Surveillance Devices Bill 2007

About this Item
Speakers - Hatzistergos The Hon John; Gallacher The Hon Michael; Nile Reverend the Hon Fred; Brown The Hon Robert; Rhiannon Ms Lee; Chair (The Hon Amanda Fazio)
Business - Bill, Division, Message, Second Reading, Third Reading, Amendment, In Committee, Motion, Report Adopted

SURVEILLANCE DEVICES BILL 2007

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Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [3.20 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Surveillance Devices Bill 2007. The bill replaces the Listening Devices Act 1984 and will expand the application of the legislation so that it applies to three other categories of surveillance devices, including data surveillance devices, optical surveillance devices and tracking devices. The bill implements national model legislation that was developed by a joint working group of the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council on National Investigation Powers. Serious crimes like murder, terrorism, drug manufacture and importation make it essential that our law enforcement agencies have every possible tool at their disposal to make their investigations and prosecutions as successful as possible.

Surveillance is a critical factor in major investigations and emerging technologies are being used to track suspects in increasingly sophisticated ways. Surveillance device warrants under the new legislation will permit the use of surveillance devices on specified vehicles or premises, on specified objects, such as containers that might be used for drug manufacturing, to record conversations and to monitor activities. These new laws will also allow police and law enforcement agencies like the Police Integrity Commission, the Independent Commission Against Corruption and the New South Wales Crime Commission to use surveillance warrants during cross-border operations. This means they will be able to fight and track crime across the country without the red tape burden of having to get a warrant in other States.

It will also recognise warrants from other States and Territories in New South Wales, meaning greater cooperation between Australia's law enforcement agencies. This kind of cooperation is of paramount importance not only in confronting the very real threat of an act of terrorism occurring on Australian soil but also in tackling the important major and organised crime being committed across our borders. This new bill will assist the operational needs of police by regulating new technology, which is needed to track, monitor and investigate serious crime, and to match the increasingly sophisticated techniques used by criminals. This bill will also allow for remote applications by phone or fax where it is not practical to make the application in person. We all know that criminals do not operate within borders or rules, and this bill gives police better flexibility to be able to confront these criminals without the burden of cumbersome red tape restrictions.

I now turn to the detail of the bill. Clause 2 provides that the bill will commence on proclamation, allowing all the necessary training and administrative procedures to be put in place before the new scheme comes into force. Clause 4 of the bill defines key words and expressions used in the bill including surveillance device, listening device, private conversation, relevant offence, law enforcement officer, law enforcement agency, corresponding law, corresponding warrant, corresponding emergency authorisation, participating jurisdiction, eligible judge and eligible magistrate.

Part 2 of the bill replaces the offences concerning listening devices contained in part 2 of the Listening Devices Act with new offences relating to all of the new devices that will be covered by the scheme; namely, data surveillance devices, listening devices, optical surveillance devices and tracking devices. Clause 7 makes it an offence, with specified exceptions, to knowingly install, use or cause to be used, or to maintain a listening device to overhear, record, monitor or listen to a private conversation to which the person is or is not a party. The maximum penalty remains at five years imprisonment and/or 500 penalty units. This offence is consistent with the existing listening device offence in the Listening Devices Act.

Clause 8 creates a new offence of installing, using or maintaining an optical surveillance device to record or observe an activity if the installation, use or maintenance of the device involves entry onto or into premises or

a vehicle without consent. Clause 9 creates a new offence of knowingly installing, using or maintaining a tracking device to determine the geographical location of a person or an object without the consent of the person or the person having lawful possession or control of the object. Clause 10 creates a new offence of installing, using or maintaining a data surveillance device to record the input or output of information from a computer without the person having the consent of the owner of the premises or the person having control of the computer or computer network.

The offences in clauses 8 to 10 will apply only when the installation, use or maintenance of the device involves interference with property in the lawful control of others or entry onto premises without consent, and so will not capture people who have security devices in their own home or premises. Other regulatory schemes will also apply in specific situations, such as the Workplace Surveillance Act. Of course, none of the offences created by clauses 7, 8, 9 or 10 will apply if the surveillance device is used under a warrant or under an emergency authorisation. Clauses 11 to 14 create offences in relation to the publication and use of illegally gained material and also the manufacture and use of devices for unlawful use.

Clause 11 makes it an offence, with specified exceptions, to publish or communicate a private conversation or record of such a conversation that has come to a person's knowledge as a result of a surveillance device used in contravention of proposed part 2. Clause 12 makes it an offence to possess a record of a private conversation or the carrying on of an activity knowing that it has been obtained in contravention of proposed part 2. Clause 13 makes it an offence to manufacture, possess, supply or offer to supply a surveillance device with the intention of it being used in contravention of proposed part 2. Clause 14 creates a new offence that prohibits, with specified exceptions, a person from publishing or communicating any information regarding the input of information into, or the output of information from, a computer obtained as a result of the use of a data surveillance device in contravention of proposed part 2.

Part 3 of the bill relates to the issue of surveillance device warrants. Division 1 of part 3 sets out the types of warrants that may be obtained, including surveillance device warrants and retrieval warrants. This part also provides for eligible judges to deal with an application for any warrant and confers power on an eligible magistrate to issue warrants with respect to tracking devices only. Warrants in relation to all other devices will be issued by judges of the Supreme Court. Clause 17 provides for a law enforcement officer to apply for the issue of a surveillance device warrant. It requires the law enforcement officer to have reasonable grounds to suspect that a relevant offence has been, is being, is about to be or is likely to be committed and that an investigation into the offence is likely to be conducted and the use of the device is necessary to obtain evidence in relation to the offence or the identity or location of the offender. The application must specify the applicant's name, the nature and duration of the warrant sought, be accompanied by an affidavit and be heard in a closed court.

Clause 18 enables the making of warrant applications by telephone, fax, email or other means when it is impractical for a law enforcement officer to apply in person or when immediate use of a surveillance device is necessary. Clause 19 sets out the matters that an eligible judge or eligible magistrate must take into account when determining warrant applications. Judicial officers will be required to consider the gravity of the offence, the extent to which the privacy of any person will be affected, alternative investigation methods, the evidentiary value of the material that might be gained, and any previous warrants in relation to the same investigation. Clause 20 sets out the matters to be specified in a surveillance warrant—that is, the period during which the warrant is to be in force, the name of the applicant and the officer primarily responsible for executing the warrant to be specified. A warrant will last for a period of up to 90 days.

Clause 21 sets out what a surveillance device warrant authorises, including installation, use, maintenance, retrieval in relation to particular premises, and doing anything necessary to conceal the fact that these activities have been carried out. Clause 22 enables a law enforcement officer who has been issued with a warrant to apply to an eligible judge or eligible magistrate for an extension or a variation to an existing warrant. Clause 23 enables an eligible judge or eligible magistrate, depending on who issued the warrant, to revoke a surveillance device warrant at any time before it expires. Clause 24 imposes obligations on the chief officer of a law enforcement agency to ensure that the use of a surveillance device is discontinued and an application is made for the warrant to be revoked if the use of the device is no longer necessary.

