



Speech by

Peter Dowling

MEMBER FOR REDLANDS

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CRIMINAL ORGANISATION BILL

Mr DOWLING (Redlands—LNP) (12.53 pm): Today I rise to contribute to the debate on the Criminal Organisation Bill 2009. I will not be supporting the bill. It is very interesting to sit back and listen to the speakers on both sides of the House, as the member for Beaudesert commented. There have been very few from the government side of the House and so many from this side of the House. There seems to be almost two debates—one with passion and one that is carefully thought out, and one with a round of indifference, which is all the government has put up. This bill is like so many other bills that are put forward: it lacks substance. It has been thought up but it has not been thought through. It is playing up to a banner headline. It is about a few media grabs.

I caution honourable members here. To paraphrase Benjamin Franklin, when you sacrifice liberty for security you achieve neither at your peril and you deserve neither. That is exactly what we will do here if this bill passes. We will sacrifice our liberties and the freedoms we have in this country that should never be taken for granted.

This legislation is very much like a rosebush: it is not too bad on the eye, it is popular and it plays to the crowd. But the minute you start working on it you find that it is full of thorns. Then when you start to dig around in the soil underneath it, you find that its foundation is in manure. That is what this bill delivers.

This bill sounds tough on crime but it is unworkable. We have heard that from so many speakers and so many people outside of the House who ought to know. This bill talks tough but that is where it ends. It is plain unworkable. It is unreasonable and it is cancerous. It is a secretive piece of legislation that removes accountability and scrutiny. We should be aiming for law and order and justice equally for everyone. That and nothing less should be acceptable in Queensland. This bill talks about tackling organised crime—

Mr Reeves: We will remember these words when it comes to the surrogacy debate.

Mr DOWLING: I hope they are remembered for many, many years. The bill talks about tackling organised crime, yet this government fails to adequately resource the Queensland Police Service, the CMC and other law enforcement agencies. We heard yesterday that the CMC came cap in glove looking for more resources. It took more than a decade to provide our police with phone interception powers so that it could actually conduct investigations using technology—modern tools in a modern world. That is how you combat organised crime.

This bill allows for people to be labelled as part of a criminal organisation with little or no proof, no criminal past or no criminal history. What kind of society allows people to be branded with no evidence whatsoever? That should make every man, woman and child in Queensland shudder to the bone. We have introduced 'the balance of probabilities' instead of 'beyond reasonable doubt'.

The LNP has always been and will continue to be tough on crime. We believe in people going to jail for committing crime—after they are found guilty, after they have had the evidence put to the courts, after the judge and jury have examined the evidence. We do not believe in railroading people. We cannot possibly have a system that takes away our liberties and freedoms. This Labor government talks about process and accountability, but that is where it ends. It talks about trust. I heard the honourable Attorney-

General saying, 'Trust me, it's okay. We have it covered. It is within the bill.' Quite clearly, trust needs to be earned. There is no chance for openness and accountability. There was no mention upfront in the election campaign when it came to the electricity crisis, the water crisis, the sale of assets. None of that was mentioned during the election campaign. Their words are empty.

In the past the LNP has tried to introduce legislation to crack down on organised crime similar to that which is available in New Zealand. The honourable member for Beaudesert has already touched on that. The subtle difference here is that the evidence needed to be tested by a judge and jury. The process needed to be open, accountable and transparent. There needed to be that test. It is something that we insisted on. It is something that we deserve. It needs to be enshrined and it needs to be not behind closed doors.

The LNP and the community will not support this legislation. It could quite honestly be unconstitutional. I am sure the provisions will be tested quite rigorously after this bill is forced through on the numbers. Imagine imposing a control order on someone using secret information from an informant that does not need to be tested in open court.

One area that the LNP has supported and talked about is the fortification issue. Again, there may be double standards. 'Fortification' is an interesting term. When does fortification become fortification? Let us run some aspects of the test over it. Is it about padlocks? Is it wrought-iron gates and steel doors? Is it security bars and screens on windows? Is it electronic surveillance and alarms? I suggest that, on that test, we are currently in 'Fortress George Street'.

