member's and my comments of today and whether the Queensland safeguards are appropriate. Indeed, the member for Southern Downs questioned whether Australia generally needs to revisit how jurisdictions provide for these types of safeguards, and I will ask the Commonwealth Attorney-General about that too.

I might note that the Information Commissioner can investigate and review the grounds for a decision to issue a ministerial certificate that that matter is security related. This means that there must be reasonable grounds for the relevant minister—that is, the Attorney-General—to issue a certificate that that matter is security related. It is important to remember that it is solely the Attorney-General as the minister administering the Freedom of Information Act who can sign a certificate certifying that that matter is security related. In this regard, in its report into freedom of information in Queensland in December 2001, the Legal, Constitutional and Administrative Review Committee noted that the QIC—that is, the Queensland Information Commissioner—is aware of only two instances in Queensland where conclusive certificates have been issued—only two. This limited use of certificates proves that the discretion is being exercised responsibly and in accordance with the objects of the act.

I want to make a general point in relation to freedom of information legislation and these amendments. I want to do this because I notice there have been a couple of articles that have appeared in the press. I want to make it very clear that, whatever arguments we may have about FOI, the new security exemption under the Freedom of Information Act here should not be part of that debate. The reason is very simple: the bill will prevent terrorists from accessing sensitive information which could be critical to them in planning and committing a terrorist offence. The Queensland government now handles far more security sensitive information, and this includes information held by the Queensland government about Queensland government security planning projects such as security plans and risk assessments of infrastructure. These include projects on critical infrastructure protection, mass gatherings infrastructure, hazardous materials facilities and government agency preparedness.

The information being collected includes information from agencies that was not previously held by government. Importantly, some information also comes from the private sector such as owners of privately owned infrastructure that was not previously collected by government and therefore would not have fallen within the ambit of the Freedom of Information Act anyway. This type of information is important and it is sensitive. It is information relating to state security and it is precisely the type of information that the new exemption is designed to protect from being made public. With the exemption in place, owners of critical infrastructure can relay to the government information about their risk assessments and security planning with peace of mind that their sensitive information will not be made public—because, frankly, we would have difficulty getting it otherwise.

Much more sensitive information is also being passed to the Queensland government from other Australian governments about national processes for enhancing security planning and combating terrorism. This information includes counterterrorism information from entities such as the Department of the Prime Minister and Cabinet, the Commonwealth Protective Security Coordination Centre and the National Counter-terrorism Committee. There is now also much more information relating to Queensland government agencies and facilities. Post September 11, there is also much more intelligence information being handled by the state government. Existing exemptions are not adequate to ensure entities from which the information is sourced—be they private owners of critical infrastructure or other Australian governments, that security sensitive information they pass on to the Queensland government will not later be released under FOI.

The government holding of comprehensive and quality information on matters such as the risk assessments of facilities is critical for effective government-assisted security and disaster planning. The proposed exemption provides this assurance, ensuring the ongoing provision of the security information to the Queensland government for the protection of its citizens. Under the intergovernmental agreement on Australia's national counterterrorism arrangements, the Queensland government is responsible for ensuring the application of 'appropriate standards and arrangements for the protection of national security information'. Additionally, in implementing post September 11 security initiatives, the Commonwealth has sought that states ensure appropriate protection for Commonwealth security related documents.

My department wrote to the Commonwealth seeking clarification of what specifically the Commonwealth sought. In its reply, the Commonwealth Attorney-General's Department stated that its concern was to ensure that documents affecting national security, defence or international relations were

likewise exempted from disclosure in state and territory FOI legislation. The recent amendments to Victoria's FOI Act do precisely that. The reply of the Commonwealth Attorney-General's Department to Queensland stated that the Victorian amendment 'meets our concerns'. Proposed amendment to the Queensland FOI Act reflects, with modification, the Victorian amendment. Though in this regard, the Queensland amendment does not extend to defence or international relations.

There is nothing here that is anything other than protecting Australia's interests and Queensland's interests. We have been requested by the Commonwealth to provide appropriate exemptions in relation to FOI to protect Australians from acts of terrorism. I notice that the *Courier-Mail* has run some comment in relation to this. I would just say to the *Courier-Mail* we are quite happy to have debates about cabinet issues, which are different, but there should not be a game played in relation to protecting Queensland and Australia from terrorist acts. We are not doing this other than to protect Australians, and we are doing it at the request of the Commonwealth. If the Commonwealth wants to lift the lid and change these arrangements in a different way, then we are happy to comply. We are not the initiators here. I say this again to the *Courier-Mail* and to the Leader of the Opposition: we are not the initiators here. This has been requested of the Queensland government. This has been requested of us. On the basis of our complying, we will then receive information from our federal or interstate counterparts. Without it, we will not.