Division 3 of part 3 relates to the issue of retrieval warrants. All the provisions relating to the application, granting, variation and revocation of retrieval warrants mirror the requirements for general warrant applications—but retrieval warrants will be granted only for the purpose of retrieving the device. Any information obtained during this retrieval process will be inadmissible in any court proceedings. Division 4 of part 3 of the bill deals with emergency authorisations. Clause 31 permits a law enforcement officer to use a surveillance device without a surveillance device warrant in limited circumstances when there is an imminent threat of serious personal violence or substantial damage to property or an imminent threat of a serious narcotics offence being committed.

Clause 32 enables a law enforcement officer to apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device in a participating jurisdiction. The authorisation may be given only if the senior officer is satisfied that the use of the device in New South Wales is authorised under New South Wales law in connection with an investigation of a relevant offence. This requirement is consistent with the national model law. Clause 33 requires the law enforcement agency to apply to an eligible judge for retrospective approval to use a surveillance device without a warrant no later than five days after the

surveillance device is used.

Clause 34 sets out what an eligible judge must take into account when considering an application for approval. The factors that a judicial officer will consider in granting a retrospective authority for emergency use of a device will mirror those for a general application. In addition, however, the judge will consider the issue of urgency, including the nature of the risk or potential loss if the device was not used immediately, how the immediate use reduced that risk, the terms of the existing authorisation, and the practicability of making a normal application at the time. Clause 35 sets out what an eligible judge must be satisfied of before approving the emergency use of powers under clauses 31 or 32. The scheme will require judges to be satisfied that there was a serious threat of the kind outlined in clause 31, that using a device may have helped reduce that risk, and that it was not practicable to apply for a normal warrant at that time.

Part 4 of the bill provides for the recognition of corresponding warrants and emergency authorisations so that warrants and emergency authorisations issued in New South Wales will be applicable in other States and Territories that have adopted the model law. Importantly, Queensland, Victoria and Tasmania have already adopted the model laws, which will greatly improve the ability of the New South Wales Police Force to use devices in cross-border situations. Part 5 of the bill deals with compliance and monitoring. Division 1 of part 5 relates to restrictions on use and communication and publication of information that has been gained through the lawful use of a surveillance device. Clause 39 defines protected information.

Clause 40 creates two new offences that prohibit a natural person or body corporate from using, communicating or publishing protected information and an aggravated offence to commit such an offence when the protected information is used, communicated or disclosed with the intention or knowledge that it will endanger a person's health or prejudice the effective investigation of an offence. Clause 41 requires the chief executive officer of a law enforcement agency to ensure that records or reports obtained by use of surveillance devices are kept in secure places and are destroyed when they are no longer required. Clause 42 enables a person to object to the disclosure of information relating to surveillance devices in proceedings on the basis that it will reveal details of the technology, methods of installation, use or retrieval of surveillance devices. This provision is a codification of the common law public interest immunity claim. The provision balances the need to protect the practice and procedures of law enforcement investigations with that of a fair trial.

Clause 43 makes it clear that a person is not entitled to search any protected information in the custody of a court unless the court otherwise orders in the interests of justice. Division 2 of part 5 relates to reporting and record keeping. Clause 44 requires a person who has been issued with a surveillance device warrant or who has used an emergency authorisation to provide a report to an eligible judge or magistrate and the Attorney General detailing the use of the device.

Clause 45 requires the Attorney General to prepare an annual report relating to applications for warrants and emergency authorisation during a financial year and empowers the Attorney General to require the chief executive officer of a law enforcement agency to furnish such information for the preparation of the report. The substance of both of these provisions is consistent with current requirements in the Listening Devices Act. Clause 46 requires the chief officer of a law enforcement agency to keep such records as may be determined by the Attorney General in consultation with the chief officer relating to the use of surveillance devices. Clause 47 requires the chief executive officer of the law enforcement agency to ensure that a register of warrants and emergency warrants be kept.

Division 3—clauses 48 and 49—relates to inspections and requires the Ombudsman to inspect records of a law enforcement agency to monitor compliance with the Act and to report to the Minister every six months on the results of the investigations. This report is to be tabled in Parliament. Clause 50 enables certain evidentiary certificates relating to procedural matters in connection with the execution of warrants and emergency authorisations to be issued by senior law enforcement officers. Evidentiary certificates ensure that numerous police officers are not called at trial to give evidence of simple procedural matters.

Part 6 outlines a range of miscellaneous provisions. Clause 51 requires notification to be given to the Attorney General of warrants issued under part 3 of the bill. Clause 52 creates a power for the court to order that a subject of surveillance be informed that they have been recorded in circumstances where the use of the surveillance device was not justified. Clause 53 allows code names to be used in warrants if the judge is satisfied that this is necessary to protect the safety of the person. This may be particularly relevant to warrants issued to undercover police officers who are infiltrating criminal organisations. Clause 56 of the bill provides that the Attorney General must consent to any prosecution for offences contained in the Act. This requirement is consistent with the Listening Devices Act. Pursuant to clause 63 this regulatory scheme will be reviewed after five years of operation.

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. Schedule 2 contains a range of consequential amendments to the Criminal Procedure Act 1986 and the Electricity (Consumer Safety) Regulation 2006. In summary, the bill facilitates the use of surveillance devices

by law enforcement agencies in cross-border investigations and allows for the extra-geographical operation of New South Wales warrants. Most importantly, this bill implements a more modern regulatory scheme for law enforcement surveillance devices. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.20 p.m.]: I am pleased to lead for the Opposition in this debate on the Surveillance Devices Bill 2007. First, I thank Mr Greg Smith, who is the shadow Attorney General, for his contribution to debate on this bill in the other place. Obviously the experience he brings to the Parliament—and I am sure the Attorney General would agree—will be for the betterment of not only the Parliament but also New South Wales. He is most experienced in the law and is a person of great integrity. At the outset I indicate that the Opposition does not oppose the bill. However, I foreshadow that I will move a number of amendments in Committee. I indicate to interested members that the amendments have been circulated. I will seek the leave of the Committee to deal with them in globo.

I do not intend to traverse much of the ground that was covered by Mr Greg Smith in debate on this bill in the other place. To put it simply, the bill deals extensively with the amalgamation and modernisation of electronic devices used in surveillance operations. That modernisation brings together the traditional forms of surveillance we have come to know over the years, including listening devices and telephone interception devices. The bill covers more modern forms of surveillance that have developed in recent years, including the transference of data information via computer systems, and provides for surveillance by the use of tracking devices. Devices we have seen on television over the years have now become modern tools used by law enforcement agencies to follow suspects and, indeed, offenders as they carry out their activities. For many offenders who participate in counter-surveillance, the use of such devices is absolutely crucial.

As members would be aware, I had vast experience in human surveillance during my years with the New South Wales Police Force, and I know that human surveillance most certainly has its limitations. At the same time, human surveillance also brings with it certain benefits. A police officer is in a position to interpret what he is seeing with his eyes at the time it is occurring, and he is in a position to make a judgment call based on what he is seeing that may affect the outcome of an investigation. The use of electronic devices—often it is a listening device—limits an investigation to sound only; it does not necessarily provide an opportunity to capture all of what is possible in a surveillance situation. Indeed, this bill deals primarily with the electronic aspects of a surveillance operation.

