



Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

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CRIME AND MISCONDUCT AND OTHER LEGISLATION AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (5.44 pm): First of all I thank the Attorney for organising the two briefings I had with her staff to outline the Crime and Misconduct and Other Legislation Amendment Bill and the amendments to be placed before the House today. It gives me pleasure to rise to speak to the bill today. I say at the outset that we will be supporting the bill. I will leave it to later in the debate to comment on the amendments.

I start by turning to the strategic plan of the CMC for 2006 to 2010 at page 12. I think it is important to understand the background of the CMC and look at that in the context of this bill. Page 12 is headed 'Strengthening the law enforcement impact on organised crime and criminal paedophilia, including prevention initiatives.' It reads as follows—

The CMC recognises that organised crime networks and criminal paedophilia offenders are becoming increasingly complex, opportunistic and shrewd, and are using state-of-the-art technology to safeguard their illegal activities.

Today's criminal does not recognise state boundaries and is becoming increasingly adept at minimising the impact of conventional law enforcement methods. The challenge for the CMC is to focus on proactive and innovative investigative methods to identify and target these individuals.

It is vital that the CMC finds and uses methods that will enhance its capacity to contribute to the joint efforts of law enforcement agencies, both state and national. It must do this if it is to contribute to making significant inroads into strengthening the law enforcement influence in Queensland and nationally.

The CMC will meet this challenge by continuing to develop and implement proactive and innovative strategies based on sound research and accurate and timely intelligence.

We will use a range of investigation, intelligence, research and prevention initiatives with a special emphasis on alerting our law enforcement partners and the community to specific dangers.

We will take an integrated approach and draw upon a wide range of expertise and resources, using strategic intelligence and research to identify and develop targets for tactical investigations that have a high probability of success.

The CMC will work in partnership with other law enforcement agencies, particularly the QPS, the Australian Crime Commission and the Australian Federal Police, building upon advances already made, and playing a key role in combating organised crime and criminal paedophilia.

I read that because, as I said at the start of my speech, it is very important that we understand the role the CMC plays not just in this state but across Australia and indeed overseas. The role of the CMC cannot be underestimated. It is a major crime fighting body. It is a major initiative that this state has to deal with major criminal networks but also, equally importantly, paedophilia. As a consequence, scrutiny of a bill in relation to improving its powers or at least providing it with a better way or better method of dealing with these sorts of matters is important and, in my opinion, we should allow some leeway in relation to the terms of a bill of this nature.

I note the *Alert Digest* does raise some concerns in relation to the intrusion on civil liberties. We have looked at this very hard and very closely. However, when we take into account what the CMC does, who it is tackling and who it is trying to bring to court and then to jail we can certainly see that this bill is a significant move forward.

The bill itself amends a number of acts: the Crime and Misconduct Act, the Misconduct Tribunals Act, the Police Powers and Responsibilities Act, the Witness Protection Act and the Whistleblowers Protection Act. Perhaps the greatest proportion of the bill deals with the witness protection functions of the CMC and in clauses 5 and 6 extends the powers of the commissioners to request by notice the production of documents to witness protection hearings as well as criminal investigations.

The aim was to implement recommendation 41 of the PCMC report for the purpose of protecting the person or integrity of witnesses' actions. Typically, this will be used to require a bank to provide information on where a protected person last transacted to determine their location and ascertain their safety. It should be noted that the new power is provided in a way that attempts to conceal from the recipient of the notice the fact that it relates to a protected witness and the identity of the protected witness.

The bill allows the CMC to link these notices with the crime and investigation notices so that the recipient will not know whether the notice relates to a crime investigation or the witness protection function. This departure from the normal requirement that a recipient of a notice has a right to know the provision under which such notices are issued is considered justified to ensure that people on the witness protection program are safe from physical harm and that the integrity of the program is maintained.

The recipient, however, does have the right to seek protection for noncompliance with the notice and if there is a claim of excuse or privilege the chairperson has the right to require the person to attend a CMC hearing to substantiate the claim. The chairperson may seek that this person immediately attend to make his or her claim, and in doing so the CMC is required to seek the prior approval of a Supreme Court judge. If the claim is refused, the person can then appeal the decision. It is anticipated that the additional procedures for determining claims of reasonable excuse or privilege are not expected to be used often but are nonetheless inserted due to the need to meet the new power of the crime investigation power.

I initially raised with the Attorney's office my concern that the new section 75B allowed the presiding officer to require a witness to immediately produce a stated document or thing that the chairman believes is relevant to the investigation. My concern with the wording was that the bill did not require a level of belief or indication of possession or control of the documentation or thing prior to an order being made. As a consequence, I raised with the Attorney's office my concern on that point and there is now to be an amendment whereby the officer has to believe 'on reasonable grounds' that a witness has possession of a document or thing and believes again on reasonable grounds that it is relevant to the investigation. That does resolve the issue as possession is defined in schedule 2 of the primary act to include having custody and control.

