

CRIMINAL CODE AMENDMENT BILL 2001

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon N.D. Griffiths (Minister for Racing and Gaming), read a first time.

Second Reading

HON N.D. GRIFFITHS (East Metropolitan - Minister for Racing and Gaming) [10.56 pm]: I move -

That the Bill be now read a second time.

This Bill complements the Criminal Investigation (Exceptional Powers) and Fortifications Removal Bill. It does so by amending two Acts. First, the Coroners Act 1996 will be amended to ensure that failure to obey a summons, order or direction of a coroner will incur a substantial penalty. All members will be aware that recently members of a motorcycle gang refused to answer questions by a coroner during a coronial inquiry. It is most important that the interests of justice, including the interests of victims and their families, are not able to be so easily overridden.

Currently, the penalty for a failure to obey a summons, order or direction of a coroner is a fine of \$2 000. This penalty is totally inadequate. It does not deter witnesses from refusing to cooperate or testify during coronial inquests. Therefore, this Bill proposes to repeal section 46(3) of the Coroners Act 1996 and its penalty provisions. It will substantially increase the penalty to five years imprisonment and a fine of \$100 000 when a person does not obey a summons, order or direction of a coroner under section 46(1).

If an offence under section 46 is dealt with summarily, the penalty will be two years imprisonment and a fine of \$40 000. However, that can occur only when the person charged elects to have the charge dealt with summarily and, importantly, the prosecution agrees to the offence being dealt with summarily, rather than on indictment. Additionally, the Bill provides that if the court of summary jurisdiction hearing the charge considers that the offence should be dealt with on indictment, the court must commit the convicted person for trial. This will occur even if the summary proceedings have been instituted at the election of the accused and with the consent of the prosecution. The Bill also provides that when a conviction is recorded by a court of summary jurisdiction, and that court considers that the penalty it is empowered to impose would be inadequate, the court may commit the person for sentence in a superior court.

The second important feature of this Bill deals with an issue that has arisen in relation to the powers and functions exercised by the National Crime Authority. As members may be aware, there is a national cooperative commonwealth-state scheme, which, on the basis of commonwealth and state legislation, establishes and authorises the operations of the National Crime Authority. Under those arrangements, members of the Western Australia Police Service also serve as members of the National Crime Authority. For those purposes, state police officers, when acting as members of the National Crime Authority, exercise powers under the Western Australian Surveillance Devices Act 1998.

However, in the Hughes case, the High Court indicated that there might be some circumstances in which commonwealth officers or authorities may not be able to carry out functions or exercise powers under state legislation. This is relevant to the situation in which members of the National Crime Authority, including state police officers, utilise state statutory powers such as those under the Surveillance Devices Act 1998; therefore, this Bill will amend the Surveillance Devices Act 1998. The amendment to that Act relates to members of the Western Australia Police Service who are also members of the staff of the National Crime Authority. Specifically, the Bill will ensure that any power that a person has as a member of the Police Service of this State may be exercised for the purpose of carrying out a function that the same person has as a member of the staff of the National Crime Authority. This will assist the National Crime Authority to carry out its important investigatory responsibilities by enabling state police who are also members of the authority to exercise powers and functions under the Surveillance Devices Act 1998.

All the measures proposed in this Bill will greatly assist authorities to investigate organised crime in this State. As I previously indicated to the House, this is a matter of priority to not only this Government, but also all Western Australians. Therefore, I trust that all members will support the Bill and ensure its expeditious passage through the Parliament. I commend the Bill to the House.

Point of Order

Hon SIMON O'BRIEN: What is the name of the Bill which has just been read a first time, and for which a second reading has been moved?

The PRESIDENT: The Criminal Code Amendment Bill 2001.

Hon SIMON O'BRIEN: As a point of clarification to the House, the Bill we have been given as the Criminal Code Amendment Bill 2001 deals with provisions other than those referred to in the second reading speech. Although the cover says Criminal Code Amendment Bill 2001, the speech refers to what appear to be other matters.

The PRESIDENT: Is the point whether the minister has distributed the correct speech?

Hon SIMON O'BRIEN: I am more concerned that the House might have read in a Bill by a short title, other than the one it intended to.

The PRESIDENT: I would think, in this case, that if the argument is deficient in respect to the relevant Bill, the House will pick that up in due course.

Hon DERRICK TOMLINSON: The second reading speech made reference to amendments to the Coroners Act, the exercise of powers of the National Crime Authority, and amendments to the Surveillance Devices Act. The Bill called the Criminal Code Amendment Bill 2001, refers to the creation of false apprehensions as to exercise threats of danger. The Bill that has been distributed, and the content of the speech are totally disjunctive.

The PRESIDENT: Indeed, it may appear that the wrong speech has been distributed, or delivered. There is no point of order which would prevent the House adjourning consideration at this stage, because the question is that the Bill be read a second time. Obviously, the members have made the point that the speech may not be overly instructive about the merits of the Bill. That remains to be seen.

Debate Resumed

Debate adjourned, on motion by Hon B.K. Donaldson.