Time and again in jurisdictions throughout Australia and internationally, we see the success of surveillance operations—often on television and in the popular media. Unfortunately, we do not see how certain aspects of a surveillance operation have been conducted. In the past I have asked questions about several police operations, including a significant operation involving the use of electronic listening devices that commenced in 2000, commonly known as Operation Emblem. We hear from the Government time and again that it wants a level of transparency and accountability; if there are concerns about the conduct of an investigation those who are aggrieved should have an opportunity to question the conduct of the investigation. What about the outcomes of Operation Emblem? I questioned Commissioner Moroney, the former Commissioner of Police, about whether the Parliament should be given an opportunity to inquire into those outcomes. He gave a commitment that there would be no problem about that, that we would have an opportunity to do that. But unfortunately, once the police had left the confines of Parliament House and had an opportunity to consider the potential impact of what had been asked of them we were told, "Sorry, we don't make those things available."

Operation Emblem and another matter that I will refer to shortly have left a question mark over some aspects of the bill, and for that reason the Opposition will seek to amend it. Mr Greg Smith detailed the history of this matter in the other place. The Opposition is aware that the legislation is a national framework. In terms of our amendments, no doubt the Government will say that these sorts of changes are occurring elsewhere.

Hon. John Hatzistergos: Putting the national framework at risk.

The Hon. MICHAEL GALLACHER: The Attorney General says that our amendments will put the national framework at risk. At the end of the day New South Wales stands on its own two feet on these matters. I put it on the record that I will never be party to anything that will give criminals an advantage, even if it means continuing the fight for electronic surveillance devices and any other devices that are available. The Attorney General knows my views on certain high-profile offences and organised crime. I think we can go a lot further with this legislation; we should take the gloves off instead of continue with the rhetoric. Given the fact that listening devices were used in Operation Emblem, given the fact that the investigation was simply allowed to roll over continuously, and given the fact that a number of people were involved in that operation, one must ask: Have things necessarily improved with this legislation, or are we simply continuing the past practise of putting everything that is difficult into the terrorism basket?

Often in debates on such legislation we hear Government members say, "This will be used to fight terrorism. Terrorists are involved in other criminal activity. They are not just involved in explosions and putting people's lives at risk. They are involved in criminal activity leading to their terrorist activity and therefore we must do everything possible to prevent that." However, the provisions of this bill go beyond dealing with terrorism and into other areas of criminal activity. Under this bill, police officers will be able to go much further than is the case currently in terms

of using electronic surveillance equipment without having to obtain a warrant. The Minister will correct me if I am wrong, but I understand that currently police have 24 hours to obtain approval to use surveillance devices to investigate offences and that that approval must be given by a judge. That is consistent with the provisions in clause 31, which relate to emergency authorisations. Of course, no-one will get in the way of law enforcement officers who are targeting terrorist offences. But the legislation goes much further. Clause 34, consideration of application, states:

(1) Before deciding an application for approval in respect of the use of a surveillance device without a warrant in an emergency under section 31, the eligible Judge must, in particular, and being mindful of the intrusive nature of using a surveillance device, consider the following:

(a) the nature of the threat of serious violence to a person or substantial damage to property or of the commission of a serious narcotics offence,

We know from overseas experience that we must not get in the way of police doing their duty. We cannot obstruct police attempting to prevent an attack. We have to give police every possible support. Of course the bill relates to more than terrorism threats; basically these rules will apply to any threat of serious violence to a person, substantial damage to property or the commission of a serious narcotics offence.

Part 1 of the bill defines a "serious narcotics offence", thus providing the courts with some indication of what is meant by the term. However, the bill contains no definition of "threat of serious violence to a person or substantial damage to property". Consequently, the meaning is unclear. In my view it is open to misinterpretation with regard to support for police in their fight against terrorism. With that in mind, the Opposition contends that we should seek wherever possible to assist police by providing an extension, but not the five business day extension as provided in the bill. Police can operate without a warrant before they apply to a judge for a warrant. The bill provides that police could undertake a surveillance operation for five business days, and that means that if a weekend is involved they could run a covert surveillance operation for up to seven days using electronic devices for the list of offences that I have detailed, some of which are not linked to terrorism.

The Hon. John Hatzistergos: They can do that now.

The Hon. MICHAEL GALLACHER: The Attorney General indicated that police can do that now. I was under the impression that they could apply for a warrant after 24 hours of surveillance.

The Hon. John Hatzistergos: They report to me within seven days.

The Hon. MICHAEL GALLACHER: The Attorney said that he receives a report within seven days. Do they have to apply to a judge within 24 hours?

The Hon. John Hatzistergos: Yes.

The Hon. MICHAEL GALLACHER: That is my advice. It is the view of the Opposition that five days is too long a period. Two business days from the commencement of an operation is sufficient for police to seek approval from a judge to continue an operation. We are not saying that police should not be able to seek approval; we are just saying that an application to a judge should be made as soon as practicable after 24 hours. We are prepared to give police an extension beyond 24 hours to two business days. A five business day extension could run into seven days, if a weekend intervenes, and given what the Attorney General has said—and I have no reason to doubt his understanding of the law—in the current climate seven days is too long a period to be running a warrant.

Police should have the opportunity to make an application to the judge within two business days. This is not in any way designed to undermine the police. In fact, it could be argued—as I certainly do—that it will strengthen their ability to investigate. Quite often the fact that an investigation was conducted over a period of seven days without police making an application for a warrant is the subject of fairly aggressive cross-examination and argument at any future trial. Restricting the period to 48 hours would strengthen the argument by police that because of imminent danger they have to move quickly, and that within two days of the commencement of the use of surveillance equipment they are in a position to apply to a judge to allow them to proceed further.

The Opposition will seek also to amend the 21-day provision currently provided for in the bill. Earlier I said that I had a copy of a 21-day warrant for the use of a listening device that was granted in the Operation Florida/Emblems investigation. The Government proposes to extend the period of such warrants to 90 days. It is the view of the Opposition that we should not interfere with the 21-day provision. If the warrant were in relation to terrorism alone, everyone would agree that we should remove any barriers to police and law enforcement agencies, whether State based or nationally based, to ensure that investigations are not stymied by bureaucratic interference. But the bill provides for offences other than terrorism offences. The 90 days provided for in the bill is too long. Apart from the comment to me by the Attorney General across the table that it is part of a national framework, no other argument has been put in support of 90 days.

After 21 days investigating officers can apply to a judge and the Attorney General, as is currently the case, to

extend the period of the warrant to use an electronic device for a further 21 days. What the Opposition puts forward is quite reasonable. We have all seen conduct in the past that would not make obtaining such an extension difficult. The Government maintains that the police should be trusted and that this bill will give police the ability to continue their investigations. I have in my possession a listening devices warrant that was issued during Operation Florida in April 2000. It contains well over 100 names of individuals, not all of whom are police officers.

