

**TERRORISM (COMMONWEALTH POWERS) BILL 2002**

*Standing Orders Suspension*

**MR E.S. RIPPER** (Belmont - Deputy Premier) [3.26 pm]: I move without notice -

That so much of the standing orders be suspended as is necessary to enable the Terrorism (Commonwealth Powers) Bill 2002 to be introduced without notice and proceed to the stage that the motion for the second reading of the Bill has been moved.

This is necessary so that the Premier can introduce this Bill and give the second reading speech today. It is the intention of the Government to bring on the Bill for debate tomorrow. To facilitate the Opposition's consideration of this business, the information that the Government had available was provided to the Opposition yesterday. I do appreciate the agreement of the Opposition to the suspension of standing orders. I appreciate the Opposition's cooperation in helping the Government to proceed with this vital legislation as soon as possible.

**MR R.F. JOHNSON** (Hillarys) [3.27 pm]: Once again, the Opposition is very happy to cooperate with the Government to progress this legislation this week as a matter of urgency. We obviously see it as a matter of urgency. However, I take this opportunity to say that I hope that courtesy will be reciprocated in the future on more occasions than it has been in the past. I inform the Premier and Deputy Premier - the Deputy Premier is in charge of the House today - that members on this side of the House are very happy to help whenever they can to get good legislation through this House. We appreciate the urgency of this legislation, and we will in no way filibuster. We will do it justice, obviously, and have our say, which is the absolute right of the Opposition. However, on this occasion the Government will have its way with the absolute cooperation of the Opposition.

Dr G.I. Gallop: To get it through tomorrow?

Mr R.F. JOHNSON: This week, certainly. If it is tomorrow, it is tomorrow. We will certainly do the best we can. The sooner the Government brings on the legislation, the sooner the Opposition will get into it. I appreciate that the Deputy Premier sent out a few copies of the Bill and the second reading speech, which I received yesterday afternoon. Obviously, our party has not had a chance to consider it properly. We will do that before we debate the legislation tomorrow. Once again, the Opposition is very happy to cooperate, in the interests of and to secure the safety of all Western Australians.

Dr G.I. Gallop: That is good.

Mr R.F. JOHNSON: Of course it is good, because we are an extremely responsible Opposition, and we will do everything we can to ensure the safety of Western Australians.

Question put and passed with an absolute majority.

*Introduction and First Reading*

Bill introduced, on motion by Dr G.I. Gallop (Premier), and read a first time.

*Second Reading*

**DR G.I. GALLOP** (Victoria Park - Premier) [3.30 pm]: I move -

That the Bill be now read a second time.

All members of this Chamber and all West Australians are fully aware of the tragic events, not only in the United States on 11 September 2001 but also much closer to home in Bali on 12 October 2002. Those events, as well as the recent terrorism alert issued by the Australian Government, are clear evidence that we are living in changed circumstances which require us to not only be careful and vigilant, but also ensure that our laws are appropriate and adequate to deal with terrorist threats and terrorists regardless of when and where they act or plan to act against Australians.

To protect and safeguard everyone in Western Australia, the State Government has not only been cooperating with the Commonwealth and other States and Territories, but has also been taking the necessary steps to ensure that all government agencies, including police, emergency services and hospitals, are prepared and able to deal with any contingency. We all need to take the necessary steps and precautions to preserve our way of life, especially our democratic rights and freedoms. This, as all members are aware, can be done without overreacting, targeting or vilifying any particular group or organisation in Western Australia. This Bill represents a major aspect of this State's and Australia's preparedness to deal with terrorism. It is part of the measures, which the Prime Minister, all Premiers and Chief Ministers agreed to at the leaders' summit on 5 April 2002.

The Commonwealth has already amended its criminal code by creating new commonwealth terrorism offences. Those offences are currently in operation and apply in this State as commonwealth law. However,

commonwealth legislative power, unlike state legislative power, is not plenary and general. Commonwealth legislative power, as a general matter, is limited to specific, express powers and some implied powers. For example, the new commonwealth terrorism offences are based on commonwealth legislative powers such as the external affairs power, the corporations power and the influx of criminals powers. In addition, the Commonwealth Parliament has the power to protect States against invasion and domestic violence and an implied power to protect Australia's existence and legitimate activities.

