Speech By

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Record of Proceedings, 21 November 2013

CRIMINAL LAW (CRIMINAL ORGANISATIONS DISRUPTION) AND OTHER LEGISLATION AMENDMENT BILL

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (7.46 pm), in reply: As indicated in my second reading speech, I will now address the matters raised by the Legal Affairs and Community Safety Committee in my summing up. The first point of clarification being sought by the committee is the intent of the bill in relation to current and former participants in a criminal organisation. The committee notes the concerns raised by the Queensland Law Society as follows—

... licensing authorities may consider past participation in a criminal organisation as a relevant consideration. Given the operation of the relevant definition we consider it would be most effective if the Attorney-General undertook to ensure that affected licensing authorities only considered issues of current participation in a criminal organisation and no other irrelevant considerations.

In response, I would like to say that it is important to understand the amendments do not provide licensing authorities with any role in identifying participants in a criminal organisation, past or present. The amendments task the Commissioner of Police with this responsibility. Licensing authorities will be informed by the Commissioner of Police of participants in criminal organisations. This will ensure a consistent and centralised approach.

The second point of clarification is the level of probity checks required in obtaining a licence from the Prostitution Licensing Authority. The Prostitution Act 1999 is designed to ensure that the Prostitution Licensing Authority has full access to information needed to make a decision about whether a person is eligible and suitable to be issued with a licence under that act. This includes information about a person's criminal history, arrests and other relevant intelligence and information about the person. Therefore, the probity provisions appear wide enough to include consideration of whether the applicant is a participant in a criminal organisation. Also, the composition of the authority under the act, which includes senior police and senior Crime and Misconduct Commission officials, facilitates a very high standard of probity assessment of applications made for licences under the Prostitution Act. There was therefore no need to include the prostitution industry in the group of industries being targeted under the bill.

The third point of clarification is to address a concern raised by the Bar Association of Queensland in its submission. This issue regards the bill having the effect of withdrawing approvals of relevant agreements. Approvals under section 153 of the Liquor Act in relation to agreements to let or sublet, or enter into a franchise or management agreement for licensed premises, are currently subject to probity checks by the Office of Liquor and Gaming Regulation. The new provisions merely extend the probity considerations to prohibit criminal organisations, or their participants, from being granted or retaining such approvals in line with the government's policy in relation to criminal organisations. Whether the licensee has recourse against the lessee in such situations is a matter of contractual obligation between the parties.

The Bar Association of Queensland has also stated that the reason for including the building industry in these reforms is less clear than other areas. In looking at the occupations and activities identified as being influenced by criminal motorcycle gangs, the Queensland government wants to take a broad and comprehensive approach to ensure that such gangs cannot take hold in licensed occupations. It may be the case that the net will need to be further widened or further adjusted to outmanoeuvre criminal gangs who will seek to take advantage of any unforeseen loopholes. The Queensland Police Service considers the building industry is attractive to criminal organisations and has determined that this industry should have protection under the new provisions.

This relates to the fourth point for clarification raised by the committee in its report. The committee raised a concern about—

... the extent of the burden of the public interest test to be applied by the Queensland Commissioner of Police when considering the disclosure of a current or former participant of a criminal organisation's criminal history ...

The government understands the case law indicates that the expression 'in the public interest', when used in a statute, imports a discretionary value judgement to be made by reference to undefined factual matters, limited only by the subject matter and the scope and the purpose of the Police Service Administration Act 1990, within which the decision power sits. Whether something is in the public interest will generally require consideration of a number of competing factors about the public interest and will involve weighing their respective benefits and detriments. However, how those various factors are weighed will be a matter for the commissioner. Imposing prescriptive criteria may unnecessarily restrict the commissioner's ability to consider the specific facts and circumstances of and other factors relevant to the individual case before the commissioner. Given the above, the government does not consider it appropriate to include any additional legislative guidance to the commissioner as how such a determination is to be made. As the committee has noted in its report, the power granted to the commissioner is non-delegable.

In its fifth point for clarification, the committee sought clarification of the intended scope of the amendments to the Police Service Administration Act 1990, addressing the concerns raised by the Law Society and confirming whether any interjurisdictional problems are foreseen. Under the amendments, the commissioner will be able to disclose to an entity. The Acts Interpretation Act 1954 defines 'entity' to include a person and an unincorporated body. The government's view is that this could include entities outside Queensland and media organisations. However, it is critical to note the commissioner is only able to disclose if satisfied it is in the public interest to do so. Further, the entity to which the commissioner discloses the information can only disclose or publish the information if authorised to do so by the commissioner, who can only so authorise if satisfied it is in the public interest to do so. Importantly, the commissioner has to consider public interest considerations at each stage, ensuring that factors such as the impact of disclosure and publication outside of Queensland, as well as the fairness to an accused in a trial, are given proper regard.