I am the first to acknowledge that some of those named should not have been members of the police force. Some were later charged with very serious criminal offences, and they deserved to be so charged. However, the warrant contains the names of people who have gone on to very successful careers and who continue to serve the people of New South Wales and are very well respected by the Government, the Opposition and the public. Their names are also on this warrant, which, for all intents and purposes, appears to be nothing more than a driftnet, a huge catch-all net. They have been identified, along with others, as individuals who may or may not have attended a function in 2000. I point out that since 2000 there has been very little discussion in the public domain by the Government about this matter, but I suggest it is deserving of a little more attention by the Government.

The list contains the names of more than 100 people who attended a party in 2000. A person who had rolled over to the royal commission into policing attended that party wearing a listening device intent, obviously, on trying to talk to as many people on the list as possible in an attempt to get some sort of admission from them. I will not name any particular person on the list, because that is not necessary, but I note that one person on the list is now an outstanding police officer, one that the Government would proudly stand beside.

The name Steve Barrett—a journalist and not even a police officer—appears on the listening devices warrant because he happened to be at a party in 2000. His name and the names of many other individuals, including officers who were subsequently proved to be corrupt, were included on the warrant. These names were put onto what I would call a driftnet, which was dragged through the party to see what turned up, to see whether any admissions were made in the course of this operation. I understand that the operative, because of his criminal activities, rolled over at the royal commission and sought to save his bacon by working for the Police Integrity Commission, which he was entitled to do. Anyone looking at this warrant, which includes the names of over 100 people along with the name Steve Barrett, a well-known journalist, would wonder what the operative sought to achieve. After the expiration of 21 days the warrant was rolled over. I have a copy of another warrant that was issued on 14 September 2000.

The Hon. John Hatzistergos: Where did you get it?

The Hon. MICHAEL GALLACHER: The Minister asked where I got this warrant. We have friends everywhere. The original warrant to which I referred was issued in 2000 and this subsequent warrant, which was issued on 14 September 2000, included the names of the same 100 people who were mentioned in the original warrant. If we go back to the starting point we find that the original warrant was issued because all the people who were listed on the warrant were invited to a party and they were all expected to be there. In April the undercover operative who was working with the royal commission was wired up and went to the party with the intention of speaking to as many attendees as possible to see what chestnuts could be obtained. In September the warrant was again rolled over. It would be fallacious for the Government to suggest, as no doubt it would, that it is trying to tie up the police.

As the New South Wales Police Force has evolved since the royal commission we have to ensure that things do not get sloppy under the watch of this Government. The warrants to which I referred earlier raise questions about the sloppiness of this Government and the ease with which warrants can be obtained, rolled over and continued in perpetuity. The 21-day provision put forward by the Opposition will enable a degree of checks and balances and ensure the maintenance of probity. If the period during which a warrant is in force is increased to 90 days, an extension will be sought at the expiration of that period and warrants might then be in force for 180 days. If this warrant is anything to go by, the Government's approach to these matters is fairly sloppy. I would hate to think what other warrants are being used in conjunction with criminal investigations.

The Hon. John Hatzistergos: How come the Federal Police thought 90 days was okay?

The Hon. MICHAEL GALLACHER: I have no criticism of the Federal agencies, but at the end of the day—

The Hon. John Hatzistergos: The Federal Attorney-General.

The Hon. MICHAEL GALLACHER: In the main, the investigations conducted by the Federal Attorney-General and the Federal Police are of a serious nature. They investigate a number of serious crimes. This legislation covers not only serious crime; it allows for offences involving threats of serious violence to a person. In the context of the Federal Police we could be talking about fairly heavy stuff, such as members of Al Qaeda boarding a plane. Anyone who is about to be assaulted or who has a fear of being assaulted tonight at the local pub at Stockton would also qualify under that definition.

The Government is attempting, through this legislation, to address serious crime, terrorism and organised crime,

and we all agree with that. But this legislation does not define what constitutes a serious threat or violence, and it does not define substantial damage to property. It allows for more minor matters to be viewed with the same level of concern, and this reflects sloppiness under the watch of this Government. I will not bore the House with anecdotes from the past. Suffice it to say that we are concerned about the potential for this legislation to be misinterpreted. If the Government tidied up its position, that would go some way towards rectifying the problem.

The Hon. John Hatzistergos: It is national.

The Hon. MICHAEL GALLACHER: The Attorney General said that this legislation is national. As a result of the royal commission, New South Wales has gone through substantial reforms that have not been seen in any other jurisdiction. New South Wales should have been leading the agenda and the debate in ensuring that safeguards were implemented rather than necessarily following the lead of Victoria, Western Australia or South Australia.

The Hon. John Hatzistergos: And the Commonwealth.

The Hon. MICHAEL GALLACHER: The Attorney General includes in that the Commonwealth, but I again make the point that we heard much about Commonwealth investigations in debate on this issue. In my view, the Federal Police focus far more on serious crime. If police and courts in New South Wales misinterpreted the nature of this legislation and it was used to address less serious crime, we could find ourselves tidying up a mess at some time in the future. I refer, next, to substantial damage to property. If someone caused substantial damage to the MLC Building or destroyed the entire building that would qualify as substantial damage to property. And if someone smashed in the windows or kicked in the door of my garage at home, that would also qualify as substantial damage to property. It depends on how something is interpreted at any given time.

Because of the lack of definition in this legislation it is the view of the Opposition that it could be misinterpreted. For that reason the Opposition foreshadows that it will move two sensible amendments in Committee. The first amendment provides that warrants should be granted for a period of only 21 days before they are readmitted, which is the current practice. We realise it is not a perfect situation, but it is a darn sight better than a 90-day period. We believe that two days as opposed to five business days is a necessary safeguard before an application for a warrant is made to a judge.

Reverend the Hon. FRED NILE [3.48 p.m.]: The Christian Democratic Party supports the Surveillance Devices Bill 2007, an important bill that will replace the Listening Devices Act 1984 and expand the application of the legislation so that it applies to three other categories of surveillance devices including data surveillance devices, optical surveillance devices and tracking devices. Minister Campbell said in his agreement in principle speech in the other place:

> The bill implements national model legislation that was developed by a joint working group of the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council on National Investigation Powers. Serious crimes like murder, terrorism, drug manufacture and importation make it essential that our law enforcement agencies have every possible tool at their disposal to make their investigations and prosecutions as successful as possible.

That statement forms the basis of the bill before the House. This national legislation is based on an agreement between the Commonwealth and all the States and Territories. It refers particularly to those serious crimes. I believe it has been formulated with a background focused on terrorism. I am surprised at the statements of the Leader of the Opposition. They seem to be almost the complete opposite to what would be expected in this debate from someone who has upheld law and order and police powers. I have never heard him speak in that fashion in all the time he has been in this place. His comments are a contradiction to his normal position in opposing the Labor Government or the Greens watering down powers, yet here he is doing that himself. As this is national legislation, I believe we should support it. The Leader of the Opposition would know more than anyone else that the Coalition Government in Canberra is driving this agenda because of the threat of terrorism. This bill is one of a series we have passed recently to increase police powers during special events such as the Asia Pacific Economic Co-operation conference. Such powers are unique and special, and the likes of which we have never had. This legislation is going in the same direction by upgrading, if you like, the powers of Federal and State police in carrying out their duties.

