Speech by

Ros Bates

MEMBER FOR MUDGEERABA

Hansard Wednesday, 20 May 2009

TELECOMMUNICATIONS INTERCEPTION BILL

Ms BATES (Mudgeeraba—LNP) (3.56 pm): I rise to support the introduction of the Telecommunications Interception Bill 2009. The opposition does not oppose this bill, given that the main objective is to finally enable the Queensland Police Service, the QPS, and the Queensland Crime and Misconduct Commission, the CMC, the same powers that every other state in Australia currently has to use telecommunications interception to assist in the investigation of serious crimes.

This bill satisfies the requirements of the Commonwealth Telecommunications (Interception and Access) Act 1979, the T(I&A) Act. The absence of Queensland legislation meant the QPS and the CMC were not recognised as interception agencies and therefore were unable to obtain a warrant under the T(I&A) Act to intercept telecommunications for serious offences. The Commonwealth act sought to establish a comprehensive national scheme for lawfully intercepting telecommunications and required that states had their own complementary legislation which complied with the T(I&A) Act.

For 10 years, the CMC, the QPS, the Parliamentary Crime and Misconduct Committee and the Liberal National Party have lobbied for this legislation in Queensland. However, the Queensland government had not allowed the use of telecommunications laws to be enacted unless it allowed for an independent body to become involved in the process to obtain a warrant. In every other state the Ombudsman has provided the back-end support, ensuring that interception agencies complied with the law. No other state has demanded a further layer of bureaucratic red tape of accountability in the warrant application process. This new layer of red tape has, until now, been inconsistent with the Commonwealth's T(I&A) Act and would therefore have been invalid under the Commonwealth Constitution.

In December 2008, the Commonwealth amended legislation to allow an additional independent body, other than the Ombudsman, the powers to obtain telecommunication warrants. The Commonwealth's Telecommunications (Interception and Access) Act 1979 allows for government law enforcement agencies to apply to operate a telephone interception. Under this act, state law enforcement agencies can apply for a warrant to intercept telecommunications whilst investigating criminal activity. As far back as 2001, state law enforcement agencies such as the QPS have battled to get telephone-tapping powers similar to their other state and federal counterparts.

Telephone interception is an important tool of law enforcement and in the wake of increased crime activities in every state it is preposterous that Queenslanders have had to wait 10 years for the Labor government to introduce this legislation. Only now has this government decided that it needs to curtail organised criminal activity in response to alleged crime links between bikie gangs, yet those opposite voted against similar private members' bills by the LNP. This legislation should have been passed 10 years ago with or without the PIM as another fortress for crime fighters to deal with. Every other state in the country utilises the services of the Ombudsman, but this state Labor government has held us back in antiquity. So much for the Smart State!

For Queensland to be the only state in the country without these powers, even when it has been on the agenda and ignored by the government, has meant that organised crime and violent crime may well have been able to flourish with the tacit approval of this government, whilst those opposite sat on their

hands and refused to listen to experts such as the QPU and the CMC. One wonders what secrets may have been revealed over the past 10 years that this government sought to hide if these telephone-tapping powers had been introduced.

Why did this government ignore repeated calls from the state's top crime-fighting agencies for telephone powers to combat organised crime? As far back as 2001, my colleague the member for Southern Downs, Lawrence Springborg, sought to introduce a solution to this stalemate of an independent monitor by a show-cause clause to a Supreme Court judge. Why is it that the Ombudsman is all that is required to tap phones in any other state legislation but Queensland held out and wanted another gatekeeper as well? It begs the question that the government of the day does not trust the Ombudsman to carry out the very same duties the government has delegated him.

Again, in October 2003 Lawrence Springborg introduced a private member's bill—the Telecommunications (Interception) Queensland Bill 2003—to increase police powers to tap phones for serious offences such as drug trafficking, and yet again the bill was defeated by those opposite. In 2004, the Queensland Crime and Misconduct Commission, the CMC, continued the push to get powers to intercept telecommunications, and indeed in the same year it released a report claiming that Queensland's current telecommunications laws were impeding police investigations into organised crime networks. That report stated—

The absence of TI powers severely impeded the capability of Queensland law enforcement to make serious inroads into organised crime markets and effectively target key organised groups.