The committee also noted the Queensland Law Society's concerns about disclosures being made without the consent of the person and there being no opportunity for the person to make submissions to the commissioner regarding such release. The ability to disclose a criminal history is limited to persons who are or were a participant in a criminal organisation. It is highly unlikely that such persons would consent to the release of their criminal history information, rendering the clause ineffective. Further, a decision of the commissioner to release a criminal history is subject to the provisions of the Judicial Review Act 1991, similar to other disclosures currently made by the commissioner. Imposing a requirement for the commissioner to consult and receive submissions on disclosures may, depending on the circumstances, unnecessarily impact the commissioner's ability to disclose records where time is of the essence.

I now turn my attention to the committee's second recommendation, which is that I address any issues regarding fundamental legislative principles that were not raised in the explanatory notes. First, in relation to the audio visual amendments included as part of the bill, the parliamentary committee raised the fundamental legislative principle issue about the right to a fair trial, consistency with natural justice and the practical difficulties of using video or audio links in proceedings. I acknowledge that technology such as this is not failsafe, but the benefits of it are clear. Provisions in the Evidence Act 1977, the Justices Act 1886, the District Court of Queensland Act 1967 and the Supreme Court of Queensland Act 1991 regulate how links are to be used and provide for what is to occur where links fail, namely, the court is to adjourn the proceeding and may make any other appropriate order. Even more relevantly, on a practical level this is not a new thing for the courts. Legislation enabling the use of video links has been in place since 1996. The technology is already used every day in the courts.

The committee also asked for further clarification if the audio visual amendments adversely affect the rights or liberties, or impose obligations, retrospectively. The amendments relating to the

use of video and audio links in the courts, as well as the new Bail Act 1980 provision about bail proceedings heard outside of a relevant Magistrates Court district or division, apply to proceedings as they are heard from the day of commencement of the amendments. The parliamentary committee has commented that the provisions have retrospective application and that no justification for this has been provided. It is correct that these provisions will apply retrospectively in the sense that they will capture proceedings commenced before these amendments are passed and irrespective of when the relevant offence occurred. However, this is consistent with the common law on the application of procedural laws. In the absence of an express provision to the contrary, procedural laws are construed so as to operate retrospectively and apply to events that have occurred in the past that are presently before the court. The general rule is that the procedural law applying in a court proceeding is the procedural law in place on the day of the proceeding, and the amendments are consistent with that.

I will now address the FLP issues raised in part 3.3 of the report in relation to enhancing the Crime and Misconduct Commission. The amendments in clause 26 allow the CMC to issue a notice to produce in a crime investigation, or a specific intelligence operation about a criminal organisation or participants in a criminal organisation. The amendments also provide that a person who is a participant in a criminal organisation may not rely upon fear of retribution as a reasonable excuse to fail to produce the stated document or thing. This amendment mirrors the amendments made in the October reforms and are necessary to allow the CMC to more effectively deal with the clandestine operations of criminal organisations and to protect public safety.

The amendment in clause 44 clarifies the current effect of this provision and does not create any new powers for the CMC. Contrary to the committee's view, this clause provides additional safeguards to ensure that the person's right to a fair trial is not tarnished if that person is required to provide information to or answer questions at a CMC investigation or hearing. The amendment in clause 53 does not create any new use of compelled self-incriminating evidence by the CMC or other body. The amendment, however, provides for a safeguard to protect a person's right to a fair trial in any current or later criminal proceeding by requiring that such compelled self-incriminating evidence is admitted only with the court's leave. Courts have inherent jurisdiction to take whatever action is required to uphold the integrity of the court process and ensure a person's right to a fair trial is not prejudiced. Again, contrary to the committee's report, the amendments in clause 45 and clause 38 do not operate to have retrospective effect, but ensure that compelled self-incriminating evidence obtained by the CMC, under its coercive powers, can only be used in a confiscation proceeding from the commencement of the initial amendment to section 197(3)(c), that is, 17 October 2013, and only in confiscation proceedings commenced on or after 17 October 2013.

The committee has also raised FLP concerns about amendments to the licensing and permit acts. In particular, the committee was concerned with receiving evidence and hearing argument in the absence of parties to a proceeding. For example, clause 186 provides that QCAT or the Supreme Court may receive evidence and hear argument about criminal intelligence information in the absence of parties to the proceeding and their representatives, and may take evidence by affidavit. The explanatory notes, on page 8, state that the bill provides for some reviews to take place without the applicant and some hearings may be closed. Clause 186 is one of those cases. The explanatory notes explain that these safeguards are—

"... procedurally necessary to ensure that an applicant for review does not inadvertently obtain criminal intelligence. Natural justice is still afforded to an affected person as they are able to proceed with a full merit review.