When I read the amendment that reduces the number of days a warrant can remain in force from 90 days to 21 days I noticed a possible conflict with Federal and State police working together on some of these crimes. The State police would say, "Sorry, our warrants cannot be used anymore because our 21 days are up", and the Federal police would say, "Well, we still have the remainder of our 90-day warrant." That would create confusion and reduce the ability of both police units to cooperate 100 per cent. Federal and State police must work on the same formulas, whether it be the 90 days for a warrant to remain in force or the five days after an emergency authorisation has been given. The Opposition proposes that the period of time after which a police officer must apply for approval of the exercise of powers under the emergency authorisation be reduced from five days to two days. I have been advised by the Attorney General that under current legislation in this State that restriction is open-ended. Therefore, the five-day period is a new limitation. To restrict that period further certainly would upset

the New South Wales Police Force; it would put the force offside with the Coalition if the amendment were carried.

This is important legislation dealing with crime in the modern world, especially terrorism, but also organised crime involving drugs, murder and so on. The police need every avenue of surveillance they can use. That is the only way they can, effectively, catch up to organised crime, which often is ahead of the Police Force with the ability to use its own resources. Police need the best listening devices, optical surveillance devices and data surveillance devices to especially deal with terrorism and organised crime. The Committee on the Independent Commission Against Corruption has discussed the importance of those devices. Modern society must except that these surveillance devices are absolutely necessarywithout them we will not win the battle against crime or terrorism.

The bill makes it quite clear that the use of these devices will be controlled. The bill places police under strict controls and does not provide for them to act as cowboys. The objects of the bill include, "to regulate the installation, use, maintenance and retrieval of surveillance devices". The bill restricts the use, publication and communication of information obtained through the use of surveillance devices. The bill establishes also procedures for law enforcement officers to obtain warrants or emergency authorisations for surveillance devices. That means that police officers know exactly what their powers are, know where they stand and can get on with the job. That is very important. We support the bill and have strong reservations in regard to the two proposed amendments.

The Hon. ROBERT BROWN [3.54 p.m.]: The Shooters Party broadly supports the Surveillance Devices Bill 2007. The Shooters Party has very strong policies on law and order and the protection of citizens. However, I must say that the Shooters Party constituencythat is, licensed law-abiding firearm owners in this State, even extending that to include law-abiding firearm owners across Australia—has had horrendous experiences with global Federal-type laws, particularly the 1996 firearm laws that were enacted across the State, and with continual interpretation of laws in New South Wales by people with delegated authority. I refer to blatantly stupid interpretation of regulations by firearms registry personnel that in some cases is applied by overzealous licensing police, by registry personnel or by ill-informed members of the Police Force too junior perhaps to understand what is in the Act and regulations.

The Attorney General has been convincing in his argument in relation to not supporting the Opposition's amendments regarding the 90-day duration of warrants. His argument was compelling on the basis that the amendments would water down the cross-jurisdictional effectiveness of the legislation. However, we are inclined to support the second group of amendments proposed by the Liberal Party. Those amendments reduce from five days to two days the grace period in which police can obtain a warrant under emergency conditions. We are convinced because in discussions the Attorney General argued for uniformity and told us that, indeed, other States have the same sort of two-day provision. On the basis perhaps of a little caution, as indicated by the Leader of the Opposition, we tend to support that second group of amendments.

I acknowledge the concerns expressed by our colleagues from the Christian Democratic Party that we do not want to gut the law or make it ineffective, but we believe that supporting the second group of amendments is the right thing to do. It will give police two business daysthat is, two working days, which could be increased by extending to a weekend or a three-day weekend and two business days—to obtain a warrant to use a surveillance device. If it works in other jurisdictions it should be given the chance to work in New South Wales. We support the bill. We do not support the Liberal Party's first group of amendments relating to the 90 days, but we will support its second group of amendments that reduce the five days emergency provisions for obtaining a warrant to two working days.

Ms LEE RHIANNON [3.58 p.m.]: The Surveillance Devices Bill is a mixed bag. Some sections increase protections against unauthorised surveillance and some make it easier for police officers to conduct surveillance. We know that the bill is a long overdue update of the Listening Devices Act. Most importantly, it expands regulation over three categories of surveillance devices, specifically visual surveillance devices such as closed-circuit television [CCTV], data surveillance devices and tracking devices. Visual surveillance and tracking devices are not new. Let us be honest: these devices have been used for years by the police to breach people's privacy. I say that from the outset because one proposal of this bill is to tighten up those breaches. The Greens remain concerned that that is not being done as effectively as would be hoped from a Labor Government. We know these devices have operated for a long time without sufficient safeguards.

This is another instance of the law lagging well behind technology. It is time that the people of New South Wales had some comprehensive regulation of these laws. People certainly need protection against the abuse of technology. Unfortunately, protection is not being provided to the extent we would have hoped by this legislation. There has been some sloppiness in the formulation of this bill. The Greens are still hopeful that the Government may succumb to commonsense. If the loopholes remain, we argue that they may foster the development of some types of crime. We all know that when surveillance equipment is misused, effectively the law is being broken. We should ensure that such a loophole is closed as effectively as possible.

The Greens are concerned about any increase in the powers of the police in particular to conduct surveillance activities. The Greens are seriously concerned about a number of devils hiding in the detail of this bill. I foreshadow that the Greens will move amendments at the Committee stage. Privacy is not a trivial matter. In the

1991 New South Wales Law Reform Commission's interim report on surveillance, the commission labelled surveillance powers as "powers of a highly intrusive nature". It is important to strike the right balance between the rights of an individual to privacy and the detection and prosecution of crime. The Greens admit that that is a difficult balancing act, but it is not one that members of the House should shy away from, thereby giving more and more powers to the police by default. The Greens would argue that the role of members of the House is to strike the right balance.

In recent years since the 9/11 tragedy there has been no attempt to get the balance right. Consequently the balance has swung in favour of the police. The authorities have cracked down and as a result people have lost their basic rights. We also should not be blinded by technological advances in surveillance as though they are magic silver bullet that will solve crime in New South Wales, catch all the terrorists and make everybody feel safe. It is dangerous to cultivate such a notion because technological surveillance will not be the solution that it is often presented to be. If surveillance powers are abused, people are left open to victimisation and discrimination. The Council of Civil Liberties submission on the draft surveillance bill in 2006 stated:

> Covert intrusions leave a person vulnerable to mistaken data-matching. The knowledge that words and actions may be being monitored restricts autonomy and hampers personal growth and the development and enjoyment of relationships. In the hands of the unscrupulous, covert surveillance leaves victims open to blackmail.

I have consulted the Australian Privacy Foundation in relation to this bill and noticed that the foundation had not previously been consulted about its formulation. That is disappointing, considering that the foundation is one of the most knowledgeable and competent advocacy groups on privacy in Australia. To the extent that the foundation has had the chance to consider the bill, it is satisfied that the bill faithfully implements the national model laws drafted by the Standing Committee of Attorneys-General.