The last major report into organised crime in this state was the 1999 Project KRYSTAL report, and there have been many changes to organised crime activities since this report was published. As far back as 1985, the Commonwealth announced it would give the states the power to tap phones as part of a crackdown on Australia's illegal drug trade. However, our law enforcement agencies have been unable to utilise these powers due to the state Labor government pushing for a request to allow a monitor, such as the Public Interest Monitor.

It is all too easy to blame the federal government for not allowing amendments to the Commonwealth act as the reason it has taken Queensland 10 years to enact this legislation. If it was good enough for other states, it should have been good enough for Queensland. This is typical of the attitude of this government and its 'too little, too late' approach on tough issues such as law and order. It can be summed up by the flippant comments made by former Premier Peter Beattie. It was reported—

'There is no need to change the laws because adequate (Federal Government) protection currently exists,' Mr Beattie said. 'How many authorities do you want to tap your phone?'

That is from the AAP on 5 October 2001. Now, this government wants to establish a role for the Queensland Public Interest Monitor in the telecommunications interception warrant application process.

First, we have a government that has stalled on this legislation for 10 years, citing that we already had the protection under the Commonwealth—which only applies to crime where it crosses state and federal bodies—and the government has held up applications and pleas from those in the know to add yet another layer of bureaucracy on top of the difficulties of obtaining a warrant for this purpose, when every other state has no problems with the Ombudsman being the referee and umpire. The Commonwealth Attorney-General's annual report for the year ending 30 June 2007 observed—

There remains a consistent view among agencies that telecommunications interception continues to be an extremely valuable investigative tool. Agencies have again noted that evidence gathered through the execution of a telecommunications interception warrant can lead to the successful conclusion of an investigation in circumstances where alternative evidence is uncorroborated, unavailable or insubstantial.

In particular, telecommunications interception has proven extremely useful in investigating major drug cases, particularly where it is necessary to identify targets in organised crime. Interception is also vital in the investigation of offences that by their nature utilise the Internet, such as child pornography and cybercrime offences.

Further, Mr Anthony Blunn AO, in his 2005 *Report of the review of the regulation of access to communications*, said—

Access to telecommunications data is, and for the foreseeable future will remain, fundamental to effective security and law enforcement.

I refer to the Queensland Parliamentary Library's research brief titled '"Telephone Tapping" Powers in Queensland', which said that in the past the CMC has argued that where there was no joint operation between federal and state agencies it has been unable to gain access to intercepted information obtained by interstate or Commonwealth interception agencies. Historically, the CMC has had to resort to using covert techniques, which puts its operations and operatives at higher risk due to the lack of telecommunications interception powers.

Examples of alternative detection and investigation measures used by the QPS under the Police Powers and Responsibilities Act 2000 of surveillance devices include listening devices, visual surveillance and tracking devices to investigate indictable offences under the authority of a warrant issued by the

Supreme Court of Queensland. Surveillance devices versus telecommunications interception have their limitation, and indeed placing listening devices can place the officer installing them at risk and even then record only one side of the conversation, whereas telecommunications interception can capture both sides of a telephone conversation, making it much more useful than mere listening devices.

Serious offences where telecommunications interception warrants can be sought are defined in section 5D of the T(I&A) Act and include: murder, kidnapping and similar offences; serious drug import and export offences and other serious drug offences; acts of terrorism and related specific offences; child pornography related offences; specified offences involving loss of life, injury, or trafficking in prescribed substances where the offence carries a minimum of seven years in prison; specified offences involving planning and organising for theft, handling stolen goods, bribery or corruption of government officers, tax evasion et cetera and which are punishable by a minimum of seven years in prison; money laundering offences; telecommunications offences; certain computer related offences; offences related to people smuggling with exploitation, slavery, sexual servitude and deceptive recruiting; certain child sex tourism type offences; and ancillary offences such as aiding, abetting and conspiring to commit other serious offences.

