Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

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CRIMINAL ORGANISATION BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (5.26 pm), in reply: At the outset I want to thank all honourable members for their contributions to the debate on the Criminal Organisation Bill 2009. In particular, I want to thank my colleagues on the government side of the House for their reasoned, sensible and very thoughtful contributions to this debate, as typified by the contributions of the member for Barron River and also the member for Chatsworth and the very courageous speech by the member for Toowoomba North.

The bill seeks to disrupt and restrict the activities of criminal organisations and their members and associates. The structure and methods of organised crime pose a challenge to the traditional processes of the criminal justice system which are designed to prosecute and punish proven criminal activity committed by individuals. The long-term disruption of ongoing criminal enterprises may require more than isolated prosecutions of individual members. As I made clear in my second reading speech, the powers set out in this bill will augment but not replace those existing powers to combat serious organised criminal activity in Queensland.

Further, it must be acknowledged that the landscape in Queensland has significantly altered, given the fact that our neighbouring states and territory have all passed similar legislation. The bill will send a clear message that Queensland will not be seen to be or become a safe haven for criminal organisations who may be tempted to move their operations from other states and territories. I reiterate that one of the major reasons that we need these laws passed in Queensland is to prevent this state from becoming a safe haven for outlaw motorcycle gangs from interstate.

Members opposite might think this is fanciful and speculative, but today's *Herald Sun* in Melbourne contains the news that the Finks and the Comancheros have decided to set up chapters in Victoria where they have never had a presence in that state before. What does the newspaper give credit to for this decision? The Victorian government's decision not to enact laws targeting organised criminal groups. I table a copy of that article.

Tabled paper: Copy of an article from The Herald Sun, dated 26 November 2009, titled 'Union calls for state to adopt anti bikie gang laws as documents reveal arrival of two notorious outlaw groups in Victoria' [1513].

It says—

Victoria's police union wants dedicated laws to control motorcycle gangs after a confidential police report revealed two notorious outfits are looking to set up new chapters in the state.

As exclusively revealed by the *Herald Sun* ... the Finks and the Comancheros—are scouring appropriate areas of Victoria to set up their first chapters in the state.

It goes on—

Victoria Police Chief Commissioner Simon Overland told reporters this morning there was nothing to stop outlaw gangs setting up clubhouses in Victoria.

I am very confused by the opposition's position on this bill. We have the deputy opposition leader opposing it because it is too wide ranging in its application. But we have the member for Gregory opposing it because, in his view, the powers in the bill are not wide ranging enough. What their opposition to the bill clearly shows, however, is that they are soft on organised crime. They talk tough but, when given the chance to back up their rhetoric, they walk away. They are policy chameleons who take on the colours of the person they last spoke to.

Three other jurisdictions have introduced legislation targeting the activities of criminal organisations. In every other jurisdiction—in New South Wales, in the Northern Territory and in South Australia—legislation passed both houses with bipartisan support from all political parties. I note that the member for Moggill has entered the chamber. At least he had the self-respect and the discipline to not speak on the bill, after his strident support for the legislative measures put forward by the opposition in 2007. All other jurisdictions have had the bipartisan support of the coalition members—the conservative politicians in the rest of the nation—but not here in Queensland. In Queensland the policy void of the LNP has chosen political expediency and cheap point-scoring over sound policy development and strong action against organised crime in this state.

They say politics makes for strange bedfellows, and what we have seen here in this House over the past two days goes to show how true that is. The member for Southern Downs has suddenly developed a civil libertarian bent. This has never been evidenced in this House over the past 20 years, but for the sake of political expediency he has hitched his wagon to the Queensland Council for Civil Liberties. If we go back through the media releases put out by the council over the past 10 years we see an astonishing trend: 'Opposition leader Springborg's youth curfew proposals rejected'; 'Opposition leader Springborg breached National Party candidate's domestic violence order'; 'Opposition justice spokesman Springborg "acting like a cowboy"'; and 'Springborg's mandatory jail vow "mindless law and order posturing"'.

The member for Burnett is also now a civil libertarian. This is despite his description of Queensland's civil libertarians, as seen in *Hansard* of 21 May this year, as—

... a contemptuous breed of human who was and are prepared to sacrifice our children's future and lives ...

