CRIMINAL INVESTIGATION (EXCEPTIONAL POWERS) AND FORTIFICATION REMOVAL BILL 2001

Second Reading

Resumed from an earlier stage of the sitting.

HON PETER FOSS (East Metropolitan) [5.37 pm]: Our concern about clause 6(2), which provides that the person appointed as a special commissioner must be a person who is or was a judge of the Supreme Court or District Court, is this: the type of work that will be carried out is essentially administrative. I would have thought that the appropriate person who carries out judicial work and also administrative work would be a magistrate. If we were to confer on somebody who sits in courts an obligation to act as a special commissioner to deal with these matters, I suppose the logical person would be a magistrate. However, I can understand the Government's intent in appointing somebody from a higher judicial sphere in order to give the proceedings something of a more serious nature to ensure that the proceedings are not abused. We accept that. We do have a concern that we will have a judge who may very well be at one moment participating in an inquisitorial process that is subject to secrecy and the next moment sitting in judgment on the matter, because, as a result of the evidence that comes out of the special commission, a prosecution might take place and the next thing is that he is the judge on the case.

Hon N.D. Griffiths: You would surely not expect that to happen.

Hon PETER FOSS: If it does not happen, it will require the listing processes of the District Court in particular, which has a very flexible method of dealing with listing, to take into account the obligations that a person might have as a special commissioner. This concern may very well be minor, but it is an indication of why the special commissioner should preferably be a person who has retired as a judge of the Supreme Court or District Court rather than a person who holds office, so as to avoid giving judges any more administrative functions and to avoid the problems of mixing up one role with another.

Another concern, which I believe the legal profession also has, is that under clause 8 the tenure of a person as a special commissioner is up to a period not exceeding four years. It does not affect that person's tenure as a judge or his rank, title, status, precedence, salary, or annual or other allowances. However, again there may be some problems with a judge holding some position which is at the behest of the Government rather than one which he continues to hold once he is appointed.

Hon N.D. Griffiths: Yes, but not as a judge.

Hon PETER FOSS: I realise that, but he might like being a special commissioner. The minister is aware of the concerns that have been expressed by academic writers around Australia over the constant use of judges as royal commissioners. The concern that I am expressing is not one that is peculiar to me. It is a concern that has grown in loudness with the legal profession objecting to the judiciary being used in this function. I do not know whether the minister agrees with that, but it is not something I dreamed up. It is a concern that has been expressed around Australia, particularly in academic circles, but also by lawyers and legal groups. They do not like to see judges being used as royal commissioners, and the same argument applies to special commissioners. They do not see it as appropriate.

Hon N.D. Griffiths: That is the view of the people you have mentioned. What is your view on behalf of the Opposition?

Hon PETER FOSS: My view on behalf of the Opposition is to draw to the attention of the Government the concerns that are in the community. If the Government is not concerned about the views of the community and the legal profession, it has a problem, because it is bringing before this Parliament legislation -

Hon N.D. Griffiths: I want to know what your view is, because you are representing an important view of the community.

Hon PETER FOSS: I am representing what the community thinks, and the community does not like it. Whether or not the minister agrees with it -

Hon N.D. Griffiths: You had no regard for the community when you were on this side of the House. Why don't you tell us what your view is? Have a bit of courage!

Hon PETER FOSS: Every time I open my mouth, the minister interjects on me. I have already said that we support the legislation, but it would be foolish of me to be blithely ignorant of the concerns that have been expressed. If the minister thinks that supporting the Government's legislation means that we lightly dismiss every criticism that is being made, he is wrong. The role of the Opposition is to draw the Government's attention to the concerns expressed in the community, just in case it was not aware of them. It may be that the

minister was aware of those views and decided to totally disregard them; I do not know. However, on the other hand, the minister might not have been aware of those views, and by drawing his attention to the concerns expressed by people, he may change his view.

Hon N.D. Griffiths: I am most obliged, but I am interested in the Opposition's view.

Hon PETER FOSS: Our view is that we support the legislation. By supporting the legislation, we advise the Government of the concerns. What an extraordinary attitude! There is a very good passage in *1984* in which it was not sufficient to confess to something; even to confess to two plus two equals five, a person had to actually believe it. It was not until such time as the person had been forced into the genuine belief that two plus two equalled five that he was allowed off. The minister and I know that the role of the Opposition is to draw the Government's attention to concerns. We have already indicated that we will support the legislation. If the minister wants to know what our view is, our view is that we will support it. If the minister wants to know what are the views that are being expressed in the community, they are that some people out there do not support it. I am sure the minister would understand that the role of the Opposition is to draw the Government's attention to some of the views that are contrary to its views, and perhaps to ours. If the minister does not see that as being part of our role, I do not know what he thinks we are meant to be doing here. The Government thinks that we should either agree with everything all the time or oppose everything.

Hon N.D. Griffiths: Occasionally you should say where you stand.

Hon PETER FOSS: I have said where we stand, and I will say it again: we support the legislation. Now does the minister understand our position? We support it.

Hon Derrick Tomlinson: But there are some questions.

Hon PETER FOSS: But there are some questions. It seems that the Government believes that we must support its legislation absolutely to the hilt. It is not enough to support its legislation; we must say that we do not have any qualms about it. We are supposed to go along as blindly as the Government does in its belief that it is right. However, we do not believe that the Government is always right. We are just telling the Government that we support this legislation. We support it, we support it and we support it. However, we have a few words to say about it. It is our role as the Opposition to tell the Government what the community thinks about this legislation. Some members of the community do not think it is a good idea to make serving judges royal commissioners or special commissioners. I hope I have made that point and I hope that the Government understands that people in the community hold that view. As I said, we support it. Do not be worried, we will vote for it because we support it. However, the Government must know that not everybody is as accepting and as non-judgmental as we are.

Hon Ken Travers: I might get a copy of that quote when *Hansard* is printed and keep a copy of it in my drawer.

Hon PETER FOSS: So the member should. Every erstwhile powerbroker should do something about that.

Hon N.D. Griffiths: Here is the powerbroker of the Liberal Party!

Hon PETER FOSS: I have never been a powerbroker in the Liberal Party. One of my failings is that I have never exercised the slightest power in the Liberal Party.

Hon Ken Travers: Has Noel Crichton-Browne invited you to breakfast at the Blue Duck Cafe yet?

Hon PETER FOSS: No. Is that where he has breakfast? I am afraid that he has not. This is a serious piece of legislation because it confers some fairly significant powers on the police.

Hon Giz Watson: That is the understatement of the year.

Hon PETER FOSS: I thank the member. I am glad Hon Giz Watson interjected because she has some concerns and would like the Government to know about them. She does not support the legislation. She too considers it her role to tell the Government of her concerns.

Hon N.D. Griffiths: She can make her own speech.

Hon PETER FOSS: I am sure that she can. I am also sure that she does not support this legislation and has some concerns about it. We are both carrying out our function of letting the Government know of the concerns out there.

Hon N.D. Griffiths: I would like to get out there.

Hon PETER FOSS: The minister will not get out there if he keeps interrupting.

As I said, we support the Bill; however, I have a few words to say about it. My speech is being extended by unruly interjections from the members opposite who are talking about things that they probably should not talk about. I will try to confine my comments to the Bill because I am sure that we would all like to get away at some stage for a well-earned Christmas break.

Part 3 provides for an examination before a special commissioner. I have heard reference to the Star Chamber, which is an inappropriate reference. The process in part 3 has a very close resemblance to the grand jury system. The grand jury was a very successful and useful method to find out whether an offence had been committed and to commit people to trial. It was abolished in the United Kingdom and Australia in favour of using magistrates for committal. However, one of the disadvantages of getting rid of the grand jury is that its inquisitorial function was lost. The grand jury system still exists in the United States. That is the method by which people in the United States are indicted. It has a grand jury of citizens in the same way as an ordinary jury does, and it conducts its proceedings in secret. People who reveal matters that have been heard before the grand jury are subject to penalties, and it has proved to be an effective method of getting to the nub of the matter in an investigation. There is nothing particularly new or draconian about part 3 in its basic form; that is, the idea of carrying out an investigation under compulsion.

It is also similar to the provisions of the National Crime Authority's powers. These powers are not new. It differs from the grand jury in the United States in that an amendment has been passed to the US Constitution called the fifth amendment to its Bill of Rights, under which a person cannot be compelled to give evidence against himself. We even use the term "the fifth amendment" in Australia; it has become well known through popular American entertainment. We know Americans' rights better than our own law! To that extent, this part differs from the American grand jury because people can be compelled to give evidence about their behaviour. However, there are protective mechanisms. I can remember many a time when Hon Joe Berinson was the Leader of the House and we dealt with the same problem of people being required to give evidence about their wrongdoing.

Let us look at the general nature of part 3 and at clause 9 particularly, because it is the nub of this part of the legislation. Interestingly enough, it starts with a subclause that is purely informative rather than executive. It is a good provision that will inform people of the general nature of the legislation and how it is to be interpreted. Clause 9(1) states -

> This Part is to facilitate the investigation of a section 4 offence.

Even though it has fairly broad statements in it, it starts off with the words "to facilitate the investigation of a section 4 offence". That is then amplified in subclause (2), which states -

> The investigation of an offence includes the investigation of a suspicion that the offence has been, or is being, committed.

The word "suspicion" causes some concern to people. Suspicion is a reasonably light word. The subclause does not require that there be reasonable suspicion or belief; all it requires is a suspicion. That has been the subject of concern and criticism. However, it is then qualified further in subclause (3), which states -

> The powers of a special commissioner under this Part cannot be exercised unless the special commissioner is satisfied that -

It then sets out three paragraphs that are accumulative - each must be satisfied - and the third paragraph again has three matters that are accumulative. Subclause (3)(a) states that -

> there are reasonable grounds for suspecting -

Not reasonable grounds for believing, but reasonable grounds for suspecting -

> that a section 4 offence has been, or is being, committed;

Again, we must go back to clause 4, which is why it was such an important clause for us to consider. Clause 4(a) deals with organised crime and clause 4(b) deals with a peculiar homicide. Clause 9(3)(b) states -

> there are reasonable grounds for suspecting that there might be evidence or other information relevant to the investigation of the offence that can be obtained under this Part;

One must satisfy that there are reasonable grounds for hunting for the evidence, not that there is to be a complete fishing expedition, and for thinking that the evidence is out there. It does not have to be too much. It only has to be evidence or other relevant information. It does not even have to be evidence. It might just be information that sets a person looking for evidence. Clause 9(3)(c) is used to justify the others, because one would have some concerns about paragraphs (a) and (b) if it were not for paragraph (c), which states -

there are reasonable grounds for believing that the use of powers given by this Part would be in the public interest having regard to -

It must be in the public interest. That takes us back to clause 9(1), which states -

This Part is to facilitate the investigation of a section 4 offence.

Clause 9(3)(c) continues -

(i) whether or not the suspected offence could be effectively investigated without using the powers;

The powers cannot be used just on a whim. If the offence can be investigated using normal methods, these powers cannot be used. It continues -

(ii) the extent to which the evidence or other information that it is suspected might be obtained would assist in the investigation, and the likelihood of obtaining it;

In other words, there must be a materiality test. The next subparagraph is puzzling. It states -

(iii) the circumstances in which the information or evidence that it is suspected might be obtained is suspected to have come into the possession of any person from whom it might be obtained.

I confess that I do not quite understand what that subparagraph does. It does not tell us what circumstances are likely to have any effect. I cannot envisage the sorts of circumstances that might make it more or less acceptable or more or less in the public interest. I would be grateful if the minister would give me an example of how clause 9(3)(c)(iii) will operate.

The nub of this legislation is contained in this clause. As we go further through the Bill, we will keep coming back to clause 9. There are a number of central clauses in this Bill around which other aspects revolve. One of the central clauses is clause 9. We get all the way down to clause 9(3)(c)(iii) and we are left wondering about where we have got to. I have no idea what this subparagraph means and I suspect that the special commissioner will have no idea either. It might be helpful to the special commissioner if the minister were to give us some hint, some glimmer, about what was in the Government's mind when it gave instructions for this piece of drafting. It has not emerged from the other end in any way that I am able to discern.

This sounds like a fairly draconian way to do things, but the protection is provided in clause 10, which states -

A person cannot be examined under this Part about matters that may be relevant to an offence with which the person stands charged,

Once a person is charged, he cannot be examined about that offence. However, this clause does not prevent any other person being examined under this part about those matters, nor presumably does it prevent that person being examined about other offences. We are talking about organised crime, so I will use bikies as an example.

Hon Derrick Tomlinson: Or the Mickelbergs.

