



Speech by

Peter Lawlor

MEMBER FOR SOUTHPORT

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CRIMINAL PROCEEDS CONFISCATION AND OTHER ACTS AMENDMENT BILL

Mr LAWLOR (Southport—ALP) (5.41 pm): I support the Criminal Proceeds Confiscation and Other Acts Amendment Bill, which amends the following acts: the Trusts Act 1973, the Security Providers Act 1993, the Fair Trading Act 1989 and the Criminal Proceeds Confiscation Act 2002. Amendments to the Trusts Act 1973 are being made following a request from government linked arts institutions for amendments to enable prescribed private funds—generally family controlled charitable funds and ancillary funds—to make donations to the institutions without jeopardising the donor's tax-exempt status. The Income Tax Assessment Act 1997—the Commonwealth act—only allows charitable foundations to make grants to bodies that are both deductible gift recipients and charities for income tax purposes. While the arts institutions are deductible gift recipients, it is considered by the ATO that for taxation purposes they are not charities at law because of their links with government despite their pursuit of purposes that would be charitable if carried out by a non-government linked body.

Following amendments by the Commonwealth to the tax act in 2005, prescribed private funds and ancillary funds are able to donate to government linked bodies as deductible gift recipients regardless of whether the institution is a charity at law. For prescribed private funds and ancillary funds with existing trust deeds, this requires an amendment to the Trusts Act to enable trustees to complete a declaration stating the trust can give to deductible gift recipients that are not charities at law. Separately, the trustees must then make an application for re-endorsement with the Australian tax office as an income tax exempt fund rather than a charitable fund.

The bill amends the Trusts Act so that PPFs and ancillary funds can make grants to government linked bodies, whether or not there is an express power to do so in their trust instrument. The bill will ensure that the power, or the exercising of that power, will not invalidate that fund nor affect its status as a charitable trust. PPFs and ancillary funds will be able to opt in to this arrangement by way of completing a signed declaration to be retained by the trust. As noted above, a PPF or ancillary fund will need to then apply to the ATO to change its endorsement from a charitable fund to an income tax exempt fund. The amendments are retrospective to validate grants made by PPFs and ancillary funds to deductible gift recipients before the commencement of the amendments.

Victoria and New South Wales have already made similar amendments to their charitable acts to address the problem of charitable foundations being unable to donate to government linked institutions that are established for charitable purposes because they are not charities at law. The Queensland amendments have been modelled on the New South Wales legislation and it is less prescriptive than Victoria's.

The Security Providers Act provides a licensing regime for bodyguards, crowd controllers, security officers, private investigators, security advisers, security equipment installers and security firms—collectively referred to as security providers—who must be licensed to operate in Queensland. The key policy objective of the amendment to the Security Providers Act is to raise standards in the private security industry. The objective delivers on the government's 2006 announcement that professional security

industry associations will be given a supplementary compliance role to ensure security firms are meeting behavioural benchmarks.

Following community and industry consultation on possible models earlier this year, the amendments to the Security Providers Act will require security firms to maintain membership of a security industry association approved by the chief executive. Operating standards will also be raised by amending the existing grounds in the Security Providers Act that empower the chief executive to consider suspending, cancelling or refusing to renew a firm's licence where specified Queensland industrial relations laws are breached to reflect the greater role now played by the Commonwealth workplace relations legislation.

Amendments to the Fair Trading Act reflect the government's increasingly strong approach to protecting consumers from inappropriate door-to-door trading practices. While the Fair Trading Act prescribes prohibited hours for door-to-door trading, it currently allows traders to apply to the chief executive for approval to conduct door-to-door trading outside these hours. The ability of traders to make uninvited approaches to people in their homes causes substantial concern in the community. Some consumers feel apprehensive and fearful of unknown people attending their premises at night, while others consider door-to-door trading to be an unwelcome disruption to their personal and family time.

The bill removes the capacity from the Fair Trading Act for traders to be granted exemptions from complying with the allowable hours for door-to-door trading stipulated by section 63 of the Fair Trading Act. Removing capacity for exemptions from the prohibited hours of door-to-door trading will strike a better balance between the ability of traders to conduct door-to-door trading and the community's right to enjoy privacy at home.

Finally, the amendments to the Criminal Proceeds Confiscation Act 2002 are the outcome of a review of the act conducted pursuant to the legislative requirement in section 266. As part of the review process extensive consultation was undertaken with key stakeholders in this area of law and that consultation has guided the amendments proposed. Overall, the review concluded that the Criminal Proceeds Confiscation Act is generally operating effectively and we have had examples—I think mentioned by the shadow minister—that some \$69 million to date has been confiscated. The amendments contained in the bill are consistent with the current framework of the Criminal Proceeds Confiscation Act and aim to improve the act's ability to achieve its objectives, which are primarily aimed at removing financial gain and increasing the financial loss associated with illegal activity.

The review also considered the recommendations of the Parliamentary Crime and Misconduct Committee's report No. 71, which dealt with the confiscation operations of the Crime and Misconduct Commission. All but one of these recommendations have been adopted. I will outline the more significant amendments. The first is overhauling the orders the Supreme Court may make in addition to a restraining order, known as ancillary orders, by recategorising them as either administration orders or investigation orders depending on their nature. For example, an order requiring a person to be examined under oath represents a significant investigative tool for the state and is therefore categorised as an investigative order.

Other recommendations are: enabling investigation orders to be made only on application by the state and in some cases without notice; further clarifying that nominated state agencies can disseminate information obtained by compulsory examinations to other agencies in specified circumstances, as was originally intended by the 2002 act; providing a penalty for a person's noncompliance with an order that requires them to provide to the state within a stated time a sworn statement outlining their property and dealings—a property particulars statement—as the existing provision has no mechanism to enforce compliance with the order; enabling the court to make orders under the act, such as restraining orders and forfeiture orders, with the consent of the parties; clarifying that the court may make orders compelling a person to do anything necessary or convenient to bring property within the jurisdiction; empowering the courts to make tainted property substitution declarations substituting other property for tainted property which is not available for forfeiture and allowing for the restraint of that property pending a declaration being made—for example, where a person has used a rented property to produce drugs so as to avoid the risk of their own property being liable to forfeiture as tainted property; imposing a confidentiality requirement on financial institutions who voluntarily report information under the act to ensure investigations are not compromised and include a provision which compels financial institutions to confirm whether a person holds an account with the institution; and covering, in the offence of money laundering, the situation where a person deals with tainted property being reckless as to whether it is tainted property, as the existing offence requires proof that the person knew or ought reasonably to have known that the property was tainted property. I support the bill.