When they speak in this parliament they speak the truth, except for the debate tonight and yesterday, when they have hidden themselves behind the highest wall of hypocrisy I would suggest to honourable members has ever been demonstrated in this House.

In mentioning our neighbouring states, it is relevant to address the comments by the members for Southern Downs, Mudgeeraba and Gregory that the South Australian control order provisions have been found to be unconstitutional. Let it not be forgotten when the vote is taken. Let us see what those members from the Gold Coast—the members for Mudgeeraba, Gaven, Mermaid Beach, Coomera and Surfers Paradise, the Leader of the Opposition—say about organised criminal gangs on the Gold Coast, where bikie gangs are beginning to flourish.

There is an allegation from the Deputy Leader of the Opposition that the bill is unconstitutional. The bill is so distinguishable from the South Australian legislation as to make the decision of the full court in Totani, I submit, inapplicable to the Queensland bill. The Queensland bill is distinguishable in three fundamental respects: any substantive orders are made by the Supreme Court in the exercise of its full and unfettered discretion; the criteria which must be applied by the court in relation to all orders are broad and it is a matter for the court as to the weight to apply to each and every criterion and the evidence and information before the court; and the respondent has notice of an application seeking a declaration that an organisation is a 'criminal organisation'.

The opposition seeks to oppose the bill on the basis it abrogates the freedom of association and the principle of natural justice. In my view, in my respectful submission, the bill represents an appropriate balance between ensuring the bill is effective in meeting its objectives and providing adequate safeguards of the rights of respondents. What are these safeguards that were not commented on at all by the opposition? They include: the Supreme Court determines whether certain information should be treated as criminal intelligence and is afforded full and unfettered discretion in making such a determination; in the event the court declares information to be criminal intelligence and the evidence is admitted, it is a matter for the court as to the weight placed upon any such evidence and information; and the Criminal Organisation Public Interest Monitor will be present at all hearings under the bill and has access to all the information before the court, except to the extent that the material discloses an informant's name, current location, place where the informant resides or position held within an organisation. The COPIM's role is in the nature of amicus curiae and will assist the court in making a decision as an independent and impartial tribunal.

The bill includes significant review provisions, which were not commented on at all by the opposition. These are annual reviews by the COPIM and retired judge; an overview of that COPIM report by the Law, Justice and Safety Committee; a further review after five years to decide whether the act is operating effectively and meeting its objectives; and a seven-year sunset clause.

I will now return to addressing some of the disgraceful issues raised by the members opposite. The member for Southern Downs commented that the bill does not allow for a person to repudiate their membership with a criminal organisation in order to avoid becoming the subject of an application. This is simply incorrect. An ex-member of a criminal organisation can apply for a revocation of a control order, but it is not simply as easy as saying, 'I'm not a member anymore.' These are sophisticated criminal organisations, recognised and acknowledged by members of the opposition in this debate and in this House in 2007, and, as such, a more rigorous process has been utilised in the bill. An organisation may not apply for a revocation of a criminal organisation declaration until at least three years after a declaration has been made. An individual may not apply for the revocation of a control order until they can satisfy the court that they have not been a member of a criminal organisation for at least two years.

Why do we have these restrictions? These restrictions are aimed at preventing well-financed criminal organisations from bringing continuous, unmeritorious court applications for revocation and ensuring that the organisations and individuals have genuinely changed their circumstances at the date of any revocation application. Criminal organisations involved in serious criminal activity have a proven record of employing tactics of intimidation and violence against individuals who give evidence against them and individuals who choose to leave their organisations. To require an individual to support their application for revocation with evidence provided under oath could jeopardise the safety of individuals who have dissociated themselves from criminal organisations and dissuade them from bringing genuine applications for revocation. If individuals were dissuaded from bringing genuine applications for revocation, this would be counterproductive to the bill's stated purpose of disrupting and restricting the activities of criminal organisations.

The member for Southern Downs took issue with the use of criminal intelligence and the fact that the informant cannot be called for cross-examination. The use of criminal intelligence is necessary on the basis that the disclosure of such information could reasonably be expected to prejudice a criminal investigation, lead to the identity of confidential informants or covert police officers, or endanger a person's life or physical safety, and those matters must be proved before the court. How blithely the opposition deals with matters where people's lives might be put at risk.