The Greens support the series of new offences created in part 2 of the bill which relate to optical surveillance, tracking and data surveillances. However, there are a number of gaps that cause concern. Specifically, the Greens support clauses 8, 9 and 10 that make it an offence to install, use or maintain an optical surveillance device, a tracking device or a data surveillance device without the consent of the person under surveillance. One would have to acknowledge that that is a step forward. The principle is that people should be entitled to know who their audience is, who is watching them, who is listening to their conversations and for what purpose. Covert surveillance simply is not on. I would hope that in the context of the bill all members would agree with that.

The Greens are concerned that there is a worrying loophole in the detail of this part of the bill. The bill provides that clauses 8, 9 and 10 apply only when the installation, use or maintenance of the device involves interference with property in the lawful control of others, or entry onto premises without consent. In the case of optical surveillance devices that are covered by clause 8, the Greens are concerned that the bill will not capture people who use surveillance devices in their own home or in a building they own. For example, will the bill allow an occupier of a house or a landlord to install a closed-circuit television device on their own property to monitor other occupants or neighbours without anyone's permission? The occupier has lawful control over the property. Surely the occupier of the building should be required to ensure that the device is visible and that notices are displayed informing people that their actions may be recorded. Any covert use of optical devices should require a warrant. I ask the Attorney General to respond to this concern during his reply. I foreshadow that the Greens will move an amendment if we are not satisfied with his response.

The Hon. John Hatzistergos: What is your concern?

Ms LEE RHIANNON: The Attorney General has asked me about this point, so I point out that I was referring to clauses 8, 9 and 10. The Greens are concerned about any covert use of optical devices. We think that that type of use should require a warrant. I ask the Attorney General to address in his reply the situation of an occupier or owner of property who may be using devices to monitor other occupants or neighbours. Similarly, the Greens are concerned that this bill may not cover the use of closed-circuit television if it is on the operator's property looking outward. In that case the owner of the closed-circuit television would not be on the property that is under the lawful control of others or on premises without consent. If that proposition is correct I argue that that is a worrying loophole. This point reveals the sloppiness of the way in which the bill has been drafted.

The Greens interpret these clauses to mean that an owner of property could set up equipment so they effectively are spying on their neighbours. I argue that the use of surveillance devices in that manner would be fostering mistrust between neighbours and possibly could engender mistrust throughout the community and eventually may undermine the sense of community which is so important. If people who have this type of equipment use it in that manner the word would get around and that would create uncertainty. People would start to suspect each other. This provision really needs to be tightened up. I look forward to the Attorney General addressing that matter during his reply. Obviously, the law should provide for the legitimate use of security cameras, but surely a complete exemption is too much. There should be controls over their intrusiveness and the use of material. I ask the Attorney General to respond to these concerns and provide some assurance regarding this part of the bill.

Part 3A deals with warrants and law enforcement officers. The bill requires law enforcement agencies to apply to the Supreme Court for a warrant to use listening devices, optical surveillance devices and data surveillance devices, and to apply to the Local Court to use tracking devices. Clause 17 sets out the circumstances in which the police may apply for the issuing of a surveillance device warrant which authorises a wide range of actions. It permits entry by force if necessary to install or maintain those devices. These wide-ranging powers require key protections for individual rights and privacy. The Greens are concerned that the bill makes it even easier than before for the police to obtain approval for the use of surveillance devices. I note that at least a judicial warrant is still required under State legislation, unlike Commonwealth legislation, which busily transfers powers to the bureaucracy that formerly required judicial approval.

The Greens have two particular concerns. The first deals with the issue of emergency authorisations. The bill provides that surveillance devices may be used in an emergency without warrant when there are reasonable grounds to believe that there is an imminent threat of serious violence or a substantial threat to property, or that a serious narcotics offence will be committed. It requires only that a law enforcement officer apply to a judge for approval within five days of the use of the device without a warrant. The Greens accept that in some instances surveillance may be required urgently, but that should be on very rare occasions only. It is easy enough for police officers to obtain a surveillance warrant by email, facsimile or telephone. When emergency applications are made there should be minimal time left before a police officer makes a retrospective application. The Greens argue that that is an important safeguard that will ensure that the police are conscious of the power they hold and are conscious of their responsibility to ensure that their power is used effectively, and not abused.

We therefore believe five days is excessive. It is out of step with the model rules and with other jurisdictions in Australia. The Greens believe a two-day limit is more appropriate. Two days is sufficient time to prepare documentation to obtain the judge's approval. I understand that the Opposition intends to move an amendment along those lines in Committee, and the Greens will support it. The bill extends the maximum period during which a warrant may be in force from 21 to 90 days. That is an extraordinary shift. The Listening Devices Act allowed judges to grant warrants for up to 90 days but for terrorist offences only. The Government has offered no convincing case for such a lengthy extension of the maximum time available for a warrant. The Law Reform Commission noted:

> A term longer than 30 days weakens the high degree of accountability which covert surveillance requires and which a shorter time frame secures. It also encroaches on justifiable limits of intrusion into the privacy of individuals.

That is pretty clear. The Government is moving into very dangerous territory by seeking to extend 21 days to 90 days. The Greens believe the surveillance device warrant period should remain at 21 days or we risk the powers being abused. It is as simple as that. Twenty-one days is plenty of time for an investigating officer to seek an extension of a warrant. The requirement to explain to the issuing authority why an extension is needed offers some protection against misuse. We note that the New South Wales Council for Civil Liberties recommends the existing 21-day limit. The Greens had intended to move an amendment to the bill to this effect but we will be pleased to support a similar amendment that the Opposition has foreshadowed it will move in Committee.

The Greens will monitor closely the six monthly reports by the New South Wales Ombudsman to be tabled in Parliament. We support increased oversight by the Ombudsman of the bill; it is clearly needed at every turn. Since the twin towers attacks in New York the international surveillance terrain has altered dramatically. I think we all view the bill in the context of a changed approach to justice and surveillance issues. Governments worldwide have tightened security and given police and intelligence services enormous powers, including surveillance powers. Public space, our movements, our conversations and our relationships and interactions are monitored increasingly.

There is an urgent need to safeguard the privacy of individuals against arbitrary interference by the State—and by individuals and corporations, for that matter. It comes down to balance, and the Greens believe the Government has failed to strike the right balance in this legislation. If we do not get the balance right we can argue that the terrorists have been successful in reshaping our society. Of course, terrorists have much wider aims—I hope that people will not foolishly misconstrue my remarks—but in debates about surveillance and security we must be wary of which path we tread. We must not end up mirroring the actions of the people we most oppose.