In addition, the Commonwealth Constitution includes section 51(xxxvii). This provision gives the Commonwealth Parliament power to legislate with respect to "Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law".

This Bill is one of the three pieces of legislation involved in the state reference to powers over terrorism to the Commonwealth. First, there are the current commonwealth terrorism offences. They are in the Criminal Code Act 1995, which was amended by the Security Legislation Amendment (Terrorism) Act 2002, to include a new part 5.3: terrorism offences. However, as I have indicated, this commonwealth legislation does not cover all the circumstances in which terrorism offences can or may arise. This is because of the limited commonwealth constitutional competence and because this legislation is not based on state powers which can be referred to the Commonwealth Parliament.

The second piece of legislation is this Bill. It is a model Bill similar to the Bills which have already been introduced into the New South Wales and South Australian Parliaments. This Bill contains provisions relating to the referral procedures and mechanisms and referring to the Commonwealth Parliament the text of offences set out in schedule 1 to the Bill which reproduce the existing part 5.3 of the commonwealth Criminal Code Act 1995.

The third legislative enactment will be a commonwealth Bill - the Criminal Code Amendment (Terrorism) Bill. After the state referral of power, this Bill will be enacted by the Commonwealth Parliament. It will repeal and re-enact part 5.3 of the Criminal Code Act 1995. As a result, the Criminal Code Act 1995 will contain provisions relating to the referral procedures and mechanisms and re-enacting the terrorism offences which will be based both on the express and implied commonwealth constitutional powers, to which I have referred, as well as the section 51(xxxvii) power.

Members will recall that the commonwealth Corporations Act 2001 was also based on a referral of state powers. Like those arrangements, this state terrorism reference is a text reference, together with the power to amend. It is not a general reference referring to the Commonwealth a general subject matter over which the Commonwealth Parliament could make laws or an adoption of commonwealth legislation as this State has utilised with child support and mutual recognition arrangements. In particular, members will note some specific aspects of this proposal referral.

First, it is important to note that the Bill contains a termination provision; that is, the reference of power can be terminated after a three-month notice period by the Governor making a proclamation. This State's position is further protected by clause 100.8 in schedule 1, which will be enacted by the Commonwealth Parliament and inserted into the commonwealth Criminal Code. For example, commonwealth legislation will provide that express amendments to part 5.3 of that code require the approval of a majority of the States and Territories, including at least four States.

Secondly, schedule 1 contains roll back provisions which will be inserted into commonwealth legislation. Those provisions will preserve the operation and effectiveness of state criminal laws, prosecutions and investigations; that is, those provisions preserve the validity and effective operation of state laws from inconsistency with these commonwealth terrorism offences. Of course, the roll back cannot avoid direct inconsistency under section 109 of the Commonwealth Constitution. However, the provisions are drafted to ensure that, so far as possible, state laws can continue to effectively operate. One benefit for the States of the roll back provisions is that they will roll back commonwealth offences, not only to the extent that they are based on commonwealth legislative powers, other than section 51(xxxvii). They will also roll back commonwealth offences to the extent that they are based on state referred powers; that is, currently commonwealth terrorism offences apply in the States under 5.3 of the commonwealth Criminal Code 1995 without any roll back. This referral will roll back those commonwealth offences.

For the information of members, I advise that it is proposed that an intergovernmental agreement will be entered into between the Commonwealth, States and Territories containing a provision that a majority of States and Territories - five out of eight - including four States, will need to agree to proposed commonwealth amendments to terrorism offences. Again, this will protect the State's interests.

This Bill is an important and vital step in defending all Australians against terrorism. It will ensure that there are no gaps in the constitutional basis of commonwealth terrorism offences. Consequently, it will ensure, without depriving defendants of their right to a fair trial, that no legal or constitutional technicalities can be used to invalidate legislation by those who seek, through terrorist activities, to change our way of life. I commend the Bill to the House.

Debate adjourned, on motion by Mr J.L. Bradshaw.