Hon PETER FOSS: I would rather use bikies, because it is a more diffuse group. The Mickelberg family seems to have worked closely together at all times. I am thinking of a more diffuse group.

Hon Derrick Tomlinson interjected.

Hon PETER FOSS: They are still organised. I will use what must be proven to show organised crime. There must be two people, two offences and a degree of complexity of organisation of the offences. One of those people might overlap with another set of organised crime. There might be 20 sets of organised crime with varying people involved. Using that example, person A might never have been involved in crime with person X, but is involved with a number of people who may well be involved in crime with person X. Similar fact evidence might become relevant. Person X is examined about his crime, but the examination stops once he is charged. Person A is then examined about a crime that person X was involved in with person B, who is the other person charged over the offence.

Sitting suspended from 6.00 to 7.30 pm

Hon PETER FOSS: Before the dinner suspension I referred to the very sensible protection that clause 10 provided. If there is a concern about this Bill; it is not so much that people should be questioned about possible crimes but that they should be required to condemn themselves out of their own mouths; in particular, that they should be required to do it after legal proceedings have recommenced. Clause 10 plainly makes certain that that should not happen. In organised crime, the same people from the organisation are not necessarily involved in each crime. An organisation might have hundreds of members. They combine one way or another in their organisation to assist one another, but not in every crime. This clause does not provide that a person should be

examined in relation to someone else's offence, but I do not think it prevents it. If that is the case, a person may give evidence that condemns him because it reveals the organisation and gives similar fact evidence that may result in that person being convicted. Under this part of the Bill, information obtained from a person by examination, even though it does not relate directly to the offence with which the person has been charged, could have a negative and probative effect against that person. Does the minister believe that such evidence might be elicited? Would that be prohibited by the provisions of the Bill? It appears to me that it would not be.

I am very pleased to see that the Government has accepted a suggestion from the Opposition in the other place to ensure by law that all proceedings be by way of a lawyer on behalf of the Commissioner of Police. That is to be found in clause 16(1), in which an amendment suggested by the Opposition was included. This process has historically been brought by a lawyer. In the United States, it is still brought by a lawyer, where the person responsible for proceedings before the grand jury is usually a person representing a district attorney or in some cases the Attorney General. The difference between having a lawyer and a policeman is the duty that a person owes as a lawyer by reason of his professional position. That is preserved in this Bill with regard to the special commissioner. That is a very important protection in the way in which this legislation will operate, by virtue of the fact that a lawyer must be used and that lawyer owes to the special commissioner the same duty that a lawyer owes to the court. That is well known and will provide a necessary protection in the whole matter. That is contained in clause 40(3), which states -

> A person representing a person before a special commissioner -

That includes the Commissioner of Police -

> has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, if the person is a barrister or solicitor, is subject to the same liabilities as if appearing before that court.

That is a very important clause, which, together with the amendments suggested by the Opposition requiring the Commissioner of Police to be represented by a legal practitioner, is an important protection against abuse.

I support a number of other matters: in particular, the fact that the disclosure of the summons may be prohibited. That is done by a notation on the summons, and that is consistent with provisions in other legislation of this sort relating to, for example, the Anti-Corruption Commission and the grand jury proceedings. The idea is that there should be no prejudice to either party by reason of its becoming known that it is occurring. A person should not be prejudiced in the likelihood of his being subject to some form of malicious intervention by organised crime just because his name becomes known; the inquiry should not be in any way prejudiced by the number or the line of people being investigated becoming known; and nor should anybody in the matter of an investigative process be prejudiced by early disclosure. Members will note that the processes for that protection are dealt with in clause 12, in which the method is set out.

Various other clauses are fairly straightforward, until clause 16, which deals with legal representation. Again this is an NCA provision; it is a sensible one, but it is unusual. A person may be represented by a legal practitioner, but subclause (4) states -

> The special commissioner may refuse to allow a person to be represented before the commissioner by a person who is already involved in the proceedings or is involved or suspected to be involved in a matter being investigated.

The reason for that is clear, leaving aside that certain firms appear to specialise in appearing for people involved in organised crime. Even if it were not one of those firms, there could be a leakage of information if a person who was acting for one person being investigated was able to discuss matters with another person who was being investigated so there could be some sort of cross-fertilisation of information. That is obviously not in the public interest, so the special commissioner has the power to prevent a particular person appearing for more than one party. I do not think that is necessarily complete in terms of preventing this cross-fertilisation of ideas, but it is certainly a good starting point. It allows examination and cross-examination of witnesses. It is interesting that it is an inquisitorial process. Clause 17(1) reads -

> A person representing the Commissioner of Police may, so far as the special commissioner thinks proper, examine, cross-examine, or re-examine any witness . . .

It appears not to be the rule that if someone is examining his witness, he cannot cross-examine him. That is necessary for an inquisitorial process. It is no different from the other inquisition that we have had for hundreds of years, which is the coronial inquest, in which counsel assisting the coroner has always had the right to examine a witness in any manner whatsoever and is not limited by the normal rules of a court case.

The Bill provides for examinations in private, for proceedings to be determined by the special commissioner, and for arrest of witnesses who do not appear. There is an appeal to the Full Court of the Supreme Court in the apprehension of a person who fails to appear; and properly so. The commissioner also has powers in relation to things that are produced. Then we get to clause 23, which is the area with which I have some concern. Clause 23 reads -

> (1) A special commissioner is to cause records to be kept of the investigation, including transcripts of all proceedings before the special commissioner.
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> (2) A special commissioner may make any order considered to be appropriate as to how the records are to be dealt with when the investigation is complete.

The Bill does not seem to provide for how the records will be dealt with before the investigation is complete. I would have thought that would be the time when the records were most at hazard. That is why I raised this question with the minister. It was raised with the Attorney General in another place. Frankly, the Attorney General had no idea what would happen to these records or how they would be kept secure. That is a matter of considerable concern, because we all realise the exposure that witnesses and the whole investigation have during that period, and it appears that in no way has that been properly dealt with.

The Opposition is concerned about clause 23(3) because, having just last year set up the State Records Act, this is a significant departure in principle. I am pleased that subclause (4) has been added at the behest of the Opposition. However, subclause (3) leaves the Attorney General as the person who may order how records are to be dealt with, regardless of any written law. The Opposition suggests that the appropriate body to decide that is the State Records Commission. Subclause (4) protects the position of those records, because they are to be treated as restricted access archives, unless the Attorney General requests otherwise. I do not believe there is any justification in this day and age for disposing of records other than to the State Records Commission in accordance with the practices of the State Records Commission. That has been the case with various royal commissions into criminal activities from time to time. Having established the State Records Act, we should stick by the regime that has been set there. The people at the commission are used to dealing with confidential records. They are professionals; it is their job. They have been set up by the Parliament to do this job and members should keep in mind who they are. Three of the commissioners are people who hold major independent roles already and are responsible to Parliament - the Ombudsman, the Information Commissioner and the Auditor General. They have a professional staff to assist in this, and I do not see any problem with that.

The Opposition has a concern with division 3, which sets the offences. It provides for a minor set of penalties. I understand the argument used by the Government that under clause 26, a person who fails to produce anything is dealt with as though in contempt of the Supreme Court, and there is no limitation on the amount of the penalty that can be imposed by the Supreme Court. There is no limitation either way, unfortunately. I do not know of anybody who has been imprisoned for a substantial time for contempt of court. There is some authority to indicate that if imprisonment for contempt of court is doing no good and achieving nothing, the person should be released. Gone are the days of the nineteenth century when people were left in prison forever. The idea of saying that this is an indefinite sentence is nonsense. The reality is that people will get nowhere near a reasonable penalty. There is a misconception as to how the court will operate. The Opposition believes that there should be a proper and significant penalty.

The penalties provided in the Bill are, putting it mildly, light. I am looking at both old and new clauses, because some amendments were made in the other place. Clause 28 provides a penalty of imprisonment for three years and a fine of $60 000 for offences of disclosure contrary to the notation on a summons. Can members imagine that? We are talking about organised crime, which includes convictions for offences such as homicide. People who commit such crimes will not find it terribly frightening that the offence carries a maximum penalty of $60 000 and three years imprisonment. It is ludicrous.

Hon Derrick Tomlinson: That translates to one year.

Hon PETER FOSS: Yes, even if a person were imprisoned for three years. It probably translates to one year even if someone were imprisoned for the maximum term, but nobody is ever sentenced to the maximum penalty. The maximum penalty given is usually half the prescribed maximum. The average is usually about a quarter of the maximum. Therefore, the maximum sentence that anyone would get from a penalty of three years is 18 months, which translates into six months. That person is more likely to get half of that 18 months, which is nine months, which translates into six months. That penalty will not have much impact. Also, people will not be sentenced to the maximum fine of $60 000. A maximum penalty of $60 000 is pin money to bikies, who make the sort of money they make from selling amphetamines and from involvement in their other activities. A fine of $60 000, therefore, will not have much impact on people involved in organised crime.

There is a maximum penalty of five years imprisonment for giving false testimony, three years for breaching privacy proceedings and five years for bribing a witness. It is interesting to compare those penalties with the penalties imposed on people for the same offences under the Criminal Code. Section 130 of the Criminal Code relating to the corruption of witnesses in court is the equivalent crime to the last one. Under the Criminal Code, that penalty is seven years. This Bill does not even impose a penalty commensurate with the penalty for an equivalent offence under the Criminal Code. I would have thought a stronger penalty would be required under this legislation because these crimes strike at the fabric of society. Organisations involved in organised crime, by virtue of the nature of those organisations, make it impossible for police and the ordinary processes of government to deal with them. If that is our reason for being here in the first place, how can we contemplate a lesser penalty for people on whom more severe methods would otherwise be imposed on the basis that the current system will not work? If the current penalties for bribing witnesses in courts will not work, how shall we manage with significantly lower penalties for offences under this legislation? This is asking people to snub the special commissioner. The penalty for destroying evidence is imprisonment for three years; and for preventing witnesses from attending, it is five years and a fine of $100 000. I am pleased that those penalties are a bit higher. They sound a little better than some of the others; however, they are still fairly minor. Destroying evidence is a serious offence, especially in the context of trying to deal with organised crime. The penalty for preventing witnesses from attending a special commissioner hearing is five years imprisonment and a fine of $100 000. Members should keep in mind that that is the maximum penalty. Even if a person received the maximum penalty, he would not spend anywhere near that long in jail. The penalty for causing an injury to a witness is five years imprisonment and $100 000. That offence strikes at the heart of the process of administration of justice in this State. If someone actively interferes with witnesses during an inquiry into organised crime, he will get a smack over the wrist with a wet lettuce. If the Government were serious about this, it would impose serious penalties. The member for Nedlands can explain how ineffective are the provisions under the National Crime Authority Act. That is because the people being dealt with - organised criminals - are totally unafraid of the penalties. They are making too much money and face too small a penalty if they are convicted to pay the slightest bit of attention to it. There must be some sort of process. Why bother with this if the Government will not be serious about it? Why have this special process, which makes significant inroads into the normal processes, if the Government is not prepared to do something to make it stick? If the Government wants it to be only window-dressing, that is fine, but it should tell us that it is only window-dressing and not intended to work. It should say that this legislation simply copies the NCA legislation, which the state police can use, and that it will not have any effect whatsoever. It will be business as usual for the Government, but this is something about which it can tell the public. If it really wants to make this legislation work, it must do something about the penalties. It is disgraceful that the penalties in this Bill are lower than those for similar offences prescribed in the Criminal Code relating to court hearings and people who are not necessarily organised criminals.

Division 4 is necessary but, again, it causes some people some concern. Clause 37 reads -

> A prerogative writ cannot be issued and an injunction or a declaratory judgment cannot be given in respect of the performance of a function under this Part and proceedings cannot be brought seeking such a writ, injunction, or judgment.

Although it remains to be seen how effective that clause will be, I think it is necessary to prevent the sorts of delay that organised crime will indulge in. If one thing is certain, it is that organised criminals generally have lots of money, which enables them to hire extremely expensive lawyers to delay the legal process.

People also get upset about clause 38, which deals with legal professional privilege, and states -

> Legal professional privilege does not prevent a summons under section 11 from requiring a person to produce a document that would otherwise be subject to that privilege, and does not provide a reasonable excuse for failing to produce a document as required by the summons.