If the *Courier-Mail* thinks there is something untoward here, then I for the life of me cannot see it. I have read its material. I do not think it grasped the central issue here that this is a national strategy; it is not ours. We are simply making sure that we are doing everything we can to protect Queenslanders. If they want to run a campaign against it they should direct their attention to the federal government, and if the federal government want to change their view we will. If they want to change these acts we will. As it is, we have been frugal and sensitive, and if they need changes we are happy to follow whatever lead the Commonwealth provides.

The reason I say that: it is not buck passing to the Commonwealth; the Commonwealth has the responsibility for terrorism and national security and we have to, if you like, play a constructive and sensible role here. I would hope that the Leader of the Opposition and those who have been critical—and I made some reference to *Courier-Mail* articles—actually understand the nature of these circumstances and the context in which we are acting and why those provisions are within the bill.

In terms of other matters, let me be brief because in my detailed response to the Leader of the Opposition I have covered most of the matters that have been raised by others. The member for Toowoomba South asked for the meaning of naming interstate police. I can advise the honourable member that it means that officers are identified by name to provide some certainty that they have been conferred with Police Powers and Responsibilities Act powers in Queensland.

I understand that all other issues that have been raised by members have been addressed by my earlier comments. The member for Currumbin made some comments about funding. Bearing in mind that the Leader of the Liberal Party played a constructive role in his contribution, for which I thank him, I was a bit mystified by the honourable member's comments. We will obviously consider on an ongoing basis funding for counterterrorism initiatives. The member for Currumbin was not in this place at the time, but we have had training here for CHOGM and we spent almost $20 million, if I recall correctly—a large part of the funding coming from the Commonwealth—to train our Police Service in the lead-up to CHOGM. A lot of the terrorism training has already been done and therefore we are well prepared and we will continue to assess the issues of funding on an ongoing basis. I think it is a little poor to play a bit of cheap politics based on those sorts of issues when I thought we were all trying to be bipartisan in fighting terrorism on an international basis.

There was an issue about why the bill does not implement all the recommendations of the PCMC report. I wonder if, in the interests of time, I could incorporate my response to that in *Hansard*?

Leave granted.

> The Bill broadly implements most of the terrorism-related recommendations of the Parliamentary Crime and Misconduct Committee's report although there is some variance in some respects.
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> The PCMC recommended that surveillance warrants be extended to places for terrorism investigations only. The Bill in fact goes further than this by allowing warrants to be obtained for places for all investigations within the jurisdiction of the CMC and police. The rationale for this is that in the initial stages of investigation it may not be possible to identify the ideological element necessary to establish the activity as a terrorist act.
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> The Bill accords with the PCMC's recommendation to extend additional powers warrants to major crime investigations, but restricts them to terrorism-related investigations. In the Government's view, there is no clear justification to extend them beyond terrorism investigations.
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> The PCMC recommended extending the definition of "serious indictable offence" in the Police Powers and Responsibilities Act 2000 to destruction of property in a terrorist act. This will be actioned later in the year through the Queensland bill based on the national scheme of cross border investigative powers
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> Rather than extending the definition of "special constables" generally in the Police Service Administration Act 1990 as recommended by the PCMC, the Bill specifically authorises non-State police officers to use Queensland police powers in the event of a terrorist act or imminent threat. The broader issue of "special constables", beyond terrorist situations, is being

considered on a national basis by the Police Commissioners' Conference through a review by the Police Commissioners' Policy Advisory Group.

The PCMC recommendation that CMC witness protection officers may be authorised to use assumed identities is implemented in the Bill.

The Bill does not implement the PCMC recommendations to allow CMC and police officers covert search powers without a warrant in an emergent situation involving a terrorist act. This is because the Government is not convinced that there is adequate justification to override the current fundamental safeguard for officers to apply to the Supreme Court for a warrant.

Last, but by no means least, the Bill will legislatively refer the investigation of terrorism-related major crime to the CMC. This referral is significant as it allows the full range of CMC coercive powers for terrorism-related major crime.