However, any potential unfairness to the respondent is countered by a number of measures. Similar legislation in other Australian states and territories allows criminal intelligence to be assessed by the Attorney-General or a single Supreme Court judge acting persona designata—that is, in an administrative capacity. This bill requires that criminal intelligence is always assessed by the Supreme Court acting independently and exercising its judicial function.

The bill provides the Supreme Court with an absolute discretion as to whether it should declare any information to be criminal intelligence and allow it to be used in an application. The bill expressly provides that when deciding whether to declare information to be criminal intelligence the court can consider whether unfairness to a respondent organisation or individual outweighs the justifications for protecting the information. The commissioner must include in his application to the court an explanation of the system used by the Queensland Police Service to classify intelligence and what classification has been assigned to the information the commissioner is seeking to have protected with regard to its reliability or credibility.

If the information that the commissioner wants declared as criminal intelligence contains information provided to the commissioner by an informant, an affidavit must be sworn and filed by the police officer responsible for handling that informant. The police officer's affidavit must contain the informant's full criminal history, including any pending charges made against the informant; any allegation of professional misconduct that has been made against the informant; any inducements or rewards offered or provided to the informant in return for the informant's assistance; and the reasons why the police officer holds an honest and reasonable belief that the intelligence is reliable.

The Criminal Organisation Public Interest Monitor, or COPIM, must be present at all hearings that concern criminal intelligence. The COPIM is able to test the Police Commissioner's application, examine and cross-examine witnesses and make submissions to the court about the appropriateness and validity of the application. The bill allows the court to provide a person who is performing functions under the Crime and Misconduct Act 2001 with access to the criminal intelligence documents. This will ensure that the Crime and Misconduct Commission can properly investigate any allegations of misconduct made with respect to criminal intelligence applications.

Why do we have a process for certifying criminal intelligence? Because, as the member for Barron River put before the parliament, these are secretive, closed organisations. There are police men and women in Queensland who put their lives at risk daily for the rest of us. They need our protection and our support, and that is why we have these measures.

The member for Southern Downs referred to the government's opposition to the 2007 organised criminal groups bill. This was the highest point of hypocrisy that I have seen in my time in this parliament.

What an extraordinary debate we have just had in that none of those speeches made by those members opposite in 2007 were even commented upon, even distinguished, even clarified by any members opposite. What a joke. They are utterly shameless in their hypocrisy. They are intent on whitewashing the realities of the bill they proposed—a bill that most importantly included no checks and balances against misuse and a bill that solely focused upon criminalising an individual's involvement in a group. It was a criminal association bill, and I quote the member for Moggill—

We want to make it an offence for people to associate with and support organised crime.

That is what they brought into this parliament. The bill proposed by the opposition—their guiding light when it comes to civil liberties and attacking organised crime—was drafted so as to create an offence where the prosecution would only have to prove that the defendant knew that his or her participation contributed to any criminal activity of an organised criminal group, not actual involvement in the commission of a particular criminal offence.

The practical effect of the failed bill, therefore, was a situation where, if an individual is identified as a member of a group and other members of the group commit a criminal offence in which the individual may have had no involvement, that person will be made criminally responsible for the conduct of the other members of the group. What did we have in this debate? So craven is the opposition that it now seeks to misrepresent its own bill before the parliament. It seeks to misrepresent and distort the bill that it brought into this House. It should be ashamed.

That bill should be carefully compared to the balanced and staged scheme proposed under the current bill. The Criminal Organisation Bill before the House, had the opposition taken the time to read it, provides that civil control orders can only be made against individuals if they personally 'engage in or have engaged in serious criminal activity'; and individuals can only be found guilty of a criminal offence based upon their own behaviour. I find it astonishing that members opposite can oppose this bill today when they supported that bill a mere two years ago. This shows the depths of hypocrisy to which members opposite will plumb for their own base political purposes. For all their bleating about anti-association laws, that bill was, in its entirety, a bill that imposed criminal sanctions for mere membership of a group. Membership could be proven by the wearing of colours. As I understand it, that bill in the end was supported by the member for Gladstone and the member for Nanango, who today say that they no longer support this bill. I am impressed by the intellectual gymnastics at least of those opposite tying themselves in hypocritical knots, but it does not make for good policy. They have disgraced themselves again.