Australian lawyers get upset about this. I have worked in the United States, which operates under a different system whereby almost nothing is covered by legal professional privilege. The only thing that might be covered is witness statements. The area of legal professional privilege in the United States is so small that lawyers do not take witness statements if they can avoid it because they run the risk they will be discoverable and the other side will see them. We in Australia get terribly upset about legal professional privilege, and lawyers can point to all sorts of reasons that it should cover practically everything. However, it is amazing how the United States seems to get along reasonably well without it. We just have to learn to live with a totally different regime. Nothing is Holy Writ about this. Legal professional privilege has developed to some degree, although the High Court of Australia has been pegging it back quite a bit from what it was originally seen to be, and that is appropriate. Legal professional privilege has been taken to extraordinary lengths, and perhaps has been exaggerated.

It is interesting that many of the things concerning the type of inquiry and the lack of legal professional privilege about which people are getting upset are part of everyday life in the United States. They are not part of the law of the land of the free and the land of the place with a bill of rights. The grand jury operates every day across the United States. Legal professional privilege is so small in ambit in the United States that we would regard it as having been almost abolished. Of course, legal professional privilege has never extended to criminal acts. One has never been able to claim privilege over one's knowledge of a criminal act. In fact, one cannot have a document that proves a criminal act and claim privilege in respect of it.

There is a protection in this legislation, and it is the usual one. Clause 39 states -

> A statement made by a witness in answer to a question that a special commissioner requires the witness to answer is not admissible in evidence against the person making the statement in -
>
> (a) any criminal proceedings;

That is only a partial protection, because it does not stop a person finding the evidence anyway. It stops the statement itself being the evidence, but it does not stop any use of it being made. As clause 39(1)(b) states, it certainly cannot be used for -

> proceedings for the imposition of a penalty other than contempt proceedings or proceedings for an offence against this Part.

I presume that means that a person cannot even bring it up afterwards and say that that is what the penalty should be, even if it was not used to convict a person. It can be used for proving inconsistent evidence. Therefore, if a witness says one thing before the special commissioner and gives a totally different story before the court, that person can be questioned on it as a previous inconsistent statement. The rest of the provisions seem to be reasonably acceptable. As I said, clause 40(3) is a very important provision. Generally speaking, part 3 is reasonably acceptable.

Under part 4, the police are in their usual mode again. I should have sought out some speeches of Hon Nick Griffiths on this matter, because he has made a number of speeches in this House about giving rights to the police to search, seize and do all these other things. They were very learned speeches indeed. Perhaps I can just refer members to *Hansard* and to the index that refers to Hon Nick Griffiths and various legal proceedings that went through the House. I endorse his statements, and they have an impact on this part.

However, what is the problem with this part? It starts with clause 44, which poses significant problems. Whereas part 3 is really under the control of a special commissioner in front of whom the proceedings are conducted, clause 44 is virtually a blank cheque, or, as it is known in law, a general warrant. It states -

> This Part applies if the Commissioner of Police has satisfied a special commissioner that the grounds described in section 9(3) exist.

It does not provide for proceedings for that. It seems to be - I may be wrong - that once it has been established under clause 9 that a person should be investigated, part 4 applies automatically. The person cannot be investigated under part 3 unless it has been established that the grounds in clause 9(3) exist. Once that is done, part 4 is let loose, and it appears that it is let loose on everyone, for everyone, anywhere. What happens? As soon as an officer says that he would like to examine Joe Bloggs, every police officer in Western Australia can then, for the purpose of investigating a section 4 offence, without a warrant, at any time and at any place when there are reasonable grounds for suspecting that the offence has been or is being committed, demand the production of and inspect any articles or records kept there.

Clause 45(2) provides -

> A police officer who has entered a place under subsection (1) may -
>
> (a) search the place and secure the place for the purposes of searching it;
>
> (b) stop, detain, and search anyone at the place;
>
> (c) photograph any person or thing, and make a copy of or seize any document that the police officer suspects on reasonable grounds will provide evidence . . .
>
> (d) seize anything else that the police officer suspects on reasonable grounds will provide evidence or other information relevant to the investigation of the offence.

Subclause (3) provides -

> A police officer may use any force that is reasonably necessary in exercising powers . . .

Police officers can go into a place in which they think the offence has been or is being committed and demand the production of and inspect any articles or records. Clause 46 -

Hon Derrick Tomlinson: This is the Osama bin Laden clause.

Hon PETER FOSS: That is correct. Subclause (1) provides -

> This section does not apply unless there are reasonable grounds to suspect that a person is in possession of -
>
> (a) anything used, or intended to be used, in connection with the commission of a section 4 offence; or
>
> (b) anything else that may provide evidence of, or other information about, the offence.

It does not have to be the section 4 offence referred to in clause 9(3); it is any section 4 offence.

Hon Derrick Tomlinson: Nor is it the person referred to in clause 9(3); it is any person.

Hon PETER FOSS: Have gun will travel!

Hon Derrick Tomlinson: The bin Laden clause!

Hon PETER FOSS: Clause 46 continues -

> (2) A police officer may without a warrant stop, detain, and search the person and any conveyance where the police officer reasonably suspects the person to be.
>
> (3) The power to stop and detain a conveyance includes the power to detain anyone in or on the conveyance for as long as is reasonably necessary to search the conveyance . . .

I remember Hon Nick Griffiths speaking with considerable fervour about this issue just before he voted against a clause that was far more limited. The clause further provides -

> (4) A police officer may without a warrant seize anything described in subsection (1).
>
> (5) A police officer may use any force that is reasonably necessary, and may call upon any assistance necessary, in order to perform a function under this section.

Hon Derrick Tomlinson: What is "any force that is reasonably necessary"?

Hon PETER FOSS: That term has been interpreted from time to time. It is a good definition, especially if one is trying to prove afterwards that it should not have been used.

Some limitations are placed on unnecessarily sexually interfering with people. Clause 47 provides -

> (3) Nothing in this Part authorises a search by way of an examination of the body cavities -

I am pleased to see that provision included. The subclause continues -

> of a person unless it is carried out under subsection (5) by a medical practitioner or a registered nurse.

Members should not worry, because subclause (4) provides -

> A police officer may arrange for a medical practitioner or registered nurse nominated by the police officer to examine the body cavities of the person to be searched and may -
>
> (a) detain the person until the arrival of that medical practitioner or registered nurse; or
>
> (b) convey or conduct the person to that medical practitioner or registered nurse.
>
> (5) A medical practitioner or registered nurse may carry out an examination arranged by a police officer under subsection (4) and no action lies against the medical practitioner or registered nurse in respect of anything reasonably done for the purposes of the examination.

Of course, they may use any force that is reasonably necessary.

Hon Derrick Tomlinson: And may be accompanied by whatever assistance is necessary - you hold them down and I will look.

Hon PETER FOSS: Clause 48 provides -

> The power given by this Part to search for any thing includes the power to break open anything that it is suspected might contain it.

Clause 49 refers to section 714 of the Criminal Code applying to anything seized. This is a reasonably strong provision and there should be some limitations. First, it should not happen simply by operation of an examination order under clause 9. There should be an order allowing it to be done. I agree that police officers may be required to go to a number of places, they may suspect a number of people, and there may be a number of alternatives and options. It should first be an advertent act on the part of the special commissioner to allow police officers to use this power; it should not be an inadvertent act. Special commissioners may be deterred from giving orders under proposed section 9 if they think that the net result is that, without intending it, a general warrant for any proposed section 4 offence seems to occur once those grounds have been established. I would have thought that there should be an order by the special commissioners that part 4 applies and that there should be a capacity for the person to limit by specific things or classes of things how it is to be exercised.

I also believe that the Bill should provide the capacity to limit for how long the power is exercised. There is no time limitation on this. Someone might be examined in 2001 and in 2051 the police might say that they will search some premises under that examination order made back in 2001. It seems a little broad to me. I am surprised that the Labor Party has agreed to this, since I would have thought that some members of the Labor Party would have serious doubts about it. I may be wrong, but I am sure that some members of the Labor Party would have doubts. I share those doubts, and I hope that they will share my doubts after I have finished speaking.

What is to stop a policeman saying in the future that he acted under part 4 of the Criminal Investigation (Exceptional Powers) and Fortification Removal Act? All he must do is refer to the Act, as it will be. He does not have to refer to any order made by a special commissioner. He does not have to tell the special commissioner what he did about it. The special commissioner has no capacity even to find out what happened. Whereas I can agree that a policeman should not have to run to a justice of the peace every time he wants to search a person or place, there should at least be some record of who exercised the power, how it was exercised and what was done with it, if only so that the special commissioner knows next time what sort of order to make. There is no judicial supervision or supervision by the special commissioner.

It is said that nobody is allowed to check up on these policemen. This is alarming. The power has every capacity to be abused. No-one can stop it. The Commissioner of Police does not even seem to be able to stop it. Police officers appear to have been given a licence. Perhaps this clause should be called double-0 44 rather than 44, because that is how wide the right is that the police have been given. There are absolutely no accountability checks whatsoever. The provision is couched in the vaguest and broadest of terms. The power is unlimited in time. It is not subject to any form of advertence on the part of the special commissioner or any form of judicial supervision. It is a case of, "Here you are boys. Off you go." Frankly, whatever the need might be for some extra powers of search and seizure, this general warrant is of the most extraordinary kind. If the slightest nod is to be given to the concept of not liking general warrants, the Government could do a little better than this. This must be the general warrant of all times, forever, for everywhere and for everyone, and nobody can question it. Nobody supervises it and nobody checks up on it. This is the all-time bid for power, the ambit claim by the police. We have an amendment that we believe will assist in bringing the provision back into line.

Part 5 makes the test that needs to be satisfied for surveillance devices lighter when an application is made concerning a proposed section 4 offence. That would appear to be acceptable, and we do not have a concern about that. No doubt the fortifications issue will be dealt with either in committee or by the committee to which this matter is referred, for which I understand Hon Giz Watson will move. It appears on the surface to have a sensible process for the removal of fortifications. It contains provisions for notice, the opportunity to give justification, the capacity for judicial review and the ability to remove them. Generally speaking, it appears to be a proper process to deal with something like fortifications. However, as with any process that has a lot of detail, people do not know how it will operate until they have had an opportunity to speak to someone who has some experience of the matter. If, as Hon Giz Watson is to suggest, this matter is referred to a committee, the committee should take the opportunity to speak to the New Zealand authorities to find out how this works in practical operation.

Hon Derrick Tomlinson: I believe it is failing in British Columbia.

Hon PETER FOSS: Does it have the same system?

Hon Derrick Tomlinson: It is worth going there as well.

Hon PETER FOSS: I was not aware of that. It just goes to show that once we put our minds to these matters, we can come up with all sorts of ideas.

Hon B.K. Donaldson: It is very sensible to study others.

Hon PETER FOSS: Yes. I am sure the Deputy President (Hon Jon Ford) paid particular attention to that remark and no doubt will have his own views on it.

Hon Derrick Tomlinson: I thought it was going to the Standing Committee on Public Administration and Finance.

Hon PETER FOSS: No. I think the appropriate committee for this matter to be referred to is definitely the Standing Committee on Legislation.

Part 7 of the Bill contains some reasonable measures and amends the Freedom of Information Act. I know there is a problem here. The Information Commissioner is not very keen on further exemptions, but it is appropriate that a special commissioner not fall under the Freedom of Information Act, because of the nature of all the other people who have exemptions. Therefore, a special commissioner would at least qualify for an exemption.

Clause 67 is a considerable improvement on its original form; when the Bill was introduced in the other place this was a sunset clause. It would be quite silly to have a sunset clause in this legislation, but a review is acceptable. I do not know why the Government thought it needed a sunset clause; it might have been due to some internal concerns, but the reason is not obvious to the outside observer. However, I am pleased that it was removed in the other place and is now just a review clause.

I read the schedule 1 offences and I am concerned that one offence is omitted from it. Fraud appears to be an area in which those engaged in organised crime are increasingly involved, and it is of considerable concern because of the pernicious nature of the crime. Those involved in organised crime are definitely moving into that area, and the difficulty is that they do it to people who are not in a good position to report it, respond to it or give evidence on it. Often the crime is committed against the elderly or people disadvantaged in other ways. They seize the opportunity to take advantage of people and use fraud as their means of obtaining funds. It would be very unwise to omit this area of increased involvement by organised crime from the schedule 1 offences. It would ignore the direction in which organised crime is heading, and would ignore one of the worst areas of crime that anyone could be involved in, simply because of the nature of the victims who are chosen in those circumstances. I suggest that the Government consider including section 409 of the Criminal Code in schedule 1 of the Bill.

There is substantial support from the Opposition for this legislation. We have concerns with two very significant areas which we think should be looked at. First, there is a lack of resolution on the part of the Government to make this legislation work, by the very nature of the insignificant penalties provided in the legislation. If the investigation provisions are left as they are, it will leave the crime fighting authorities in this State in no better position than they are in at the moment under the National Crime Authority Act.

