ACTS AMENDMENT (CRIMINAL INVESTIGATION) BILL 2001

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: *Coroners Act 1996* amended -

Mrs EDWARDES: I could also have risen on clause 2 and asked why it is the seventh day. It seemed an unusual provision for the Act to come into operation on the seventh day after, as opposed to the day on which, it receives the royal assent.

Mr McGinty: It is most probably an analogy with other work I have been doing, which provides that on the seventh day I rest.

Mrs EDWARDES: I refer to the clause 3 amendment that will delete section 46(3) of the Coroners Act. That subsection states -

> A person must obey a summons, order or direction under subsection (1).

The penalty is only $2 000 with no threat of imprisonment. We have referred to the case in which, unfortunately, a woman committed suicide after a pack rape. At the inquest a person refused to answer the coroner's questions, and the penalty was not a disincentive. Proposed new section 46A of the Coroners Act is headed "Crime of disobeying coroner" and subsection (1) reads -

> A person who does not obey a summons, order, or direction of a coroner under section 46(1) commits an offence that is a crime.

The penalty proposed is imprisonment for five years and the fine is increased to $100 000. When the matter is dealt with summarily, the maximum penalty for the offence imposed by the court is two years and a fine of $40 000. Subsection (4) states that, despite what is contained in subsection (3), it is the court's opinion that the charge should be prosecuted on indictment. The Opposition is concerned with the penalties, and we raised this earlier in the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill that deals with the exceptional powers to be used, essentially against organised crime. Would the Attorney incorporate a review of the penalties under new section 46A of the Coroners Act in the review of the penalties that he has undertaken for the previous Bill? I ask him to keep in mind that there should be a tariff on top of those offences for the offences contained in the previous Bill. New section 46A is an important provision to ensure the coroner has sufficient enforcement powers to achieve his ends. This should have been done at an earlier stage, and I am sorry that I did not pick it up earlier. The penalties do not need to be equivalent to the exceptional powers legislation, because I firmly believe there should be a tariff dealing with the substance of the matters, which is organised crime. This clause does not necessarily pertain to that, as a wide range of people come before a coroner's hearing.

Mr McGINTY: The intention is to remedy a defect in the law that has been amply illustrated; that is, the penalty for not giving evidence to a coroner is totally inadequate to the extent that people have flouted the law. They are happy to wear a fine of up to $2 000, which is the current provision, rather than to tell what happened. There was a particularly tragic case of death by suicide of a woman in the south west of the State a number of years ago. Most people in Western Australia were revolted that people could cause a death in those circumstances and not be brought to account and tell their story about what occurred. It is interesting that over time attitudes have changed. A decade or more ago, I remember two instances - the deaths of John Pat and Stephen Wardle - in which public officers refused to tell their version of the events that occurred. The law is now clear, because it has been amended since those events, to require public officers to testify as to their knowledge of circumstances. That was resisted at the time by people who saw that as taking away a right of people not to incriminate themselves - a right to remain silent. Today we all expect that a public officer who has a duty of care over someone cannot hide behind those privileges and must tell a public officer such as the coroner what occurred. This clause backs up the requirement that people must answer questions put to them by the coroner, and if they do not there is a significant penalty. The jump from a $2 000 fine to a $100 000 is most probably sufficient, although we need to ensure an internal consistency in the penalties that apply in these situations. I thank members opposite for their indication of support of this provision. I will be happy, when we look at the penalties in this area, to include this; although at first blush the big step of proposing imprisonment for five years and a fine of $100 000, where previously the fine was $2 000, is probably a sufficiently significant step to deal with the problem.

Clause put and passed.

Clause 4: *Surveillance Devices Act 1998* amended -

Mr McGINTY: I move -

Page 3, lines 17 to 23 - To delete the lines and substitute the following -

> A power under this Act may be exercised in a person's capacity as a member of the police force of the State even if the person is also a member of the staff of the National Crime Authority.

This provision originated from a National Crimes Authority request of 13 September 2001, indicating that members of staff of the National Crime Authority cannot lawfully use the powers that the WA Surveillance Devices Act 1998 purports to confer on them. The NCA requested an amendment to the WA Act, so that WA police officers seconded to the NCA could exercise powers conferred on them as state police officers by the WA Act while working for the NCA for the benefit of NCA investigations. Consequently, parliamentary counsel was instructed to draft a provision expressly confirming the ability of state police officers to exercise powers under the WA Surveillance Devices Act 1998 while on secondment to the NCA. The NCA considered there may be some ambiguity in proposed new section 4A of the Surveillance Devices Act; that is, it might be read as conferring powers on state police as staff of the NCA for NCA purposes. If this were so then a further problem would be that there was no clear power in the NCA Act consenting to such a state conferral power on NCA staff, including seconded WA police.

The NCA has now indicated that its intention in asking for the amendment is to enable NCA staff - that is, seconded WA police - where necessary, to obtain approval to use surveillance devices from the appropriate officer in the WA police rather than the NCA chairperson. Section 15(3) of the Surveillance Devices Act 1998 indicates that a WA police officer acting in that capacity must obtain approval to get a warrant to use surveillance devices. Such approval can be obtained from the police commissioner, deputy or assistant commissioner under section 15(3)(a). However, the NCA would prefer an express provision be included, and has agreed with the amendment that I have just moved.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by Mr McGinty (Attorney General), and transmitted to the Council.