Have there ever been members of this House found guilty of criminal acts? Yes, quite a few. Is this organisation an unacceptable risk to the community's safety and welfare—selling off its assets, the mismanagement of the state, spiralling debt? Absolutely! This government misled the people of Queensland. It failed to disclose all of those things, and by those tests this government could qualify as a criminal organisation under this bill. By any measure it is entirely possible. That being said, when you see a clubhouse with barred windows, steel doors, gates, lights and movement sensors, should those things be removed?

Mr DOWLING (Redlands—LNP) (2.31 pm), continuing: Before lunch I touched on the issue of fortification. Legislation must not discriminate, and it cannot discriminate. I know the examples used were extreme, but that really drives home the point: the law must apply equally to all, and later in this debate I will give evidence which basically outlines where those opportunities are lacking and where those discrepancies take place.

How can those opposite really support this legislation when so many people have come out against it? The Queensland Law Society has concerns, as does the Queensland Bar Association, the Queensland Council for Civil Liberties and criminologist Professor Paul Wilson from Bond University. Many people have raised concerns and questions about how this bill is going to be enacted, how it is actually going to work and how it is going to protect Queenslanders and democracy in this state. Even our own Scrutiny of Legislation Committee has raised serious concerns about it. To proceed with the bill in this form is extremely arrogant. It is fraught with danger. The Scrutiny of Legislation Committee's *Legislation Alert* states—

- clauses 10, 18, 33 and 110 which may have insufficient regard to rights and liberties of individuals as they would require satisfaction of a lower standard of proof than the criminal standard;

That is not addressed. It goes on—

- clauses 10, 18, 19, 24, 28 and 33 allowing the court to consider evidence of past associations;
- clauses 19(1), 29(2) and 33 which may affect rights and liberties of individuals, including freedom of movement;

These issues are significant and are not addressed. It continues—

- clauses 13, 15 and 22-3 which may affect rights to access the courts;

Again, that is clearly out of order in a free society. It goes on—

- clauses 119-20 which would override common law protections of the right to silence;

It continues—

- clauses 10, 18 and 151 which may not be drafted in a sufficiently clear and precise way.

This is our own evidence coming forward that says that clearly this bill should not proceed. It continues—

In relation to whether the bill has sufficient regard to the institution of Parliament, the committee draws the attention of the Parliament to clause 64 which may raise concerns regarding interference with the independence and impartiality of the Supreme Court exercising powers under the legislation.

We are being asked to support this legislation in a position of trust and faith. Quite frankly, Queenslanders do not have that faith and trust in this government following the election. The honourable member for Bundamba, the chair of the Scrutiny of Legislation Committee, in correspondence to the Attorney-General said—

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

It goes on to list a range of other acts, but all of those examples require the burden of proof up-front. It is a completely different scenario, and to use those as an example is just wrong. It is patently wrong, and I am really concerned that this bill will go through.

I remember all of the hoo-ha in Carbrook when a member of the community who had not been found guilty of anything was being chased from pillar to post. The overriding premise from this government back then was that he must be protected, that he must be given those liberties and those freedoms that the rest of us take for granted. Yet here in this legislation we are saying that it is okay to let people who are convicted of crimes of paedophilia or who are suspected of those sorts of crimes roam free but we cannot have that same rule for motorcycle club members. They are the reasons this bill cannot be supported and should not be supported.

I now turn to Rob Messenger MP, the member for—I am trying to think—

Mr Ryan: Burnett.

Mr DOWLING: The member for Burnett. Thank you very much, 'Mr Movember', and I congratulate you. I draw the attention of the House to the bill introduced into this House in 2007 by the member for Burnett. That bill, which is similar to this legislation, was rejected in this very House. The bill failed at its second reading on 31 October 2007 because the government considered that that bill potentially eroded the fundamental right of freedom of association. It is clear; it is concise. The government then was concerned that even innocent participation in an organised criminal group as defined may in some way contribute to the occurrence of a criminal activity by the group. It is clear that we should not be proceeding with this bill based on this government's own version of events and this government's own view of history.