Secondly, we are concerned about the lackadaisical way in which the Government has given these general warrant powers to the police without any real control or accountability mechanism. As I said, we think that a number of other minor areas of detail are important to work out. When I say they are minor, they will have a significant impact; however, they are not matters of principle but of drafting and practicality. I have raised a number of those matters with the minister and I hope he will give an undertaking to deal with them, because they have the capacity to undermine this legislation significantly and the benefits it may bring.

Finally, we are seriously concerned that the Government has not thought about how the legislation will operate in practice. There is a real risk that a breach of security would not only undermine the intent of the Act but also lead to the severe interference with or even the death of witnesses or the escape of criminals who had been warned as a result of that breach of security. Practically, the Government has no idea whatsoever and it needs time to work that out so that it can assure us how it will work in practice. The Opposition indicates its support for the Bill before the House.

HON JOHN FISCHER (Mining and Pastoral) [8.16 pm]: This legislation is perhaps one of the most important pieces of legislation to be presented to Parliament for many years. This Bill has the potential to remove some of the basic rights that citizens have come to expect in our State. Therefore, it must not be passed with haste and the Council must consider every angle before the Bill should proceed. I am sure this is what the community expects of us. I understand that this legislation does not include a sunset clause, which is very important. If this legislation is to pass, it will need a sunset clause to protect civil liberties, which will operate in three or four years.

Like most members of the Council, I abhor the actions of the bikie gangs that thumb their noses at society. Those gangs are responsible for drug trafficking and much worse. The bombing deaths of Don Hancock and Lawrence Lewis have rightly shocked our society. Therefore, laws that will curb this excessive behaviour must be debated in Parliament. However, we must not trample on the rights of everyone to prosecute the few. In other words, we must not use a sledgehammer when a nutcracker would do the job. When a bikie was shot and

murdered in cold blood at Ora Banda, it was reported in the newspapers that the entire Hancock family was tested for powder residue, as would be expected under the circumstances. They all tested clean, but Don Hancock tested strongly for citric acid. Given his expertise, he would have known that lemon juice is an effective way of removing powder residue. It is understandable that the mates of the bikie who was murdered should feel aggrieved when the police proved totally ineffective and did not arrest anyone for his murder. Blowing up the pub at Ora Banda by shoving gelignite through the window is just as unlawful, although far less sophisticated, as blowing up a vehicle, presumably by remote control. Is there any evidence that the bikies blew up Don Hancock? Although it is true that they had a motive; they also had a substantial disincentive because they knew that any such action would bring down the wrath of the State on them. Some elements of the Police Force could have had a strong reason for getting rid of a man who obviously knew much about the behaviour of other police officers and who would have been prepared to trade on his knowledge for his own protection. Those elements of the Police Force had a motive, the expertise and the opportunity. If that scenario is correct, the Government could offer an immense reward without fear of it ever being collected.

I am not of the view that our Police Force on the whole is corrupt. I suspect that it suffers more from incompetence and curtailment. I believe there is evidence that the real problem is the corruption of the courts and the legal system. We have allowed a system to develop in which justice is for sale and in which the very rich can buy the best brains to evade a conviction, but middle Australians find the price of justice beyond their means.

I am concerned that the draconian measures that the Government is proposing will serve to further enhance the power of the system to protect itself at the expense of society as a whole. No-one can argue that these new powers cannot be very effectively used to intimidate and silence anyone who is trying to remedy a gross miscarriage of justice that is likely to expose the perfidy of our judges, lawyers, senior officials or powerful politicians.

A royal commission into police corruption has been called. I may be cynical but I think it would be foolhardy to rush this legislation through Parliament before the royal commission findings are produced. On the one hand, we are seeking to give police unprecedented powers and, on the other hand, we are investigating the possible misuse of police power. That is a contradiction that has not gone unnoticed by the public. I am concerned that the royal commissioner appointed for this inquiry is not from another State. I certainly hope that when the Government appoints counsel assisting it will look further afield. I note that the terms of reference for the royal commission preclude any investigation of the Perth Mint swindle, for which the conviction of the Mickelbergs continues to gnaw at the conscience of this State.

I recently asked some questions about the Murphy interest in relation to official corruption on a grand scale. I said earlier that I did not believe that the Police Force is corrupt as a whole. However, the gold squad may well be a different matter. I feel uneasy when a section of the Police Force is paid by a private entity, especially as members of that entity are often the best placed people to misappropriate gold and thereby cheat shareholders and government revenue. There appears to be substantial evidence that Michael Murphy was robbed of millions of dollars worth of gold and valuable leases by corporate chicanery. How can we expect the gold squad to investigate the very people who pay them? The technology to prove conclusively where the gold came from has never been fully utilised. I suspect that most gold is stolen by management, not by workers; therefore I fear that we are faced with an inquiry into nothing. Twelve months and perhaps roughly $15 million will answer that concern. However, the inquiry cannot go on forever. I have been advised that information is available that suggests a completely new suspect for the Perth Mint robbery. If that is true, it will completely exonerate the Mickelbergs and cast a massive indictment on our justice system. In the same vein, if Mr Murphy can get his case out of the state jurisdiction, it has the potential to expose the shortcomings of our entire legal system. To this end, One Nation is proposing to sponsor a public forum next year, at which Bob Bottom will be the keynote speaker.

In relation to the Bill at hand, police already have exceptional powers of search and seizure. If one combines sections of the Criminal Code, the Police Act, the Firearms Act and the Misuse of Drugs Act, the police have a good combination of powers to deal with organised crime.

Hon Derrick Tomlinson: Add to that the special powers of the National Crime Authority and you have a really diabolical mixture.

Hon JOHN FISCHER: Quite right. So often we hear and read of cases that come before the courts in which the accused are given a slap on the wrist and sent out to do community service or are given jail sentences that see them back on the streets with indecent haste. This is not the fault of the police; rather, it is the fault of the limp-wristed approach of our judiciary. This has the effect of weakening the resolve of our Police Force to bring law-breakers to justice; it lowers their morale and in some cases can lead to frustration or perhaps even corruption.

This also has the effect of encouraging criminals to continue committing crimes because they do not fear the penalties that are handed out by the courts. Western Australia has the highest rate of theft in Australia. Theft has a major impact on the health and wellbeing of our citizens. Elderly citizens in most of our suburban communities fear for their lives. We have the laws to punish criminals, yet they are not used effectively. If we are to erode civil liberties with this new legislation, we must be absolutely sure that our current laws are inadequate rather than simply ineffectually applied. Before we give police additional powers we need to understand why the powers they currently have are inadequate. The Commissioner of Police needs to spell this out to the public so that the public is comfortable with the idea that additional laws are required. This legislation is asking the public to trust police. In late November the public was alerted to the abuse of police powers involving the random breath testing fiasco. Will these new powers be used widely, or will they be abused? We must ask ourselves that question. What is the risk of them being abused, and is it an acceptable risk?

I will move on to the definition of "organised crime" as referred to in the legislation. Organised crime has been defined as two or more people associated for the purpose of committing one or more of the schedule of offences. This definition is a bit confusing. Two people hardly constitute a gang. I find it difficult to accept that all the police have to do is to prove that two people are involved in two or more crimes to satisfy the threshold test. This could snare a number of people who are totally removed from organised crime and could cause the special commissioner to become bogged down in inappropriate cases. This definition is important because it goes to very heart of this legislation. We also need to understand exactly what is meant by organised crime so that innocent parties are not unfairly categorised under this heading. The Bill contains no protection to prevent Parliament from adding to the list of schedule 1 offences. In time, both these issues may result in the category of offender and types of crime increasing to the point where people no longer need to be parties to organised crime to fall under these laws.

This Bill allows for the establishment and appointment of a special commissioner who will be a Supreme Court judge, District Court judge or a retired judge of either court. By selecting a serving judge, this Bill has introduced an unusual and serious threat to judicial independence. This will compromise the judiciary and their independence as well as the separation of powers between the judiciary and the Executive Government. This Bill may breach the principle of separation of powers, a cornerstone of democratic principle. Judges do not and should not investigate crime for the police. I suspect this is more to do with cost than anything else. Why are we not setting up a new authority to overcome this problem? I believe that the use of sitting judges is highly unsatisfactory and will not work.

In relation to the examination of witnesses, an individual can be summonsed to give evidence in private without legal representation if the special commissioner deems it appropriate. The special commissioner is not obliged to provide legal aid to a witness. The witness has no right to remain silent. If the witness refuses to answer questions, he or she will be held in contempt of court and can be jailed. If a witness fails to attend a hearing, he or she can again be held in contempt of court. The right to remain silent becomes even more important when a witness may face an inquiry without legal representation. The State is well represented with respect to legal representation by way of having a judge as the special commissioner. Witnesses, however, will have only their wits to protect them. I do not believe that this is a fair situation. Questioning a witness in private is a notion foreign to our democratic traditions. This concept is akin to the American system of a grand jury or the sixteenth century Star Chamber inquisitions. Preventing a witness from having legal representation is again a fundamental infringement of every citizen's democratic right.

Everyone should have the right to legal representation. The law is complex. In order that justice be done it is necessary to afford everyone - even a suspected gang member - the right to legal representation. This is because corruption occurs among the ranks of the police, and cases of mistaken identities occur more frequently. Many cases have come to light in the recent past in which injustices have occurred. Democratic rights may be infringed because the legislation allows for no appeal process to be taken against the powers or functions relating to the special commissioner. Every citizen should be allowed the right of appeal, particularly if a witness is obliged to give evidence without legal counsel and in private, away from public scrutiny.

Another consideration is that of legal professional privilege. This will be overruled. This concept was tested in the High Court of Australia in 1983 in Baker v Campbell, in which the court upheld this right. This Bill is seeking to trample on this right.

Another aspect of this Bill is retrospectivity. Any documents that a lawyer may currently have will be subject to scrutiny. Is this Bill meant to be retrospective? That question must be asked. A client may go to a lawyer for advice and the lawyer may make notes on a legal pad. Will these notes then constitute documents that can be held against a witness? Is this the Bill's intention? Democracy is defined not by the will of the majority but rather by the protection of the individual.

I refer now to the demolition of fortifications. Surely the fortification removal aspects of this Bill are covered by current shire building codes. If those codes have been infringed - one would suspect that construction of a fortress could be considered a breach of them - the police already have the power to order removal of such structures. It may be that those codes require some tidying up or modification. However, surely laws are in place now to remove those structures. The Surveillance Devices Act 1998 requires the police to prove to a court that they have reasonable grounds for believing that illegal acts are being committed. That requirement does not appear to be too onerous on police. The Commissioner of Police must explain to the public why these laws are not adequate. It is a basic, democratic right of people to expect privacy with respect to their mail and telephone conversations. If we do not make the police jump at least one hurdle before they infringe that right, we will have trampled on everyone's basic rights. Applications to a court to infringe people's rights provide that protection by way of a paper trail that can be subsequently challenged and appealed in court. That would go some way to ensuring that justice is done. This Bill prevents that appeal process from happening. No appeal process can be taken against the powers and functions of the special commissioner. In addition, the Attorney General has the right to destroy evidence at the conclusion of an investigation. That right will ensure that an individual who has been wrongly accused will have no avenue of redress. That provision must surely be unprecedented. People are constantly being wrongly accused. If they were not, there would be no need for our current court system. This Bill provides no avenue for redress. It should provide a form of ultimate redress.

I do not support the criminal activities of bikie gangs and organised crime syndicates, but I am concerned about the abolition of basic human rights. I give my qualified support to the Bill; qualified because certain matters must occur before the Bill can be passed. First, the police must satisfy the Parliament and the public that the powers they currently have are not adequate and they must explain why they are not adequate. Second, Parliament must consider why the judiciary is currently not dealing adequately with criminals and why bikie gangs have risen in prominence. Third, the Bill must be referred to a committee and sufficient time be given for discussion of the committee's findings by both Houses and the public before the Bill is presented again to Parliament. Fourth, a royal commission into police corruption must be concluded before we can consider giving police extended powers. Fifth, a specific sunset clause must be included in the Bill so that it can be reviewed in the not-too-distant future.

HON GIZ WATSON (North Metropolitan) [8.38 pm]: I rise to speak on the Bill and start by quoting from an article in *The West Australian* on 12 November this year, which states -

> A POLICE service hungry for new powers had duped West Australians into endorsing a police State comparable to South Africa's apartheid regime, Australia's top civil libertarian has claimed.
>
> Anti-gang laws which remove the right to remain silent, DNA legislation which forces people to submit samples and property confiscation laws which assume people are guilty have outraged the Australian Council for Civil Liberties.
>
> Council president Terry O'Gorman accused the WA Government of cashing in on international fears of terrorism to rush through some of the most draconian laws in the developed world.