How is the member for Surfers Paradise going to justify to his constituents, near the heartland of organised criminal activity in Queensland, his opposition to this bill? I note he has not spoken on it. I reaffirm the quote that the member for Mundingburra cited in her speech—and a great speech it was, too. The member for Surfers Paradise said something they see a lot on the Gold Coast is—

... chapters of all of the major national bikie gangs located on the coast. Organised crime gangs on the Gold Coast instil fear in residents and give the area a bad name ... Police do not have the legislative support that they need to crack down on thugs who terrorise our streets. This bill is designed to give police this backup.

But they have had a change, haven't they? They had a meeting with a group purporting to represent outlaw motorcycle gangs and they changed their view. We have not heard about that meeting. We have not heard what occurred. We have not heard what was said. We have not heard who facilitated that meeting. We have not heard if it was a lobbyist, if it was a former staffer to Senator Santo Santoro, now working in the private sector, who has fronted media conferences on behalf of the outlaw motorcycle gangs. They run away from that.

The member for Southern Downs made comment that the better way to tackle organised crime is by unexplained wealth legislation. The member for Southern Downs has failed once again to understand the current laws that exist in Queensland—very strong laws. But, of course, in his consultation draft he gives no discretion to the Supreme Court. The Supreme Court must make an order. So much for the rule of law. So much for judicial discretion. But that follows the path they have always taken—the man who seeks mandatory sentencing for juveniles. That is their policy.

I heard the member for Hinchinbrook in the House in an adjournment debate talking about mandatory sentencing. We know what their colleagues have done in Western Australia. We know their colleagues have introduced mandatory sentencing for assault against a police officer. What about the first two individuals charged for assaulting police in Western Australia? They received a mandatory jail term of nine months. What do we know about them? They both had a psychiatric illness. That is the sort of policy and the sort of criminal justice system that those opposite seek to implement in Queensland.

I have respect for the integrity of the member for Gregory. At least he had some self-respect to come in here and support the bill and say that it was not strong enough and that more needed to be done. He is the only person opposite who made reference implicitly to what occurred in 2007, but it shows you how split and divided the opposition is. It cannot come in here with a consistent position. I look forward to the

member for Gregory—a man of integrity—coming to this side of the House and supporting what I am certain he knows is an important law enforcement method.

I turn to the member for Kawana, a purported lawyer. He criticised the bill as introducing anti-association laws and allowing for guilt by association. Obviously the shadow Attorney-General did not discuss with him the bill that went through the House in 2007. Whilst a person may be prohibited from associating with another person, this is only where the first person is subject to a control order. A control order cannot be imposed by the Supreme Court solely on the basis of their membership of a criminal organisation. In order to make a control order, those matters set out in clause 18 of the bill must be satisfied, but we had no reference to that by the members opposite.

The member for Indooroopilly and a number of other members appear to labour under the misunderstanding that a person can be jailed on the basis of criminal intelligence. What a gross distortion. Their whole argument was fantasy, based on misrepresentation, based on distortion, based on half-truths of what they say the bill might do. There was no examination of the clauses which they are now going to oppose. This is not the case.

Criminal intelligence may be relied upon in determining whether to impose a civil order. Criminal sanctions only apply in relation to a breach of such civil orders. That is the process—a civil order first. If you comply with the order, you will not be subject to criminal sanction. If you breach the order—just as you are subject to criminal sanction if you breach a domestic violence order—you will then go to a court and you will be tried. You will be dealt with according to the criminal standard of proof beyond reasonable doubt, but we heard nothing from members opposite on that—again, another distortion. All the criminal offences under this bill must proceed in the traditional criminal justice system and be proved beyond a reasonable doubt before the appropriate court.

I must say that I was extremely disappointed in, and in fact distressed by, the comments made by the member for Gladstone, who has sought to cause alarm and distress in the community, particularly among elderly and frail Queenslanders. It was most disturbing. I may only be relatively new to this House, but I have watched the career of the member for Gladstone. I know that she is a smart, intelligent woman who is perfectly capable of understanding clause 43 of the bill. The bill does not allow removal of fortifications, as I submit the member for Gladstone would know if she had read the bill. It must be excessive fortification, and the court looks at whether the fortification is excessive for any lawful use of that type of premises. The premises must also be used in connection with serious criminal activity or be occupied by a member of a declared organisation or an associate of such an organisation. It is disappointing to see someone in this House frightening the elderly, for what purpose I am not sure.