On 30 March 2009 the Queensland Premier noted that since Task Force Hydra's inception police have made 332 arrests in relation to 931 charges including attempted murder, arson, extortion, robbery and drug trafficking. That to me says that the law enforcement agencies are doing their job. They are having an impact. They are winning the battle, and we have given them even more powers since then. We have given them telecommunications interception powers to use modern tools to track down criminals, as it should be.

With regard to the Commonwealth's legislative power to deal with organised criminal groups and organised crime, the Commonwealth Constitution does have limited powers. However, where it is able to tie up all the loose ends and where this really hurts organised crime is that it has the power to legislate in such matters as taxation, banking, national security, telecommunications and border control. That is where we are going to get to the heart of organised crime—through money laundering, through the confiscation of proceeds of crime. That is where we are going to start to get some positive results.

There is a national approach which goes back to April 2009 which is contained in the communique from the meeting of the Standing Committee of Attorneys-General, or SCAG. It shows that Attorneys-General agree that organised crime needs a nationally coordinated response by all jurisdictions. SCAG also noted that to combat organised crime the Commonwealth will consider the introduction of a package of legislative reforms to strengthen criminal asset confiscation—and that is where you start to nail down organised crime—including unexplained wealth provision. That is where you start to drive this legislation and where you start to strike at organised crime. The legislative reforms also included enhanced police powers to investigate organised crime, including model cross-border investigative powers for controlled operations and assumed identities and witness identity protection. That is where you start to drive this issue. Further legislative reforms included facilitating greater access to telecommunication interception for criminal organisation offences. That is where you start to drive this issue. That is where you start to champion the community's concerns about organised crime.

Even Labor's own literature—you would not think that they could have two diametrically opposed positions on this matter—the *Forward with Fairness* document, signed off by none other than the Prime Minister and Deputy Prime Minister, states on page 12 in relation to their industrial relations system, which also goes to the heart of the issue of liberty, that Labor will protect freedom of association and that they will continue to fight and to protect against unfair treatment and freedom from discrimination. These are all the very issues that we are speaking out about.

The legislation is clearly flawed. It has more holes in it than Swiss cheese. We cannot possibly allow it to pass in its current form. I hope that the members opposite are able to sit down and look at some of the amendments that will be moved when we get to the consideration in detail stage. This legislation can be worked into shape. It can be fixed. So many other entities, so many other people have an interest in this legislation. But when the bodies that we will be relying upon to administer the legislation are not happy with it—the Bar Association, the Queensland Law Society, the Queensland Council for Civil Liberties—we find that the government cannot possibly proceed with it.

I remind honourable members of what I said at the beginning of my speech. I again paraphrase the words of Benjamin Franklin that when you sacrifice liberty for security, you achieve neither at your peril. I do not think we can afford to take that risk. I do not believe we can proceed with the bill as it is now. I know that there have been a number of assurances given by the honourable the Attorney-General in various interjections saying that it is all covered, that it is transparent, that it has all of those fail-safes in it, but at this point no-one else can see them. If the Queensland Bar Association, the Queensland Law Society and the Queensland Council for Civil Liberties cannot see them, then there must be something wrong with the bill. The bill must be fundamentally flawed. It is not a case of throwing out the whole bill; it is a case of fixing it. It is a case of dotting all of those i's and crossings all of those t's.

We get one chance at legislation in a very public way. We do not need to be revisiting this legislation after it gets tested in the courts, after cases are jeopardised and after convictions are quashed or overturned. That is the wrong message to send. We need legislation that works the very first time, that is absolutely rock solid, that is above challenge and reproach, that is completely open, honest and transparent, where there are no grey areas and legislation that gets the convictions that we need, because we do not want these people out there. We do not want organised criminal gangs roaming the streets. We do not want that kind of activity on our streets.

I will close with the following comment from a member of the previous Labor government back in 2007—

The fundamental right of freedom of association is potentially eroded by this bill because even innocent participation in an organised criminal group as defined may, in some way, contribute to the occurrence of criminal activity by the group.

We cannot proceed with this bill in its current form. It needs to be fixed. We need to remember the words of Ben Franklin—

Ms Croft interjected.

Mr DOWLING: The member does not want to hear them again?

A government member interjected.

Mr DOWLING: That is the third time I am getting pinged for repetition. I will not be supporting the bill.