The Greens (WA) agree entirely with that sentiment. Since this Bill was introduced to Parliament, we have been inundated with correspondence on the implications of this particular Bill. We consider that it is a profound threat to civil liberties in Western Australia. The legislation is intended to target outlaw motorcycle gangs and organised crime syndicates; however, it also seeks to overturn legal principles that protect human rights. These principles have been painstakingly established by western society over hundreds of years. The legislation's most significant impact will be the establishment of a class of inquisitors, known as special commissioners, who will have undreamt-of powers to obtain information from people. Among other things, the Bill removes the right to remain silent; removes the right to legal representation; provides for unlimited fines or jail terms for refusing to cooperate; allows for compulsory interrogation with no right to contact friends or legal counsel; allows police to enter homes or businesses without a normal search warrant if the person has been identified as a person of interest to a special commissioner; makes it easier for police to tap phones or use other surveillance devices; and allows the Attorney General to destroy all records of an interrogation. The Bill has been identified as targeting outlaw bikie gangs; however, evidence has been presented to us that the Bill is designed in such a way that it could be used against other organisations, such as unions or protesters. I remind members that Governments change, and as much as this Government might intend that the powers within this Bill be used to tackle bikie gangs, there will come a time when a new Government is elected. I shudder to think how these provisions could be used against other groups in the community that could be identified as being outlaws or unwanted.

Hon Peter Foss: Like unions.

Hon GIZ WATSON: One of the offences in schedule 1, which lists the offences that are captured by this Bill, is interfering with a train. That is interesting, because I did not know bikies did much interfering with trains.

Obviously, that is a wider net. I suppose the excuse is that it has something to do with terrorism. However, we have seen at both the commonwealth and international levels that once we start trying to put in place laws to deal with so-called terrorists, it becomes very hard to separate legitimate protests from acts of terrorism.

The other crucial issue that has been mentioned by previous speakers is that there is no evidence that police do not already have the necessary powers to deal with bikie gangs. It was put to members of the Greens during briefings that this Bill is necessary to solve the Hancock case. However, no detail was forthcoming about why that is the case, and I have failed to be convinced of the need for these powers. I am also particularly outraged - I do not think "outraged" is too strong a word - that the Government is attempting to force this Bill through the Parliament in such a hurry. This Bill has far-reaching implications, and it has not been fully discussed by the legal profession. It was acknowledged that there was a degree of consultation, but I understand that was limited and in confidence.

I now turn to some of the correspondence that I have received about this Bill, because it is important that members understand the depth of criticism that has come from some of the recognised legal organisations in this State. For example, I have here comments on this Bill that have been provided to me by the Law Society of Western Australia. In this briefing paper, the Law Society states -

> The Society:
>
> (1) supports strong measures against organised crime;

Certainly, the Greens (WA) agree with that entirely -

> (2) condemns as abhorrent and completely unacceptable, the recent suburban bombing incident at Lathlain which resulted in the deaths of former Detective Don Hancock and local racing identity, Lou Lewis;
>
> (3) supports measures towards ensuring that perpetrators of heinous crimes are brought to justice, tried and if found guilty, severely punished.
>
> However, at the same time, the Society remains vitally concerned to ensure that any new legislation passed in the aftermath of abhorrent crimes **does not** constitute an overreaction which would trespass long term against fundamental freedoms which Australians treasure as part of a free and democratic society. In this regard, the Society makes three fundamental points:
>
> (a) Legislation which curtails civil liberties and freedoms should never be rushed. Such legislation needs to be very carefully considered by all sectors of society. The implications of dramatic curtailments against traditional freedoms such as the right to silence, the enjoyment of legal professional privilege to obtain confidential legal advice and the right to competent legal representation - all need to be carefully thought through and publicly scrutinised.
>
> (b) The onus of demonstrating a true need for legislation which curtails traditional freedoms - falls upon those who are advocating change to make out a convincing case to the community in relation to why such measures are reasonably required.
>
> (c) It needs to be remembered that the Police already hold very considerable investigatory and search and seizure powers eg the power to seize assets that are the proceeds of crime has itself recently been very considerably strengthened by new legislation brought into force only last year.
>
> If investigating authorities such as the Police believe that recent crimes are not capable of being solved or the perpetrators brought to justice using the level of existing considerable powers which they already hold, then the public should be told this openly and reasons given. In other words, an empirical basis in fact needs to be made out justifying why it is contended that the level of existing powers are not adequate to do the job properly. Here, such a justification process has not even been attempted to date.

The Law Society goes on to make specific comments, which I will also bring to the attention of the House. The paper states -

> The following specific comments about this Bill made by the Society, are preliminary in nature only. To date, the Bill has been provided to the Society on a confidential basis by the Attorney General. The Society has respected that confidence. Accordingly, a reasonable opportunity for widespread input from all quarters of the legal profession has not yet been afforded. That fulsome process needs now to be undertaken, especially with proposed laws of this moment.
>
> The Society makes the following specific comments on an interim basis:

1. Part 2 of the Bill deals with the appointment as Special Commissioners of either existing Supreme or District Court Judges, or retired Judges from those Courts. This is unprecedented and is a serious threat to judicial independence insofar as serving judges are concerned. The Society is concerned that the imposition of this investigative function upon serving judges will compromise the judiciary and its independence - that is inconsistent with the notion of the separation of powers between judicial adjudicative functions, and the functions of the Executive Government.

There is also criticism of appointing retired judges as special commissioners. My understanding is that judges usually retire only when it is considered that they are no longer capable of performing the duties of a judge. That is my understanding; I do not know whether that is the case. They usually continue to be active until they are seen to be past their use-by date.

Hon Derrick Tomlinson: They must retire at 70 years of age.

Hon GIZ WATSON: I did not know that. Is there no variation of that?

Hon Derrick Tomlinson: They used to be appointed for life. I think it was in 1991 that retirement at age 70 was imposed. There is a question about whether that contravenes the Equal Opportunity Act as discrimination on the basis of age. They still retire at 70.

Hon GIZ WATSON: Perhaps my criticism is not warranted. The Law Society document continues -

2. The notion of persons being compulsorily summoned to give evidence before a Special Commissioner **in private**, is a notion that is also foreign to our democratic traditions. The concept is akin to that of the American concept of a grand jury investigation or even to that of 'Star Chamber' of the 16th Century. Furthermore, in such an environment the right to legal representation should be an unassailable safeguard - given the extremity of what is now proposed. The Society notes with great concern clause 17(2) of the Bill, which permits a Special Commissioner to proceed without a person having legal representation at the discretion of that Special Commissioner. This is not satisfactory. Proper legal representation during such an interrogation should be mandatory! Where an examined person cannot obtain or cannot afford legal representation in time, then legal representation must be provided by the State.

3. A person who fails to attend or fails to answer questions during an examination by a Special Commissioner will be punished - essentially on the basis of having committed a contempt of court. In other words, that person is not charged with the commission of a crime and then given the benefit of an open and public trial to decide guilt or innocence. Rather a contempt of court of procedure is adopted upon a motion of the Attorney General before the Supreme Court. This is not satisfactory. There is now recognition that the contempt of court procedures currently used for instance where newspapers or media organisations commit a contempt of court, is itself outmoded, unsatisfactory and requiring of reform, see recent Law Reform Commission Reports [ALRC Discussion Papers 27 and 26 (1986) and WALRC Discussion Paper "Contempt in the Face of the Court" August 2001 Project 93(1)]. A proposal to expand the Supreme Court's contempt of court jurisdiction is going backwards. This whole proposed non co-operation sanction procedure needs to be rethought.

4. The abrogation of legal professional privilege by clause 38 of the Bill in respect of documents sought under s12 is wholly unjustified. No empirical basis has been established for the abolition of this fundamental freedom. The High Court of Australia in *Baker v Campbell* (1983) 153 CLR 52 recognised that legal professional privilege is a freedom enjoyed by a client, not the lawyer. Moreover, it does not ever apply where criminality is associated with its invocation. The privilege applies so that any person is able without constraint to consult a lawyer to obtain independent legal advice. As Deane J said in *Baker v Campbell* at p120:

> "That general principle represents some protection of the citizen - particularly the weak, the unintelligent and the ill-informed citizen - against the leviathan of the modern state. Without it, there can be no assurance that those in need of independent legal advice to cope with the demands and intricacies of modern law will be able to obtain it without the risk of prejudice and damage by subsequent compulsory disclosure on the demand of any administrative officer with some general statutory authority to obtain information or seize documents."

5. Clause 37 excluding judicial supervision by prerogative writ or declaratory judgment in relation to the performance of a function under clause 2 of the Bill is completely repugnant to the principle of the rule of law and the base requirement of accountability where great powers are conferred upon individuals in our society. It might be one thing to provide that such relief cannot interrupt an immediate obligation to attend, co-operate and provide information. However, as time passes, facts become clearer and evidence emerges, on what possible basis should the exercise of extraordinary power by an individual in private with the potential for extraordinary harm to be done against civil liberty - be removed from ultimate public scrutiny and accountability?

   Clause 37 is simply offensive to the notion of the rule of law. It is a sledge hammer used to crack a nut.

6. Clause 11(3) provides for potential destruction of evidence at the whim of an Attorney General at the conclusion of an investigation. This is a step capable of undermining proper scrutiny and accountability at a later date. It is a provision capable of easy abuse.

7. Clause 36(2) imposes an unacceptable burden against an employer to prove that an employee has not been dismissed on account of an employee having appeared as a witness before a Special Commissioner or on account of an employee having given evidence before a Special Commissioner. The penalty of imprisonment of five years and a fine of $100,000 is out of proportion to the other penalties imposed under the Act. So for instance, compare clause 33, destroying evidence, breaching privacy of proceedings (clause 29) etc. The reversal of the onus of proof against the employer by clause 36(2) is not acceptable. Interrogation before a Special Commissioner is intended to be confidential. In the absence of full facts coming to light, the suggestion that an employer should be assumed to have discriminated against a person giving evidence before a special commissioner is wholly out of place.

8. Part 3 of the Bill provides for expanded entry, search and related powers to be given to a Police Officer once the Commissioner has satisfied the special commissioner that the grounds of s6(3) had been fulfilled. But the interrelationship between clause 44 and clause 45 is not clear enough.

9. **Part 5: Fortification Removal**

   The erection of heavily fortified structures erected by bikie gangs in recent times is not justifiable. Permission should never have been granted for the erection of such structures under the Town Planning laws in the first place.

   The Society is less concerned about measures to force such structures to be removed. However, it is concerned that the definition of **"organised crime"** in s3, which is defined only by reference to the commission of crimes by two or more people and to a Schedule of offences. Two people acting together are hardly "organised crime" in the true sense of the term. However, Schedules can be altered easily in the future without proper scrutiny.

I make the point that I raised when briefed on this provision. I acknowledge that Hon John Fischer made the same comment. If there is a problem with construction, it is more appropriately dealt with under planning legislation, local by-laws or building codes than in a separate Bill such as this. I certainly argue that some of the structures for the fortifications used in some of the bikie premises would be in breach of some planning requirements. It is arguable that the powers are already in place to require those fortifications to be removed. It continues -

10. **Part 4: Surveillance Devices**

    An empirical case based upon fact once again needs to be made out to the community at large explaining why existing powers provided under the *Surveillance Devices Act* 1998 are inadequate, and why enhanced powers are required.

That is the end of the substantive comments in correspondence from the Ken Martin QC, President of the Law Society, on 6 November of this year.

I want also to make reference to correspondence I have received from the Criminal Lawyers Association of Western Australia in a letter dated 15 November. Obviously a number of points that were made by the Law Society are repeated in that correspondence, but I would like to bring to the attention of the House some additional points in the correspondence from the Criminal Lawyers Association. In its letter it makes the point -

> A citizen may be brought before a Special Commissioner at any time of day or night without the advantage to having access to legal advice.

The point was made earlier that, not only can a person who has been identified by the special commissioner be brought forward at any time, but also provisions within this Bill do not specify for how long the person can be detained. Hon Peter Foss made the point that this is an extraordinary power to be put in the hands of police. It also makes the point -

> Police powers are by the legislation increased and yet the legislation does not provide for any safe guards against the misuse of power by police, for example, under Section 45 a police officer does not need a Search Warrant to enter premises even though Search Warrants are presently very easy to obtain. There is no provision imposing an obligation on the police officer having conducted a search without warrant to inform the owners or indeed itemise anything that is taken. An owner of the premises may therefore be the subject of a search and taking of items without ever being advised that such a search has taken place.