The Committee also raised concern with transitional provisions that provide that, if immediately before the commencement of the bill the decision maker has not reached a decision on an application, the decision maker must decide the application under the provisions of the bill. The new licensing requirements in the bill apply to both new applicants and existing licensees. There is a strong argument to apply the new licensing provisions to undecided applications to ensure consistent policy and to ensure there are no loopholes. It is not consistent with the policy objective of the bill to allow a participant in a criminal organisation to obtain a licence simply due to the timing of their application. In any event, even if a person's application was considered under the current law, once the new laws start the person will no longer be eligible to hold a licence and the licence will be cancelled. Administratively, it makes sense to consider all transitional applications under the new provisions of the bill. We need to ensure the community is protected from the activities of criminal gangs and thugs and those who put fear and intimidation into the lives of Queenslanders.

The Leader of the Opposition agrees with the legislation, although she has some issues with parts of it. The Leader of the Opposition talks in this place about the provisions of the 2009 Criminal Organisation Act, which they still uphold as the best thing to address organised crime in Queensland. We submit to the House that it is not. It has not been used. Not one declaration has been successfully

used under it, although there is a matter subject to the court at the moment, which that has its own problems. Under the 2009 legislation, no criminal organisations have effectively been classified as a criminal organisation.

The opposition leader also said that the best way to get criminal gangs is to go after their wealth. I can tell my honourable colleagues that that is something that this government and I have been saying for 18 months. That is why this Newman can-do LNP government passed the first unexplained wealth laws in this state. The Labor Party had 14 years to pass unexplained wealth laws. Now it is an issue for the opposition leader. Now she says the best way to go after criminals is to go after their wealth. That is why this LNP government, within the first year of taking government in this state, moved our first unexplained wealth laws. Ours is one of the few jurisdictions in the country to have unexplained wealth laws and, of course, serious drug trafficking declarations where the entire assets of an individual can be forfeited to the state if they cannot explain from where they got the money.

The opposition leader has also talked in this place about this bill being the bungling bill and the bill that fixes all the problems with the previous legislation. We said at the time of the introduction of the previous legislation that criminal bikie gangs will try anything with their cashed up lawyers to get around these laws. They will go to every extreme, length and degree in courts in every jurisdiction—the Magistrates Court, the District Court and the Supreme Court—to get around our laws.

We have had through the democratic process of our judicial system interpretations at the Magistrates Court and different interpretations at the Supreme Court. We are clarifying, particularly in relation to bail applications, the position of the legislature and the intended position of the legislature. We were very upfront. We said that we fully expected to come in here and move amendments to our legislation, just as parliaments for 150 years have been moving amendments to legislation as dodgy criminals—those who have more money than any of us in this place—go around with high-profile lawyers and public relations campaign machines and try to convince Queenslanders that these are just people who have a couple of tattoos and ride their bikes on a Sunday.

Queenslanders know that these people are criminal motorcycle gangs. Queenslanders understand the difference between a law-abiding citizen who wants to ride and participate in a charity event and those who have tattoos of '1%' and the number '13' all over their heads and foreheads. They have FTP on their foreheads. I am not going to explain to the House what that means but members can google it.

We have an opposition that, as I said in my opening remarks, is just flip-flopping on this issue. They do not know where they stand. They still hold so dearly onto the 2009 amendments in relation to criminal organisations. They have not worked. We had to try something different. Other jurisdictions in this country are now looking to our legislation.

I note the member for Gaven, who is sitting up the back, said he had a chat to a former Queensland Attorney-General. It might have been Rod Welford whom we were talking about in the parliament this morning. Maybe he went to a party with Rod Welford. I am not sure who the former attorney was. I take some guidance from the former Labor Party Attorney-General of South Australia who two weeks ago came out fully backing our legislation saying, 'We have the magic pudding right in Queensland.' This former Labor Attorney-General of South Australia I take some credit for because he introduced the first anti-association bikie legislation that actually did fall over in the High Court. In New South Wales legislation then fell over in the High Court. He is saying that with this legislation we have hit the nail on the head and got the magic pudding right.

That is not to say that the criminal motorcycle gang members will not challenge these laws. They have already indicated they will. We will fight them right to the High Court if necessary to protect Queenslanders and to protect the mums and dads and children in this state.

I thank all honourable members for their contributions. We are going after these criminals. We are going after them hard. The only way we can do it is with a very tough response to this issue of criminal motorcycle gangs. We will once and for all rid the state of Queensland of criminal motorcycle gangs.