The Council for Civil Liberties recommends the appointment of an experienced barrister to defend the interests of potential targets whenever covert surveillance is used. This person should have powers to make submissions to the issuing authorities, to question applicants for warrants and witnesses, and to report to Parliament. I understand that a similar model, the Public Interest Monitor, exists in Queensland. It is pleasing to say that a Queensland model should be applied in New South Wales. I strongly urge the Government to consider this proposal because it would help to build confidence in the Government's commitment to striking the right balance. When we consider how the Government has handled this legislation and related matters we must conclude that it does not understand the importance of protecting people's human rights and privacy. The fact that the Opposition—which is deeply committed to law and order beat-ups at every turn—has intervened to pull up the Government on a couple of issues proves that the Government is out of touch. Its sloppiness must be tidied.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.15 p.m.], in reply: We will consider the foreshadowed amendments more comprehensively in Committee but it is important to lay to rest some of the concerns raised by honourable members. I make it clear from the outset that the legislative process involved police Ministers and Attorneys-General from around the nation trying to establish a common surveillance regime in order to facilitate the investigation of crime—much of which, in relation to this model provision, may occur across borders. When the process is completed and legislation is passed by the Parliaments and enacted in all jurisdictions our laws will be recognised those jurisdictions. As a consequence, when a warrant is issued in New South Wales it will be recognised and implemented effectively in another jurisdiction and vice versa—the surveillance laws of other States will be recognised by the New South Wales Government. In that way any cross-border surveillance that may be required can be carried out lawfully. Clearly the bill does not apply to investigations of national crimes undertaken by the Australian Federal Police because they have cross-jurisdictional capacity under legislation. The States do not have that facility, which is why this model provision is necessary.

In drafting the provisions we had to reflect, first, on the current practice in New South Wales and, secondly, on he demands that have been made by other jurisdictions on a consensus basis between Attorneys-General and police Ministers as to the requirements necessary to obtain recognition of the model bills. The amendment foreshadowed by the Opposition to reduce the duration of warrants from 90 days, as proposed in the bill, to 21 days will seriously compromise the legislation. If that amendment were to be passed the Government would have to consider seriously withdrawing the bill because it would be dysfunctional. Just about every other jurisdiction in the country has 90-day warrants and if we were to have a 21-day recognition in our warrants it would seriously compromise the capacity to use the legislation effectively to investigate cross-border crime. The period of 90 days was recommended in the model laws developed by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council Joint Working Group on National Investigation Powers. The working group stated:

> the 90-day period achieved an appropriate balance between the operational needs of law enforcement (in having enough time to covertly install, monitor and retrieve the surveillance device), and the need for periodic judicial scrutiny of the use of surveillance devices.

The report also noted that three submissions about the duration of surveillance device warrants supported the maximum 90-day period. Ms Lee Rhiannon may be interested to learn that those submissions were from the International Commission of Jurists, the New South Wales Council for Civil Liberties and the New South Wales Police Force. In addition, the Independent Commission Against Corruption in its submission on the laws stated:

> The Commission welcomes the proposal to allow warrants to remain in force for periods up to 90 days. This will significantly improve operational efficiency in large investigations.

The period of 90 days is consistent with the period provided for in the Commonwealth, and is consistent with the position in Victoria, Queensland, Western Australia, South Australia, the Northern Territory and Tasmania. All those jurisdictions accept the 90-day period. It is compatible with the duration of interception warrants issued under the Telecommunications (Interception and Access) Act of the Commonwealth. It is important to note that these laws will allow the operation of New South Wales warrants in other jurisdictions and the operation of other jurisdictions warrants in New South Wales. We will be significantly out of step with every other jurisdiction if we allow for a 21-day period as opposed to a 90-day period and, as I have stated, it will make the legislation dysfunctional.

Further, the bill establishes a thorough monitoring and oversight regime, including requirements that the chief law enforcement officer discontinue a device and revoke the warrant if the device is in use but is no longer necessary; that reports are provided to the Attorney General and to the issuing judge on the execution of the warrant; that the Attorney General provide an annual report to Parliament; that the chief officer of a law enforcement agency keep records; and that the Ombudsman inspect the records of a law enforcement agency and report to Parliament. The bill also provides that the Ombudsman may enter at any reasonable time the premises of the law enforcement agency for that particular purpose.

I will respond to a number of comments that have been made in relation to emergency warrants. Contrary to the advice that the Leader of the Opposition received, and it appears notwithstanding the eminence of the shadow Attorney General in another place, it is not correct to say that there is an extension in what we are proposing to the current practice as far as the emergency provisions are concerned. The Listening Devices Act 1984, which this bill will replace, currently provides an exception in an emergency situation in exactly the same circumstances as in this bill. It is not broadening it to all kinds of offences.

The emergency operations will apply to exactly the same circumstances as currently apply when there is a threat of serious violence to persons or substantial damage to property—a serious narcotics offence—if it is necessary to use the device immediately to obtain evidence or information. The Leader of the Opposition in his response stated that some of these provisions are not defined. It is true that the provisions in relation to violence to persons or substantial damage are not defined, but that has been the situation and it has worked. What is said now is that there is a defect in the existing arrangements. No proposal has been put forward to alter or to vary those particular provisions. Nothing has been put forward to define them.

The Hon. Michael Gallacher: How long have they been there?

The Hon. JOHN HATZISTERGOS: They have been there since 1984.

The Hon. Michael Gallacher: Yes, long before terrorism.

The Hon. JOHN HATZISTERGOS: Those provisions stand.

The Hon. Michael Gallacher: Long before terrorism.

The Hon. JOHN HATZISTERGOS: Well, hold on a moment. What the member is saying is that somehow we are broadening the scope for emergency provisions. There is no broadening.

The Hon. Michael Gallacher: I said there is an opportunity for it to be interpreted in "up to 90 days".

The Hon. JOHN HATZISTERGOS: I will explain the 90-day provision. This is about emergency warrants, which we are proposing have to be ratified by a judicial officer within five days. Exactly the same circumstances as apply to emergency provisions under the current law will operate under the new law. To that extent there is no change. The Leader of the Opposition stated that there is a lack of clarity and so on. As I said, these provisions have been in place for sometime and they have not caused distress or concern to law enforcement agencies in relation to the qualifications to obtain an emergency warrant. There is no proposal from the Opposition to clarify that.

I make this point quite clear: it is very wrong to say that somehow—and Ms Rhiannon should listen to this—we are broadening the scope of emergency provisions. Currently, to get an emergency warrant all you have to do is cause to be served on the Attorney General or prescribed officer notice of that fact and within seven days furnish a report to the Attorney General. There is no judicial oversight in the Listening Devices Act of emergency warrant provisions. There is reporting to the Attorney General and ultimately in the annual report to Parliament, but there is no need for judicial oversight.

When these issues were negotiated between the jurisdictions there were disagreements obviously between the police services. The police service in New South Wales took the view that because it does not have provision for judicial oversight at the moment it did not want to be constrained in any new bill put forward to an arrangement that requires it to have greater paperwork than is required under existing provisions. The discussion that took place with them resulted in a compromise of a five-day period for emergency operations with judicial oversight. That is actually strengthening the existing process, which does not involve judicial oversight. Under the arrangements that we are putting in place there will be judicial oversight for the provisions of emergency warrants, so it is a strengthening of the process.