It goes on to say -

> There would not appear to be any safeguards for witnesses who give evidence before a Special Commissioner as there would appear to be no reason why documents and evidence put before the Commission could not be the subject of a subpoena.

Again, I made the point when briefed on the Bill that it appears that nothing within the Bill prevents the evidence given to the special commissioner from being subject to a subpoena. I have had no satisfactory answer to that question. I also raised the question of protected witnesses, because I can well imagine that someone who might be summonsed before the special commissioner could be on the protected witness program. What provision is there to ensure that another situation like the Petrelis affair does not arise in which a protected witness comes to a very untimely end? That is probably the least I can say about that.

Hon Derrick Tomlinson: His end was very tidy - too tidy.

Hon GIZ WATSON: Untimely, not tidy. The member is right; it was too tidy.

Hon Frank Hough: Involuntary euthanasia.

Hon GIZ WATSON: Yes, that is right. Those are two quite critical matters in the Bill that are not adequately answered.

I have raised the issue that those within the legal profession to whom I have spoken are appalled at not only the intention of this Bill, but also the speed with which the Government is seeking to introduce the Bill, and the fact that they have not had an opportunity to be fully consulted. The point has been made that this Bill, when originally introduced into the Assembly, had a sunset clause, and the Opposition amended the Bill so that the sunset clause became a review. In our opinion, that makes matters much worse. Rather than having the safeguard that the Bill would have a limited life, it will only be reviewed. I guarantee that if the worst happened and the Bill went through, it would then continue. I reiterate that the Greens (WA) will do everything within their power in the Parliament to prevent this Bill becoming law.

At the very least, it is essential that this Bill go to a committee, so that it can be fully scrutinised, the committee can take evidence from witnesses and everybody will have an opportunity to step back from the rush to get this Bill through the Parliament. The Greens (WA) have failed to be convinced by any argument that has been put for the need to pass this Bill so quickly. Indeed, we are not convinced that there is a need for it at all, let alone to have it implemented so quickly. We can only conclude that it is in the Government's political interests for this Bill to be rushed through so that it can be seen to be tough on bikies. This Government has taken an appalling approach, which has left me almost speechless, because, on the one hand, this Government has made progressive changes to our laws while, on the other hand, it has introduced what the Greens consider to be one of the most fundamental attacks on the western legal system anywhere in the civilised world. As I say, I do not speak in those terms unless it is warranted. Time and time again the Greens have been told either by fax, e-mail or telephone that whatever we do, we must stop this Bill being passed. People tell us that they consider the Bill to be the most fundamental attack on civil liberties and the legal system that they have seen anywhere, not only in Australia but also in the western democratic system.

The point has been made that the community in this State has awaited a royal commission into the Police Service for many years. Finally the Government has moved to establish a royal commission that will cost in excess of $15 million. We are delighted that the Government has finally set up that royal commission. We have called for its establishment for at least eight years, if not longer; it is well overdue. The Government says that it is time to investigate the police and the long-standing accusations of corruption in the Police Service. It is time not only

for the community to have the opportunity to investigate the Police Service, but also for the Police Service to have the opportunity to present its case. It will provide an opportunity for all that information to be brought to the fore. However, it is nonsense that at the same time a royal commission into police corruption is to be held, the Government wants to provide the police with undreamt of exceptional powers before we have heard even a fraction of the evidence that will be brought before it. This is an appallingly cynical exercise which is incredibly misguided and which is being done for the crudest of political reasons. As I have said, it is being done so that the Government can appear to have done something to tackle bikies. However, the impact of this Bill will have far more wide-reaching and long-term effects.

The Greens are disappointed and angry with the Government for introducing this legislation and we are the only party to say that this Bill should be thrown out. We appreciate that parties opposite will, we trust, accept the motion to have the Bill referred to committee for further investigation. The Labor Party, the Liberal Party and One Nation are in an unholy competition to make laws harsher and to whip up a climate of fear in the community. I must take exception to the comment by Hon John Fischer to the effect that all elderly people in the suburbs are living in fear of their lives. What a load of rubbish!

Hon B.K. Donaldson: They are; you talk to them.

Hon GIZ WATSON: It is absolute rubbish. I do not know to whom the member talks, but that is a totally irresponsible statement. Do all elderly people in Western Australia live in fear of their lives?

Hon Frank Hough: You obviously do not live; you must live in a little cocoon.

The DEPUTY PRESIDENT (Hon Jon Ford): Order! Hon Giz Watson has the floor.

Hon B.K. Donaldson interjected.

Hon GIZ WATSON: Members may not have heard the speech I made on crimes against seniors. The suggestions of members opposite are not borne out by statistics. The rate of crime against the elderly in Western Australia is among the lowest in Australia. They are one of the least victimised groups in our community. I have spoken to many who are well in control and not in fear of their lives.

I do not think anyone in this place disagrees that the activities of and intimidation by organised criminal groups, whether they be bikies, drug dealers or whatever, must be addressed. However, someone asked why bikies have become such a powerful force in Western Australia. They did not have the same power 15 or 20 years ago. Bikies were around, but they were not a force that could mobilise and incite terror. This problem has arisen because of our drug laws and because we have not properly tackled the issue of drugs. While drugs remain the purview of bikie gangs, bikie gangs will continue to maintain their power. We place the sale of drugs and the money involved in the drug trade in the hands of criminals. That is the issue. Until the drug laws in Western Australia are reformed, drugs will continue to be supplied by people such as bikies. Until we adopt a radical approach to the way in which we deal with drug-related issues in Western Australia, we shall never be able to tackle organised crime conducted by thugs such as bikies. As has been said, too much profit is made from the sale of illegal drugs for organised crime not to be involved. It almost does not matter how high the fines are or that members of gangs may spend some time in jail; they know that ultimately they will be well and truly in control when they come out of prison. The challenge is to be much more creative and realistic about dealing with the underlying causes of the power that now rests with the bikie gangs.

An underlying issue that will be revealed by a royal commission is that some members of the Police Service are involved in some of these activities. That information must come to light. A knee-jerk reaction, such as this legislation, which attacks the fundamentals of our legal system, is not the way to bring back law and order to the State. I am appalled that this Government contemplated introducing legislation like this because, by and large, it is a very progressive Government. I am also appalled that the parties on the other side are happy to join in and try to crank it up even more. Members can rest assured that the Greens will continue to oppose this Bill and any legislation of a similar nature.

HON DERRICK TOMLINSON (East Metropolitan) [9.13 pm]: It is an interesting proposition that if drugs are a source of crime and we legitimise the sale and exchange of drugs we will eliminate crime - there would be no criminality. We need to look at the relationship between products and organised crime. Once upon a time we had very strict laws on the purveying and distribution of liquor. A lot of resources were expended on enforcing the liquor laws, but so prevalent were the breaches of those laws that we decided the best way to resolve this was to liberalise the liquor laws. No longer was any crime associated with liquor, but because the criminal element had lost that source of revenue it looked for something else. Liquor was associated with gambling, and gambling was still illegal. We liberalised the liquor laws but we did not liberalise the gambling laws. We then turned resources from enforcing the liquor laws, which were now liberalised, to enforcing the gambling laws, until we realised that the only way to solve this problem of gambling was to legalise it, so we legalised gambling. The

criminal element thereby lost its control and source of income through gambling, so the criminal element looked somewhere else. We went from liquor to gambling to prostitution. Prostitution has not yet been liberalised, so prostitution is a lucrative source of revenue for organised crime, and associated with that of course is drugs - but we are about to liberalise prostitution and drugs! Regrettably, the criminal element will find something else; that is one of the conundrums in this process.

I want to take a role that I suppose is an unaccustomed one for me; I want to spring to the defence of the Police Service, because tonight we have heard many attacks on the Police Service and the concerns expressed that the measures contained in this Bill will simply unleash a corrupt Police Service onto society, and those who protect us will become our oppressors. We cannot look at this Bill in isolation from other laws, regulations and procedures that regulate the conduct of police behaviour. This Bill, if and when it passes into law, will not function in isolation from those other laws, regulations and procedures - they will continue to regulate the Police Service. Of course, we also have the judiciary; whether the judiciary is competent to regulate the Police Service is something that has already been raised in debate, but it is there. The ultimate control of the excesses of the police jurisdiction is eventually the courts.

We must look at this Bill in that context. Having said that, when corrupt police officers are given access to powers such as this, all we are doing is enhancing their opportunities of criminality. I do not know how extensive corruption is in the Western Australia Police Service; I believe it exists.

The DEPUTY PRESIDENT (Hon George Cash): Order, Hon Robin Chapple! I do not know if the member has read the standing orders, because it appears as though the member is reading a newspaper.

Hon DERRICK TOMLINSON: I was making the point that I do not know how extensive corruption is within the Western Australia Police Service, but I hazard a guess that of the approximately 4 750 serving officers the royal commission will probably identify between 50 and 100. Let me say that the royal commission will name 75 officers who are engaged in some form of corrupt behaviour as opposed to criminality, and that is not identifying the number of other officers who allow it to happen. It is my belief that the bulk of police officers in Western Australia are dedicated officers committed to maintaining the law and protecting public security and safety. However, I am concerned about these powers being given to corrupt members of the Police Service - whatever their number.

Hon B.K. Donaldson: Will it cost $200 000 to investigate each of those 75?

Hon DERRICK TOMLINSON: $15 million will be just a deposit. That is the experience of the Fitzgerald inquiry in Queensland and the Wood Royal Commission into the New South Wales Police Service. If there are 75 officers, I estimate that it will cost $1 million to investigate each.

Hon Peter Foss: That sounds reasonable.

Hon DERRICK TOMLINSON: It is the high cost of democracy.

Hon Peter Foss: And it will take several months to investigate each officer.

Hon DERRICK TOMLINSON: The report will not be presented until Hon Peter Foss is next the Attorney General. I am sure the Minister for Racing and Gaming will understand the irony that in this Bill we shall give to the police powers which they have so vigorously campaigned against in the Anti-Corruption Commission. The parallels are interesting. In section 8 of the Anti-Corruption Commission Act the three commissioners may appoint a person who has been a barrister or solicitor of the Supreme Court or the Supreme Court of another State or Territory of not less than five years standing and practice to be a special investigator to investigate and report on an allegation or a class of allegations specified. That person is an inquisitor with the powers of a royal commissioner. Clause 6 of the Bill provides for the appointment of a special commissioner. The Governor may appoint a person as a special commissioner for a period not exceeding four years specified in the appointment. The person appointed must be a person who holds office or has retired as a judge of the Supreme Court or the District Court. That person will be an inquisitor with all the powers of an inquisitor. This Bill appoints the sorcerer and in the Anti-Corruption Commission Act we appoint the sorcerer's apprentice, but we clothe both the sorcerer and the sorcerer's apprentice with the power to deny persons compelled to appear before them the right to silence. We deny them the right to not incriminate themselves. We compel them to answer under pain of imprisonment or some other penalty. We take away their civil liberties. The investigation in both instances is conducted in private and all participants are under strict obligation to maintain confidentiality. These are investigations which are conducted in private and about which the persons under investigation may say nothing.

It is ironic that the Police Union (WA) and members of the Police Service have campaigned actively and vigorously against the Anti-Corruption Commission and vilified its powers, yet we give those same powers to a special commissioner. Why? We justify the powers of the Anti-Corruption Commission because we say

corruption is an insidious crime conducted by clever individuals who are so adept at concealing their criminality that we need special powers to winkle them out. Are we saying with this exceptional powers Bill that organised criminals are so ruthless and so adept at avoiding prosecution that we must give special powers to a commissioner or commissioners to bring them to justice? The irony is interesting. The powers that the police believe are offensive when used against them are essential when they want to deal with criminals whom, for whatever reason - competence or otherwise - they are unable to bring to justice.

However, there is a further irony in all of this, Mr President. The police already have the powers given to them in this Bill under the National Crime Authority. The Western Australia Police Service, with its memorandum of understanding and its participation in the National Crime Authority, not only has access to those powers but also exercises them when dealing with organised crime, and has done so since the National Crime Authority was established. We are giving the police powers that they already have because they cannot bring to justice organised criminals using those powers. If they cannot do that, how will they bring them to justice with the selfsame powers in a different Act? It is not a question of cracking a nut with a sledgehammer. Was that the analogy used?

Hon Peter Foss: Yes.