Clause 9 provides the right for a witness protection function hearing to be in public in certain set conditions, including that it considers the opening will make the hearing more effective and will not be unfair to the person or contrary to the public interest and will not threaten the security of a protected person or the integrity of the witness protection program. Importantly, clause 10 now allows for a chairperson to nominate an assistant commissioner to conduct a public hearing. This has long been a concern for the CMC in which there are certain hearings that can only be conducted by the chairperson. That has meant hearings being delayed and certainly being elongated. This provision will rectify that concern and is one that will be welcomed by CMC officers. I also note that an amendment to be brought into the House tonight by the Attorney further elaborates on that particular point.

In addition, the bill also contains amendments unrelated to the PCMC report, including initially relaxing the limit on the tenure of senior officers and assistant commissioners from eight years to 10 years with a possible further five-year extension. The PCMC is to be informed of the further extension. As the Attorney would be aware, one of the primary functions of the CMC is to deal with entrenched criminal behaviour. One of the concerns that has arisen from other jurisdictions is that with the length of term of officers in such a crime-fighting organisation there is always a risk that a particular person could himself or herself be trapped into corruption. There is always a concern in those circumstances. I am quite well aware that the Attorney would be mindful of that in the future.

Second, it allows self-incriminating evidence that a person has been compelled to give at a CMC hearing to be used in proceedings against that person for the falsity of other compelled evidence. Third, it allows the CMC to delegate its power to appoint staff below senior officer level to a person other than a chairperson. Fourth, it ensures that only individuals and not corporations can claim the privilege against self-incrimination in accordance with the recommendations of the Queensland Law Reform Commission in its recent report on the abrogation of the privilege against self-incrimination. Fifth, it removes the requirement for ministers to approve secondments to positions at the CMC below senior officer level and instead requires them to be approved by chief executives. Sixth, it clarifies that the CMC can only compel persons to attend hearings for its crime and misconduct functions and not for its other functions such as research and intelligence. Seventh, it clarifies that commission officers and other persons can only be required to produce or disclose confidential documents or information relevant to the work of the CMC that is required for a prosecution started as a result of an investigation conducted by the CMC and not just any

investigation. Lastly, it clarifies that a person is required to comply with the requirement of the CMC to produce documents or things for a misconduct investigation.

Moving on to clause 57, that clause inserts part 2A under the heading of arrangements for short-term protection into the Witness Protection Act 2000 and deals with those persons who are not included or being considered for inclusion in a witness protection program but the chairperson believes there is a need for protection for a clear purpose and for a stated period of time because of danger arising from a circumstance as defined within the bill. The person may then be provided with what I may term an interim witness protection arrangement whereby the chairperson may enter into an arrangement for a specified purpose and period, called in the bill a short-term protection arrangement, which ends upon either the purpose for which the short-term protection arrangement was entered into or the period specified in the arrangement concludes.

The short-term protection arrangements may be varied, suspended or the person to whom they are addressed can voluntarily end the arrangement. Suspension will occur if the person who is protected by the order does something or intends to do something that puts at risk the integrity of the program or another witness or the person cannot be properly protected, and in those circumstances the chairperson may suspend the protection order. The bill also provides the chairperson with the power to end short-term arrangements, and at clause 58 the new section 36 provides that it is an offence to disclose any information about a person or a witness protection program that threatens the security of the person or integrity of the program, and that particular provision carries a maximum sentence of 10 years.

In essence, the bill does provide a number of what I would call procedural amendments and some substantive amendments, providing additional protections for witnesses, but also puts in place the recommendations made by the PCMC in its report of 2004. It is interesting to read the PCMC report of 2004. When one dovetails that with the strategic plan that I referred to earlier, we find that the CMC is still directing itself to improving the technology and the basis on which it operates to provide the protection that we tend now to need more often given the greater use of technology by criminals.

As I said earlier, the question had been raised in *Alert Digest No. 8* of this year as to whether the provisions had regard to the rights and liberties of individuals. Of course those rights and liberties are always important in relation to any criminal matter or, for that matter, any matter involving a court application or proceedings. It is, however, as I said earlier, equally important to understand the role of the CMC and I find that overall this bill does not in any manner erode the rights of individuals to the extent that would warrant them being opposed by the opposition.

If I could just quickly turn to the proposed amendments to be introduced by the Attorney today, and with the Attorney's consent I will address those at this point in time instead of delaying them until later. I can probably state that the amendments come in two formats. Firstly, they deal with the Corrective Services Act and, secondly, they deal with a variety of acts in relation to prisoners having the right to vote at elections. I will refer to both of them generally to begin with. Under normal principle, the opposition would oppose these amendments given that they are not related to the primary bill before the House. But I have taken the chance to talk to the Attorney's staff late this afternoon. In relation to the changes to the right of prisoners to vote, they actually follow as a consequence of Commonwealth legislation passed in June 2006. They mirror that and in those circumstances there is no reason why they should be opposed by the opposition and we will be supporting those amendments when they come into the House.

In relation to the Corrective Services Act, again the Attorney's officers advise me that what it in essence relates to is that a sentence that has been suspended that is reactivated under normal circumstances cannot then attract a parole date. The amendments will in fact allow that to occur—that is, a parole date may now be set if a court reactivates a sentence that has been suspended. That seems purely in my opinion a right-minded thing to do and we will be supporting that proposal as well. In those circumstances, we will be supporting the bill and the amendments when they come to the House.