The member for Gladstone raised a number of other issues in relation to the bill. She asked how easy it would be for a police officer to provide information to the commissioner that is not 100 per cent accurate. There is no way that we can prevent someone who is dishonest from being dishonest. However, the Supreme Court is not required to accept whatever evidence is put before it. The court retains a full and completely unfettered discretion as to the evidence and information that it accepts, and also the weight that is placed on that evidence. If any evidence is presented to a court and is not corroborated in any way, the court will place very little weight, I submit, on that evidence.

Similarly, a Supreme Court judge hearing the matter does not have to accept the evidence if it considers that unfairness to a respondent organisation or individual outweighs the justifications for protecting the information. The member for Gladstone also raised concerns about the fortification removal orders. She gave an example of a grandmother allowing someone to place items in her garage and then wanting to provide security for the garage. The member for Gladstone also quoted the Scrutiny of Legislation Committee. The committee noted that clauses 10, 18, 33 and 110 may have insufficient regard to rights and liberties of individuals, as it would require satisfaction of a lower standard of proof than the criminal standard. I have previously addressed those issues about the grandmother locking things in her garage.

The Criminal Organisation Bill creates a civil regime which allows the Supreme Court, upon application by the Police Commissioner, to make orders aimed at disrupting and restricting the activities of criminal organisations and preventing the expansion of such organisations. Whilst control orders and public safety orders may significantly curtail the rights and liberties of the person who is the subject of the order, such curtailment is not imposed to punish the individual but to ensure community safety by reducing the capacity of individuals to carry out activities that may facilitate serious criminal activity and by prohibiting an individual from attending a premises, event or area where the individual poses a serious risk to public safety or security. The orders are about protecting the community and not about the punishment of individuals and therefore the test does not require proof to the criminal standard.

The imposition of civil orders to prohibit certain conduct is not unprecedented and currently exists in Queensland in the Dangerous Prisoners (Sexual Offenders) Act 2003, the Domestic and Family Violence

Protection Act 1989 and the Child Protection (Offender Prohibition Order) Act 2008. Further, the Dangerous Prisoners (Sexual Offenders) Act and the Terrorism (Preventative Detention) Act 2005 allow for the detention of a person within regimes based on the civil standard of proof.

The committee raises the issue of double punishment. As referred to above, the orders able to be imposed under the bill are aimed at community protection, not the punishment of individuals. The issue of double punishment does not arise.

The member for Clayfield commented that the bill provides the judge no capacity to know the identity of an informant. That is simply wrong. The judge will know the identity of the informant. That is another distortion and another misrepresentation of the bill. The restriction on identity applies to the Criminal Organisation Public Interest Monitor via clause 88(2). There is no clause which allows the commissioner to withhold the informant's identity from the judge.

The member for Clayfield also queried the fact that the court and COPIM cannot insist on the calling of an informant. Such an approach is necessary to protect the identity of the informant and the viability of the informant as a continuing source of criminal intelligence information. However, the commissioner must file an affidavit sworn by the police officer responsible for handling that informant. The police officer's affidavit must contain the informant's full criminal history, including any pending charges made against the informant, and any allegation of professional misconduct. I have recited these requirements earlier in my summing-up.

The court is able to call the police officer to give evidence and be cross-examined by the COPIM. It is entirely a matter for the court what weight it attaches to the informant's evidence. If the court finds the evidence inherently incredible or not worthy of weight, I suggest that the court will reject the evidence—the court in its free and unfettered discretion.

The member for Clayfield queried why the bill allows the Police Commissioner to withdraw an application for a criminal intelligence declaration. Such an approach is necessary to ensure the commissioner can confidently bring applications under the bill without risking disclosure of sensitive information—that is, information which is disclosed which would endanger the life of a person or prejudice a criminal investigation.