Hon DERRICK TOMLINSON: Are we not looking at the wrong nut? Should we be looking at the competence of the investigators, not the powers of the investigators? Having said that and having drawn comparisons between the powers of the special investigator under the Anti-Corruption Commission Act and the powers of a special commissioner under the exceptional powers Bill, I suggest that had a similar thought been given to the drafting of the Anti-Corruption Commission Act as was given to the drafting of the powers to be given to the special commissioner under this Bill, we would have a much better Anti-Corruption Commission Act and, therefore, a much better Anti-Corruption Commission. Unfortunately, the Anti-Corruption Commission Act is a dog's breakfast that is cobbled together in such a way as to render it unworkable.

Hon Peter Foss has indicated some of the Opposition's questions about this Bill. The Opposition supports the Bill, but it has questions about it. I understand that it is likely that before the Bill goes any further, it will be referred to a committee for proper scrutiny. I asked the Government about the limitations the Bill will impose on organised crime. The minister made this statement during the second reading speech -

> This Bill targets organised crime. It will give Western Australia the toughest laws in Australia for combating the sinister and complex activities of criminal gangs.

The definition in clause 3 states -

> **"organised crime"** means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation;

The schedule 1 offences are those which Hon Peter Foss recited, and range from wilful murder under section 278 of the Criminal Code to property laundering under section 563A of the Criminal Code. All that is needed is the suspicion that two offences have been committed by two people who engaged in substantial planning and organisation. Would that include two people who conspired to commit an intricate murder on the Kalgoorlie *Prospector* for which they wanted to escape detection, but which they wanted to make sure was executed to the best effect? They want to bump off the victim by an exploding toilet seat, which is operated by remote control. It would be very effective. Hon John Fischer referred to the gold squad. Blowing up the dunny is a very popular crime in Kalgoorlie. I am sure it would know all about that. Of course, in executing the victim by blowing up the toilet seat on the *Prospector* by remote control, those responsible would also endanger the safety of passengers on the train. They are two crimes that require intricate planning. If two or more people were involved, by this definition, it would be considered organised crime.

Hon Peter Foss: It would be an offence under clause 4(b) in any case.

Hon DERRICK TOMLINSON: Hon Peter Foss has already expounded on the difference between the clause 4(a) and clause 4(b) offences. I suggest that the Government needs to reconsider this question of organised crime. Is it really talking about the so-called bikie gangs? Is this just a knee-jerk reaction to the alleged murder, by some unknown bikie gang, of Don Hancock, or is it something that has been in the bottom drawer for some time; and are these so-called bikie gangs the only organised criminals in Western Australia? I believe that we need to consider at least three groups.

The bikies are not a new phenomenon. Ten years ago, the police in Western Australia were concerned about the rise of bikie gangs. Members might recall the territorial war between the Hells Angels and -

Hon B.K. Donaldson: God's Garbage.

Hon DERRICK TOMLINSON: No, not God's Garbage.

Hon N.D. Griffiths: There was the Mongrel Mob.

Hon DERRICK TOMLINSON: There was the war between the two gangs. The Gypsy Jokers and Hells Angels were the two main contenders in this war. The fact that they went around brutalising one another was in itself offensive, but what were they brutalising one another about, and what was the territorial war about? The territorial war was about control of a niche of the drug trade in Western Australia. That was 10 years ago, and the police of the day were helpless to do much about it.

The stage has now been reached at which bikie gangs are some of the major wholesale distributors of drugs in Western Australia. I think their speciality is amphetamines. A few years ago it was marijuana, but of course everybody smokes marijuana, it is not a crime, and there is not much money in it these days. The real money is in amphetamines, so now the bikie gangs are going after them.

The second group is the one that is characterised as the Northbridge ponytail brigade. The Northbridge ponytail brigade is not a new group either; in fact, the members that brigade are the sons of the same people who organised the gambling dens of Northbridge and who were the targets, and the favourites, of the liquor and gaming squad. The sons of those people became the Northbridge ponytail brigade, and that brigade came to notice at least a decade ago. However, what is insidious about that group is that those in the group who are visible, the so-called Mr Bigs, are merely the middlemen of the trade. They are the wholesalers. Who are the importers? Let me put this proposition to the House: there is a link between the wholesalers, whom I will call the ponytail brigade, and the importers. Those importers, who are very adept, very clever, very skilled and very well-informed businessmen, both in the criminal and legitimate fields, are criminals who are as organised as the bikie gangs - probably better organised. I suggest that those people probably are engaged in very legitimate businesses as, for example, restaurateurs or car salesmen.

Several members interjected.

Hon DERRICK TOMLINSON: I am sorry, I was not referring to Hon Frank Hough.

Several members interjected.

Hon DERRICK TOMLINSON: I was talking about a different level of functioning, not Chicken Lickin'. I was talking about the big red fox.

That insidious group of criminals is more dangerous to the fabric of Western Australian society than the bikie gangs.

The third group of organised criminals has a rather entertaining racket. Those involved import girls from Hong Kong - where in Asia they are recruited is irrelevant, but their route is through Hong Kong - and from there they travel to Sydney, where their passports are confiscated. They are distributed throughout Australia to work in brothels until they earn back their passports. Such girls are working in the brothels that do not exist in Perth. The local vice squad is powerless to do much about that, because it does not have adequate laws to control prostitution. The officers concerned know that they are dealing with organised criminals.

Each of the groups has a share of the most lucrative crime scene market - the drug market. I am not referring to marijuana or even heroin; I am referring to amphetamines, which are simple to mass produce and which have a ready market. Each group - the bikies, the Northbridge group and the Asian gangs - has a niche in that market and each is involved in prostitution.

If this Bill is about targeting organised crime, where are the offences that the organised criminals exploit so lucratively? Schedule 1 refers to the offences under the Criminal Code that may be relevant to this legislation. Those offences include murder and wilful murder. There is not much profit in that; it costs $45 000 to rub out someone, and that is chicken feed. Attempting to murder and disabling in order to commit an offence are also included. They could do that to me on the way home. Other offences include stupefying in order to commit an offence and inflicting grievous bodily harm. They are tools of trade for these criminals - ask Mr Petrelis. The list goes on: endangering persons travelling by rail. Good grief! When did bikies interfere with a railway carriage? Reference is also made to endangering persons travelling by air. We are not dealing with Osama bin Laden - although it could be Osama bin Bikie. The list also includes causing an explosion. That is simply an instrument either to rub out an embarrassment or to settle a vendetta. An explosion is nothing more than an instrument; it is not the focus of the criminal activity, nor is it a lucrative source of income. The schedule also refers to the offences of kidnapping, obstructing or injuring railways, endangering the safe use of an aircraft, causing explosion likely to do serious injury to property, making or possession of explosives under suspicious circumstances, and then property laundering, which is probably the only one that is a real target of organised crime. The group that I have just described is the very visible bikies. We do not have to look for them because

we can hear them. When their Harley Davidsons are driven along Mundaring Weir Road I hear them. They travel in groups of 40. I do not have to look for them because they are so visible, and so audible - like me, Mr Deputy President. The Northbridge brigade flaunt themselves to the law, they flaunt themselves to the public, they flaunt themselves to the newspapers, they flaunt themselves to television and they flaunt themselves to the committees of this Parliament. We do not have to look for them. If someone wants to find a brothel, he should go to the nearest taxi and he will be taken there. They are a very visible group.

Does this Bill really tackle these people? Do these powers that we are giving the police really address that criminality? Do these powers and those crimes set out in schedule 1 have anything to do with the source of criminality? The source of criminality is the profit; the profit is the product; the product is sex and the product is drugs. There is not one reference in the schedule to sex and drugs. There is, however, a reference to money laundering, because that very visible group is nothing more than the 10 per cent of the iceberg. That group of people employ accountants, lawyers and business managers. They are running commercial empires of a scale that we could not comprehend. Those visible groups are underpinned by very skilled and adept commercial legal manipulators. They are able to operate because the law does not touch them. We talk about money laundering. It is the only crime mentioned in the schedule that might go anywhere near organised crime in this State.

Her Majesty's Opposition has said it will support this Bill. In fact, I think it has some amendments to strengthen the Bill. It could well have been that we would have come back between Christmas and the New Year if we had delayed the Bill - certainly by 19 January, which was the proposal. We had a similar experience in 1991 when we brought in exceptional powers legislation to deal with juvenile offenders. So important was it that the police have the powers to deal with those juvenile offenders that Parliament had to be recalled during the Christmas break. The legislation was enacted giving not only the police the powers to detain those offenders, but also the courts the powers to lock them up and put them away. Do members remember the Bill? Do they remember the Crime (Serious and Repeat Offenders) Sentencing Bill that we had to pass, otherwise the State would be overrun by juvenile offenders? It caught nobody. It had no effect. It did nothing.

Hon Peter Foss: It was a very good window-dressing.

Hon DERRICK TOMLINSON: It was a very good Bill, because we got a trip to New Zealand out of it, and we wrote an excellent report on it.

Hon Peter Foss: As always.

Hon DERRICK TOMLINSON: However, like everything else, nobody read the report.

Hon Peter Foss: We did.

Hon DERRICK TOMLINSON: We did; we wrote it! I suggest to you, Mr Deputy President, that this Bill will have the same effect.

Hon Peter Foss: Another trip to New Zealand!

Hon DERRICK TOMLINSON: Regrettably, I am not on the Standing Committee on Legislation, so it will not have that effect for me. However, in dealing with the mischief that it is intended to deal with, it will have the same effect in dealing with the mischief that the Crime (Serious and Repeat Offenders) Sentencing Bill had on its target - nil. It will not work, because the Government is clothing the emperor in new clothes. The Government is giving the police powers that they already have under the National Crime Authority. It is giving the police the powers that they have been using for more than a decade to try to cope with organised crime at national and state levels. In the whole time that the National Crime Authority, with the exceptional powers available to it and by the memorandum of understanding available to the Western Australia Police Service, including the instruments and equipment available to the NCA in spite of any other Western Australian law, all we have seen is the escalation of organised crime in Australia and Western Australia. This window-dressing, hooked upon the alleged murder of Don Hancock, is a sham and charade. However, in this sham and charade, we are giving to the police and to the special commissioner the powers that the police themselves find so offensive in the Anti-Corruption Commission. We are giving to the corrupt group of people the powers to embolden themselves and to enhance their corruption. One of the reasons that organised crime is able to thrive throughout the world is that it has the willing cooperation of corrupt police officers, corrupt judiciary and corrupt politicians. With the willingness of a society to allow it to happen, so the corruption continues. I am sorry that the Leader of the House finds this so boring, but if he were not bored and had a close look at the legislation, instead of threatening us with dire consequences if we do not pass it, he might have a different attitude. Hon Peter Foss has indicated that the Opposition will vote for this Bill. I will vote for this Bill even though there are a lot of questions about it. When it becomes law, I predict that it will be ineffective.

HON ROBIN CHAPPLE (Mining and Pastoral) [9.54 pm]: I will be brief and succinct. I will raise a couple of points in response to Hon Derrick Tomlinson and my colleague, Hon Giz Watson. As has already been stated by my colleague, the Greens (WA) fundamentally oppose this legislation and we are also extremely concerned about elements of it. If the Opposition and Government, in cahoots, pass this legislation, there must be a thorough review of some of its components.

The first major concern that strikes me is clause 66, which amends the Freedom of Information Act. I understand that One Nation members also have a specific concern about clause 66, and I commend them for that. Under the original proposal, four years after the date on which it received royal assent, the Act was to expire. That would have been an end to the Act because it was deemed to be for a specific purpose. However, now the legislation will be reviewed after three years and will continue in perpetuity. If we introduce what I consider to be draconian legislation and we do it for a specific purpose, it is valid to specify an expiry date. However, it is not in the best interest of this State to continue what might or might not be flawed legislation.

The other point I specifically make is about the establishment of the commissioner. This Bill does not establish a separate investigative authority. I take on board the points raised by of Hon Derrick Tomlinson about the National Crime Authority. The NCA is established by an authority that includes a chairperson, a member holding office and a number of other members. Therefore, it is an authority that can be reviewed. Under this legislation, we would appoint a member of the judiciary, either retired or current. We would have only that member's personal commitment that he or she would disclose any interest or prior knowledge of involvement with a person who may be brought before that member. That is a serious concern. Honourable members, especially Hon Peter Foss, know about the old Star Chamber. The Star Chamber was not an individual, but a committee that operated under a form of review. However, it was fairly draconian because if a lawyer misrepresented in any way, shape or form his client's position or if he attested to a client's position that was deemed wrong, he either had his ear cut off or his cheek stamped with a hot iron. Invariably the lawyer would lose his practice and just about everything else that went with it. I do not think this legislation will go quite that far. However, it is flawed in a number of ways.