Mr BEATTIE: There was also a question raised in relation to an emergency terrorism situation why police should not be able to do a covert search of a place without a warrant as recommended by the PCMC. Could I also include my response in *Hansard?*

Leave granted.

The ability to covertly search without notice infringes fundamental rights of citizens.

The need to apply for a warrant to exercise these types of powers operates as an essential safeguard in balancing the protection of the community with the individual rights of citizens.

Although the police will still need to apply for a warrant to exercise covert search powers, the Government has ensured that there are adequate tools available to police to protect the community in an urgent situation by:

- Allowing police to undertake overt searches without warrant; and
- Allowing police to make an urgent telephone application for a covert search warrant.

Mr BEATTIE: There was also a question as to why Queensland is not given wider powers to respond to a terrorist act as was done in New South Wales. I have a detailed response to that. Could I please incorporate that in *Hansard?*

Leave granted.

Queensland police currently have access to a wide range of powers under the Police Powers and Responsibilities Act 2000 for investigating offences, including powers to question, search and seize etc. The majority of terrorist acts would be covered by existing Queensland crimes such as murder, arson, conspiracy to and attempts to commit these offences, in addition to weapons and explosives offences. Additionally, the Queensland Police Service is not limited to investigating only State offences and may also exercise their powers to investigate and prosecute Commonwealth offences, including terrorism offences.

The Public Safety Preservation Act 1986 provides additional powers to police in emergency situations such as explosions, oil spills, gas or radiation leaks, transport accidents, bombings, incidents involving firearms and weapons, or any other accident which may cause death or injury, damage to property or environment. This Act is designed to protect members of the public and accordingly, the emergency powers are directed toward this end, e.g. evacuation, closing roadways, commandeering resources, entry and search of vehicles and premises and removal of items.

The Chemical Biological and Radiological Emergency Powers Amendment Act 2003 provides extraordinary public safety powers under strict conditions to police and other emergency responders to enable them to respond to a chemical, biological or radiological emergency. These powers include power to detain, decontaminate and treat people and to seize property for decontamination and destruction.

The powers in this Bill build upon the wide range of existing powers that I have noted above. At the same time, the Bill is a measured response, recognising not only the need to fight terrorism, but also the need to protect people's rights.

In the lead-up to the 2003 State election, NSW introduced the Terrorism (Police Powers) Act 2002. This Act provides that if the Commissioner or Deputy Commissioner of Police are satisfied on reasonable grounds that there is an imminent threat of a terrorist attack or that a terrorist act has been committed, he or she can declare that a certain person, motor vehicle or area (no defined limits) is a "target", which then authorises the exercise of special "sweep" powers by police to require the person's identity and search them, search the vehicle without warrant, enter and search any premises without warrant and seize and detain anything within that declared target area.

Mr BEATTIE: Can I finalise my remarks by again thanking members for their support for this legislation. As I have said on previous occasions, the world changed after September 11 and again after the tragedy of Bali and what has happened recently in Spain, the war in Iraq, all of those things have changed how we feel about the world. The only way we can, as a civilised society, deal with terrorism is to ensure that we get on with our day-to-day lives and try to live as normal and free a life as possible.

There are two thing we have to ensure: one is we have to ensure that terrorists do not win. If we change our lifestyle and we change who we are as Australians then they will win. The second thing is that we have to ensure that we simply do not bring in draconian measures that take away our basic rights. We have brought in a number of very strong measures here to protect Australians, but we have to ensure that we do not give up the very spirit of who we are as Australians. One of the great things about Australians is that we are very open, we are very irreverent, if you like, in many senses to authority, and we cannot afford to give away that very essence of who we are as Australians.

One of the great things about us is that we are very open, we are very irreverent, we are disrespectful of authority, but it also means we are egalitarian and we are fair and we believe in a fair go. That is who we are. We can never change that, otherwise the terrorists do win.

Notwithstanding what I have just said, no government anywhere in Australia, no leader anywhere in the world, can give an absolute guarantee that terrorist acts will not happen. Tragically one day it is very

likely it will happen in Australia. All we can do is be prepared. What this legislation that we have introduced into the House does is actually allow us to be prepared. We have to be able to respond. It is a sad thing to have to say to the parliament, but it is true.

I thank members for their support. I commend the bill to the House.