The member for Beaudesert made comment that the bill is open to interpretation in that it will allow the government of the day to define an organisation. What another distortion. Whilst it is the case that for the purposes of the bill an organisation is a group of three or more persons, whether such an group is a criminal organisation is a matter for determination by the Supreme Court. Whether an application for declaration should be brought is a matter for the Police Commissioner. The doctrine of the separation of powers—a difficult concept for those opposite, I know—provides that the government cannot dictate to the commissioner what applications he or she should, can or should not make.

The member for Glass House, I know, is new to this House. But that does not excuse the sheer laziness of coming into this House to debate a bill that he clearly has not read. He said last night in the debate—

> The bill states anyone under anti-association orders could face criminal sanctions for associating with other gang members more than three times in a 12 month period. This is despite assurances that law-abiding members of the public have nothing to fear. These laws take us closer to a state in which you could be regarded as a criminal merely for having contact with so-called outlaw bikers, rather than actually committing any criminal act.

That was the opposition's bill in 2007. I do not know what bill he was reading from because that provision is not contained in the bill before the parliament. I do not believe the member for Glass House has done it deliberately. If he has he will need to return to the parliament and excuse himself. However, he has embarrassed himself and that side of parliament.

It is representative of the laziness of those opposite. It is the most well-resourced opposition in 150 years of self-government and those opposite read from a purported clause that does not exist in the bill before the parliament. That encapsulates the entire case put by those members opposite. It is a shame. It is an error. It is wrong.

The member for Caloundra addressed the parliament. He did not refer in any way, shape or form to the arguments that were put before the House in 2007. It is worth reiterating some of those. We had the member for Moggill saying in terms of the argument—

> We want to make it an offence for people to associate with and support organised crime.
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> …
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> The reality is that we should pass legislation in this state that protects the rights of ordinary Queenslanders and makes it an offence to be a member of a criminal gang ...

There is no criminal association offence in this government's bill. What did we have from Mr Langbroek in respect of the opposition's bill—

What constitutes an organised criminal group is defined in subsection (2) of that new clause as well as what it means to be a member of such group. The inclusion of these definitions limits the possibility of ambiguity when it comes to prosecuting a person for that new offence.

Those opposite wanted a tightly focused offence that criminalised association offences. The Leader of the Opposition quotes from the 2004 Crime and Misconduct Commission report—

Since 1999 despite relatively insignificant growth in overall crime rates.

That is a credit to this government, I might say—

Members of groups such as outlaw motorcycle gangs were identified as significant players in illicit drug markets in Queensland as well as being implicated in fraud, identity crime, property crime, theft ...

I could go on and on. I conclude with a quote from remarks made by the Hon. Robert McClelland MP at the first international Quintet meeting of Attorneys-General from the United Kingdom, the United States of America, Canada, New Zealand and Australia on 9 November 2009. He stated—

Experts in each of our countries all point out that modern organised crime is "diverse and flexible". It pervades all parts of society and the economy, easily adapting to changing threats and new opportunities. Persons engaged in organised crime are most likely to be individuals who network and collaborate to exploit a perceived opportunity. They will frequently have the very best professional advice in developing and implementing their activities. They have all but evolved beyond the reach of traditional policing. A point made by Justice Moffitt, the former President of the NSW Court of Appeal, who stated:

"Most Australians have come to realise that, despite the many inquiries, convictions, particularly of leading criminals, are few and that organised crime and corruption still flourish. The path to conviction is slow, tortuous and expensive. The criminal justice system is not adequate to secure the conviction of many organised crime figures ... Those participating in organised crime or white-collar crime, often part of organised crime, are usually highly intelligent and often more intelligent than the police who deal with them. They have the best advice. They exploit every weakness and technicality of the law. When they plan their crimes they do so in a way that will prevent their guilt being proved in a court of law. They exploit the freedoms of the law, which most often are not known and availed of by poorer and less intelligent members of the community. Crimes are planned so there will be no evidence against those who plan and, if by accident there is, it is often suppressed by murder or intimidation."

They are not my words but those of Mr Justice Moffitt, former president of the New South Wales Court of Appeal, one of the highest courts of appeal in this country. Our duty is to protect the Queensland community and to be courageous in our efforts, not cravenly hypocritical like those members opposite. I enjoin the Independent members and all members of this House to support this very important legislative measure.