I refer to the issue of bikies' fortifications. One of the reasons this Bill was introduced was the difficulty police have when chasing a felon who happens to be a bikie. As the police approach the bikie's fortified place of residence, he gains access and the police cannot enter the premises. The police must therefore obtain a warrant. Once inside the fortified building, it is very difficult to identify the offender among 10 or 12 bikies who all look like him and wear beards similar to his. Picking him out of the group would be just as easy by saying eeny, meeny, minny, mo.

The way to deal with this issue is through delegated legislation. We could easily do that without making any major amendments. As the members know who serve on the Standing Committee on Delegated Legislation, it is a very effective way of making legislative changes that will remove a problem in one fell swoop.

Some points were made about the offences listed under schedule 1 of the Criminal Code. Section 451, "Obstructing and injuring railways", reads -

> Any person who unlawfully, and with intent to obstruct the use of a railway or to injure any property upon a railway -
>
> (1) Deals with the railway or with anything whatever on or near the railway in such a manner as to endanger the free and safe use of the railway; or
>
> (2) Unlawfully shows any light or signal, or deals with any existing light or signal upon or near the railway; or
>
> (3) By any omission to do any act which it is his duty to do causes free and safe use of the railway to be endangered;
>
> is guilty of a crime, . .

As we know, in the past picket lines have been used in industrial action against the railways, and two or more people - which is the intent of the Act - consorting to enter into two or more offences within the statutes can be called before the commissioner.

Hon Peter Foss: It had not escaped our attention.

Hon ROBIN CHAPPLE: Section 296 is headed "Intentionally endangering safety of persons travelling by railway", which is also an element of the statute. If we bring together those sections we have two elements - two or more people consorting who can be brought before the commissioner.

I suggest that whatever happens in this debate, this needs very thorough investigation by the Standing Committee on Legislation. It can deal with some of the problems that arise as a result of hurriedly drafted legislation, and recommendations and amendments can be made within that process.

HON FRANK HOUGH (Agricultural) [10.03 pm]: I am concerned about clause 37, which provides the judiciary with complete control. Clause 44 covers the entry, search and related matters, and clause 67 provides for a review. One Nation would like a sunset clause included in the Bill for a comprehensive review in three years. In principle, One Nation supports the Bill but has some concern about a couple of areas. I am not a supporter of bikies, but we seem to hold them up as the principal pariahs. As Hon Derrick Tomlinson said, probably a small number of police officers are bad. Perhaps some police officers are incompetent and perhaps also some bikies are bad. I feel sorry for the Badgingarra badminton bikie club members who ride their 250cc motorcycles around and are regarded as bikies, or the other recreational bikies who are labelled as criminals. That is a great concern of mine. Bikies do travel in gangs and history tells us that they deal in drugs. I know many bikies and a lot of them are very good people. If we could eliminate drugs I guess we could just about eliminate this Bill, because drugs are the main promoter of all the areas we are trying to push through.

My other concern is that this is a knee-jerk reaction to the bombing of Don Hancock and Lou Lewis. This is the first time anyone has been bombed in Perth, and I do not think we should put a Bill together for that reason. If tomorrow morning someone steals an aeroplane, fills it with fuel and flies into the belltower I do not think we should introduce another Bill on the basis of that. This is a dreadful knee-jerk reaction and it should be addressed.

We should lay off the coppers a bit. We brand them as a bad group of people, but the major percentage of police officers are good. There are bad politicians, bad schoolteachers and bad bricklayers. Unfortunately, there are faults in every group, but when something goes wrong we isolate the police officers and identify them as a bad group. That is very unfair. To label bikies as the main pariahs of crime in this State is absolute stupidity. Not so long ago it was Asian gangs. Going back a little, Mr Deputy President, it was bodgies and widgies, and they used to supply alcohol to 18-year-olds. Tomorrow morning we shall be trying to address cyber space salespeople dealing with drugs. Bikie and Asian gangs are small groups, but let us not forget the indigenous people. They are concerned that within their own groups a lot of people are dealing in drugs, and a lot of ordinary Australians deal in drugs. I have lived a fairly hard and full life and I hope I continue doing so for the next 40 or 50 years because I thoroughly enjoy life, particularly with the group of people I now associate with. However, as a justice of the peace I had the opportunity of running into drug dealers. People have asked me for advice, which I have given, and I have also had the opportunity of dealing with drug addicts who have not had anywhere to turn. I have spoken to people, and I have known for two or three years who Mr Big is but, unfortunately, the Mr Big who controls and sells to the bikie gangs and all the people in this State cannot be touched because he is at arm's length and is in an untouchable position.

In part 4, "Entry, search, and related matters", one aspect that worries me, as a justice of the peace who has authorised search warrants, relates to clause 45, "Enhanced power to enter, search, and detain", which reads -

> (1) A police officer may for the purposes of investigating a section 4 offence, without a warrant -
>
> (a) at any time enter any place where there are reasonable grounds for suspecting that the offence has been, or is being, committed; and
>
> (b) demand the production of, and inspect, any articles or records kept there.

As a justice of the peace, I know that the odd copper is a little bent - that is, is not honest. Under this clause they would have carte blanche to walk into premises without any search warrant by themselves. If there was a booty of $10 000 of drug money - I am not saying they would touch it - we could wind up with $7 000 on the table and not $10 000. I think that clause 45(2) needs a little tidying up, because a police officer who has entered a place without a warrant and who wishes to change the evidence around somewhat would be in a position to do so. It is dangerous giving a police officer the opportunity to go into a search situation alone. He should be assisted by either a justice of the peace or another police officer. There should be two people. It is dangerous for a police officer to have carte blanche to walk into a search situation without any controls or supervision. Clause 45(2)(d) states that a police officer may -

> (d) seize anything that the police officer suspects on reasonable grounds will provide evidence or other information relevant to the investigation of the offence.

On many occasions I have been called out at two o'clock or three o'clock in the morning to a drug bust in Victoria Park, and been asked to check the contents of the drug bust and mark them off, so that the courts can

agree that everything that is submitted to the court is bona fide. I would be concerned if a police officer could walk into premises under clause 45(2)(d) and seize the booty.

Clause 47, "Provisions about searching a person", raises another concern, although it may be overcome if the Acts Amendment (Lesbian and Gay Law Reform) Bill becomes law. For example, under the Bill when a police officer of the same sex is not immediately available to carry out the search, another police officer may cause the search to be carried out under the direction of a police officer by another person of the same sex. If the gay and lesbian laws are passed what will be the definition of "same sex" if a police officer is gay? Can the non-dominant partner of the gay relationship search a woman? Can the dominant partner in a lesbian relationship search a bloke? Members can smile and laugh, but under the Acts Amendment (Lesbian and Gay Law Reform) Bill these issues will come to the fore. I am concerned, with gay and lesbian police officers, about who is the man and who is the woman, and who can search whom.

Hon Ken Travers: You are desperate for a headline.

Hon FRANK HOUGH: I am not; I am serious because it relates to clause 47. It gets down to who is the he and who is the she. The employment of special commissioners is another concern. Special commissioners will be Supreme Court judges, District Court judges or retired judges from those courts. I hope that we do not start appointing 72-year-old or 75-year-old judges. That is not to say that they would not be capable of doing the job but perhaps judges over 70 should be exempt. The Equal Opportunity Commission will probably come down on me for that view. I note that the Justices Act states that justices of the peace cannot be appointed over 70 years of age. Retired judges appointed as special commissioners should also be under 70 years of age.

One Nation supports the Bill in principle; however, there are some small items of concern that need rectification. Clause 37, relating to the exclusion of judicial supervision, appears to give carte blanche to a special commissioner; clauses 44 and 45 in part 4 appear to relate to a single police officer; and clause 47, relating to the provisions for searching a person, needs to clarify who is who. As I said, One Nation in principle supports the Bill.

Debate adjourned until a later stage, on motion by Hon E.R.J. Dermer.

Order to be Discharged and Referral to Standing Committee on Legislation

HON GIZ WATSON (North Metropolitan) [10.16 pm]: I move -

> That the order of the day be discharged and the Bill be referred to the Standing Committee on Legislation and that it report the Bill to the House not later than 31 March 2002.

HON N.F. MOORE (Mining and Pastoral - Leader of the Opposition) [10.17 pm]: The Opposition will support this motion. However, I indicate the context in which our support is given to clear up a misunderstanding on this matter, at least in the mind of the Premier.

Last week the Leader of the House led us to believe that the Legislative Council would sit in January. It was brought to my attention by the Clerk and others that this was a totally unacceptable set of circumstances for the staff of the House and that sitting in January was not an agreeable course of action from the point of view of many people. To try to ensure that the House sat at a later date than that, I had discussions with the Greens (WA), who indicated to us that they were interested in sending the Bill to a committee. I was aware also that the One Nation party wanted the Bill to go to a committee. I was further aware that, although the Liberal Party supported the Bill in the other House and supports it in this place, we also had some concerns about the Bill and that it needed to be strengthened. The Greens and the Liberal Party agreed that we would seek to encourage the Government to defer resumption of the Legislative Council until some time in February - I suggested late February - and that to expedite this week's program we would agree to send the Bill to a committee and for it to report some time next year. That proposal was agreed to by the Greens and the Liberal Party. I conveyed that agreement to the Leader of the House and suggested to him that if he were prepared to acknowledge that and agree to it, we would ensure that his legislative program would be completed this week and that it would be a win-win situation for all parties in the House.

Regrettably, the Premier and the Attorney General decided that that was not acceptable and they spoke to - I will not say leaned on - the Greens members and suggested that even though the Government had formally said that it would not support this Bill going to a committee, it would agree to it if the Greens were prepared to agree to the House coming back earlier, namely 22 January. That message was conveyed to me by Hon Giz Watson after her discussions with the Premier and the Attorney General. I then said to the Greens that as far as I was concerned, the earliest I believed the House could cope with returning was 19 February, and that if they agreed with that, I was happy to proceed down that path. The Greens and the Government then met again and agreement was reached for the House to resume on 19 February and for the Bill to be sent to a committee. The Government,

through Dr Gallop, said the next day that the Liberal Party was seeking to delay the passage of this Bill by sending it to a committee. I pointed out to the journalists that the Government had itself made an offer to the Greens to send the Bill to a committee in exchange for an early return of the Legislative Council. I confirmed that with Hon Giz Watson, and she can speak for herself on this matter. As I indicated to the Leader of the House, I was not impressed when I read that article, because I had clearly made the point to the Government during the House management meeting that we would take exception to being accused of delaying this Bill when the Government, for its own purposes, had also made an offer to the Greens that would have involved it supporting this Bill going to a committee. That needs to be put on the record, and the Premier needs to be made aware of it, if he is not already. Mr McGinty is clearly calling the shots on this Bill because he is the responsible minister. I think it is unfortunate that people are seeking to play politics with this decision and portray the Liberal Party as being prepared to delay the passage of the Bill and thereby causing the Government grief and jeopardising its capacity to deal with the bikie situation. That is not our intention. We have always indicated that we support this Bill. Liberal members spoke tonight about their views on the Bill, and we expect the committee will deal with it expeditiously. The reporting date is the end of March. Given the approaching Christmas break, that is an appropriate deadline.

I acknowledge that the Government's original position was that it opposed the Bill being sent to a committee. If the Government tonight suggests that it is opposed to this Bill going to a committee, it will have changed its mind twice. I hope that, in keeping with the spirit of the way in which this House has been able to progress this week, the Government will not be silly enough to start calling divisions on this motion and try to score political points on the referral of this Bill to a committee. I suspect that had this Bill been introduced by our party in government, the Labor Party would have been the first to recommend its referral to a committee. It would have said all the sorts of things that have been said tonight. The sensible approach is for the House to agree to this referral, and for the committee to investigate the Bill thoroughly and report back to the House. It would be an act of gross hypocrisy if the Government sought to oppose the motion to score political points. It would not reflect the facts of the matter, which are that Government was prepared to send this Bill to a committee if the Greens were prepared to agree to the House resuming earlier than what is now planned.

HON KIM CHANCE (Agricultural - Leader of the House) [10.24 pm]: I have noted the comments of the Leader of the Opposition. I acknowledge that what he said he observed during the negotiations to get certain legislation through the House was largely accurate. There is certainly a misunderstanding about the Government's position on the referral of this Bill to a committee. However, that is not something on which the Government will seek to divide. I believe that the decision this House is bound to make - that is, that the Bill will eventually go to a committee - is the wrong decision, because this is important legislation that the Government has indicated is necessary at this stage. However, I acknowledge the reality that the Government will not have the numbers. Therefore, for that reason, we will not divide on this motion.

Question put and passed.