



Full Day Hansard Transcript (Legislative Council, 11 September 2013, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 11 September 2013 (Proof).

CRIMES AMENDMENT (TERRORISM) BILL 2013

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [11.20 a.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Amendment (Terrorism) Bill 2013. The bill extends the operation of the sunset clause applying to part 6B of the Crimes Act 1900, which contains the offence of being a member of a terrorist organisation in section 310L. The offence of being a member of a terrorist organisation was introduced in 2005 to support the operation of covert search warrant powers for terrorism investigations under the Terrorism (Police Powers) Act 2002. As stated when the amendment was introduced in 2005:

The new offence of membership of a terrorist organisation will address situations where a person is a member of such an organisation but does nothing more in preparation for a terrorist act. The Commonwealth terrorism offences cover a broad range of terrorist activities and, importantly, they criminalise preparatory or support activity, such as financing a terrorist organisation, or providing terrorist training, which may be conducted a long time before an actual terrorist attack, and may be committed in countries different to where any attack ultimately occurs, and by persons who do not ultimately play any other role.

And—

... the offence is in the same terms as the membership offence under the Commonwealth legislation.

The offence and corresponding sunset provision were included as a measure to underpin the New South Wales powers until the Commonwealth enacted a national covert search warrant scheme. However, the Commonwealth has not yet enacted a national covert search warrant regime. Accordingly, the New South Wales terrorist membership offence is still required to ensure the ongoing validity of covert search warrants obtained under the New South Wales legislative regime.

The substantive amendment in the bill is to omit 13 September 2013 as the date on which part 6B of the Crimes Act 1900 will be repealed and provide instead it will be repealed on 13 September 2016. The sunset clause is due to expire shortly and if part 6B and the offence it contains were allowed to lapse it would risk the validity of any covert search warrant issued to investigate terrorist organisations. Although the sunset provision was extended previously, a further extension is necessary as law enforcement agencies cannot risk losing these powers to properly investigate terrorist organisations. In relation to the implementation of a Commonwealth covert search warrant regime, I note that two significant reviews of Commonwealth terrorism legislation have recently been completed—one by the Council of Australian Governments and another by the Independent National Security Legislation Monitor.

These reviews have made a significant number of recommendations for reform in relation to Commonwealth terrorism legislation. A Commonwealth response to those recommendations was not provided prior to the Federal election. Following the Federal election the Government intends to raise the issue of implementing a national covert search warrant regime with the Commonwealth Government. New South Wales will endeavour to resolve this issue with the Commonwealth before September 2016, when the proposed sunset provision will expire. I can confirm that the Department of Attorney General and Justice has just completed a statutory review of the Terrorism (Police Powers) Act 2002. That Act provides for extraordinary powers, including covert search warrants, which can be exercised by police in certain limited circumstances.

The Act includes a number of significant safeguards in relation to the powers it provides. For example, a covert search warrant can only be issued by an eligible judge of the Supreme Court, and only where the judge is satisfied to the requisite standard that a terrorist act has been, or is likely to be, committed and that the entry to and search of the premises will substantially assist in responding to or preventing the terrorist act. The statutory review found that the policy objectives of the Act remain valid. The review considered and indicated support for certain recommendations made by the Ombudsman in relation to covert search warrants, including amendments

to the form of the application and the warrant document. The review noted that a number of the Ombudsman's recommendations have been implemented. The completion of the statutory review and the implementation of a number of recommendations of the Ombudsman should provide some comfort that the continuation of the offence and associated power is necessary and that appropriate safeguards regarding the use of the powers are in place.

In light of the review's findings that the policy objectives of the Act remain valid, it is necessary that the membership offence in the Crimes Act be retained to support the availability of the powers the Act provides. Terrorism remains a threat to the people of New South Wales and is of concern to our society. For example, subsequent to the last extension of the sunset clause, three Victorian men were convicted of offences related to the planning of a terrorist attack on Holsworthy army barracks in New South Wales. This bill will ensure that these extraordinary enforcement powers continue to be available to police in the event that a terrorist incident is imminent or has occurred. I commend the bill to the House.