This bill is merely the private member's bill brought to parliament on 9 October 2003 by Lawrence Springborg, though without the additional bureaucracy. The opposition has tried four times to introduce this legislation, but each time those opposite voted it down. When the coalition was in government in 1998, the Telecommunications (Interception) Queensland Bill 1998 lapsed due to the election. When we were in opposition in 2003, the Telecommunications (Interception) Queensland Bill 2003 lapsed due to the election. In 2004, the Terrorism and Organised Crime Surveillance Bill 2004 was voted down. In 2007, the Terrorism, Organised Crime and Anti-Corruption Surveillance Bill 2007 was also voted down.

The only difference in this legislation is that the PIM, and not the Ombudsman or a Supreme Court judge, performs the principal inspector role. So why has it taken the Beattie-Bligh Labor government 10 years to bring forward this legislation? In 2004 Premier Beattie told parliament that the Queensland government could not introduce telephone interception powers with appropriate safeguards due to constitutional limitations. That the Commonwealth had to alter its own legislation just for the Smart State is ludicrous when every other state in this country has been utilising telecommunications interception to fight crime for years, whilst Queensland sat on its hands.

Since 2004, when the private member's bill put up by the coalition had lapsed, the Liberal National Party has introduced further private members' bills seeking to provide the CMC and the QPS with the telecommunications interception powers that everybody else had. The Terrorism and Organised Crime Surveillance Bill 2004, introduced by Mr Springborg, said that constitutional limitations meant that under his bill the PIM would have no involvement at the application stage but would provide back-end accountability through inspections and reports. Mr Springborg said that the back-end safeguards proposed by the opposition, such as inspecting and reporting, were the same as those under telecommunications interception laws of any other Australian jurisdictions. In relation to other Australian state laws which did not have a front end for their inspectors, he stated—

If all of these issues about ... lowering of the rights, standards and liberties of people at least were so great, one would wonder why there has not been a universal revocation of telephone interception powers in other Australian jurisdictions.

When the Public Interest Monitor—the PIM—was established in 1977 by the then coalition government under the PPR Act, its intention was not to bog the QPS or the CMC down with additional constraints. In fact, it was introduced to allow warrants for listening devices. At that time it was applicable under state law only and had no application elsewhere. Where the Ombudsman had held this role in telecommunications interception warrants in every other state, the inclusion of the PIM as another layer of bureaucracy is likely to significantly increase the PIM's workload and there would need to be careful consideration given on how best to implement these powers.

When introducing the amendments into the House of Representatives, the Commonwealth Attorney-General said that the T(I&A) Act already requires the decision maker to consider a number of matters before issuing an interception warrant, including the public interest in protecting people's privacy from excessive or unnecessary intrusion. It was noted that any submission by the PIM would be an additional consideration to be taken into account by the decision maker, but it can be outweighed by other matters that must be considered.

Will the inclusion of another layer of Labor bureaucracy hold up urgent warrants and entangle the QPS and the CMC in further red tape when they have effectively been in the Dark Age for 10 years with no access to interception warrants? This Labor government has played politics for too long on TI powers. We have to question just how many lives could have been saved and how many young people could have been spared from drug addiction had we had these powers sooner.

In my electorate the local police in Mudgeeraba do a fantastic job with already limited resources. The thin blue line is stretched on the Gold Coast with police to resident ratio far and away below the rest of the state. Police have already had to deal with resourcing issues. The fact that this government has taken

so long to introduce this bill to provide them with the same tools to fight organised crime as other states is appalling. I support this bill, which unfortunately has been a long time coming, and I am certain that our crime-fighting heroes will also welcome liberation from the archaic and backward lack of legislation in the Smart State.