Whilst I accept that there are some jurisdictions that have a shorter time frame for the obtaining of these emergency warrants, I make this point: the New South Wales provisions have been formulated at the request of the police, bearing in mind the background to which I have referred. Unlike other jurisdictions, we have the largest police force in the country and the greatest demand placed on it. In terms of ensuring flexible arrangements it is desirable to accommodate the request of police to have a maximum five-day period. I make the point, however, that it is a maximum period. Obviously it is in the interests of the police, if they choose to embark on a process of obtaining an emergency warrant, that approval is obtained as soon as possible to protect themselves in relation to ongoing work and to ensure that the evidence that is obtained is ultimately able to be admitted.

If, of course, the emergency warrant is not authorised by the police then the penalties can be serious, including not having that evidence admitted at court; the destruction of that evidence under an order that the judge would make; and moreover potential action in trespass. Serious considerations would caution the police to ensure that in the event that they were to activate these emergency powers they do so with proper scrutiny and, as I said, balanced discretion. But we do not want police to be hamstrung. One could imagine there might be circumstances when a longer period may be required for the obtaining of an emergency warrant, particularly in circumstances when suddenly an officer becomes indisposed and is unable to facilitate the passing of such an emergency warrant within a shorter time frame.

As I said, this request comes from the police. A number of other things have been said in this debate and I will briefly respond to them. Firstly, the Leader of the Opposition stated that it is possible after 90 days to get a further warrant for another period of 90 days, making a total of 180 days. That is in fact wrong. A warrant cannot be extended after 90 days. In the event that the police want a warrant for a longer period they will need to obtain a new warrant.

The Hon. Michael Gallacher: Would they have to make a reapplication for 90 days?

The Hon. JOHN HATZISTERGOS: They would have to make a new application for up to 90 days. They would have to make a case for why it should be granted. If he read the factors that the court has to take into account—

The Hon. Michael Gallacher: Don't they do that now?

The Hon. JOHN HATZISTERGOS: They do that at the end of 21 days.

The Hon. Michael Gallacher: The same rules apply to the 21 days that apply to the 90 days.

The Hon. JOHN HATZISTERGOS: But this reduces the paperwork for police. It is about ensuring that police are able to carry out their operations. They have to persuade the court that they need a period of up to 90 days. The judge will give them that authorisation if he believes it is justified. If they want a further warrant, they do not extend the current one, they have to go back to court and obtain a new one. As I said, there are plenty of checks and balances.

Ms Rhiannon referred to surveillance on private property. It has been an issue that she has raised with my office and she has been advised that section 23G of the Summary Offences Act provides for an offence of filming, particularly for indecent purposes. Another point that was made is the broader issue of privacy. As Ms Rhiannon would be aware—I know she has been following this issue, as indeed the Greens more broadly have been following it—privacy is an issue that is currently before the Law Reform Commission, both at the New South Wales and national levels, and that is a matter that will be reported on sometime next year.

The other issue was the use of surveillance cameras that can intrude on the privacy of neighbours. I make the point that that is a planning issue. If video surveillance has reached a high level of intensity it is possible to take action under a common law claim of nuisance on the basis of unreasonable interference with the enjoyment of property. There is at least one case in which the Supreme Court granted an interim injunction against a neighbour to restrain intrusive use of video cameras. However, what we are talking about here is surveillance for the purposes of law enforcement, which, as I said, is a different issue to that of privacy and, in particular, high-intensity cameras being used.

Overall, this bill has been a long time coming. These issues have been debated and thrashed out at the national and State levels. I believe we have come up with an appropriate way forward. Time and time again we hear comments, particularly from the Opposition, that we want to reduce paperwork for the police to ensure that police are able to get out in the field and carry out their investigations. This bill does that. Effectively, it provides for a single warrant for multiple devices for a longer period of time, and it should be supported on that basis. It facilitates an appropriate balance, bearing in mind the existing arrangements and what will be required in order for our laws to be nationally recognised by other jurisdictions.

I concur with what Reverend the Hon. Fred Nile said. The Leader of the Opposition has found himself in an unusual position, bearing in mind his previous record in relation to these matters, and I do not hold him at all responsible for it. Yesterday during debate on the Crimes Amendment (Consent—Sexual Assault Offences) Bill we saw how Greg Smith tried to hijack the Opposition into having that legislation put on the never-never list via a reference to the Standing Committee on Law and Justice and a review carried out by the Law Reform Commission. I commend those brave women in the Liberal Party who spoke in support of the Government's position. I note that there were some notable absences during the vote on that issue.

The Hon. Don Harwin: There were three Government members absent.

The Hon. JOHN HATZISTERGOS: Conveniently, the two members who spoke passionately in support of the Government's position managed to be paired for the vote. That is interesting. In any event, I will not be distracted. I note also that the member for Epping has had his hand over these provisions. I hope that before long those who have traditionally supported the law enforcement authorities will have the guts to stand up to him.

Question—That the bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Amanda Fazio): With the leave of the Committee I propose to deal with the bill by parts. There being no objection I shall proceed.

Parts 1 and 2 [Clauses 1 to 14] agreed to.

The CHAIR (The Hon. Amanda Fazio): As there are amendments to part 3 I shall put questions in relation to each clause in the part.

Clauses 15 to 19 agreed to.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [4.34 p.m.], by leave: I move Opposition amendments Nos 1 to 3:

No. 1 Page 19, clause 20 (1) (b) (ix), line 17. Omit "90 days". Insert instead "21 days".

No. 2 Page 22, clause 22 (1) (a), line 19. Omit "90 days". Insert instead "21 days".

No. 3 Page 25, clause 28 (1) (b) (v), line 30. Omit "90 days". Insert instead "21 days".

I listened to the Attorney General's reply to the second reading debate. Once again, when anyone dares to question the authority of the New South Wales Labor Government it adopts the Chicken Little approach: the world will fall in and we will all drop into the abyss and never be seen again. This is accentuated by the fact that the Attorney General is projecting the Opposition as somehow wanting to wrap the police in red tape and cause them difficulties in their investigations. Not long ago the Attorney General said that this legislation merely extends the current procedures relating to search warrants and brings together all types of listening devices in one place. These amendments will maintain the status quo, which is 21 days. Up until about five minutes ago I thought the Attorney General had no problem with the provision of 21 days.

However, the 21 days are now the end of the world as we know it; we will see Armageddon if we do not adopt 90 days instead of retaining the current practice of 21 days. The legislation states that the period during which a warrant is in force will not exceed 90 days. In other words, it could be 21 days—the same 21 days that the Attorney General has just told us are the end of the world as we know it. It is for a judge to make a determination. The judge might say that the police must reapply for a warrant after 21 days. That is okay. In the words of the Attorney General, at the expiration of a period determined by the judge the police will reapply—it is not an automatic rollover—which is a good system. What I have proposed in the amendments is exactly the same: at the expiration of 21 days the police must reapply for a warrant. That is a good thing.

The Hon. Marie Ficarra: Yes, but you suggested it. That is the problem.

The Hon. MICHAEL GALLACHER: The Hon. Marie Ficarra's interjection is interesting. My amendments merely maintain the current practise in New South Wales, although the Attorney General has said that New South Wales must follow the other jurisdictions or it will be out of step. The fact is that the same rules apply in the other States. If the period is up to but not exceeding 90 days the judge may decide to stay with 21 days and at the expiration of 21 days the police can reapply. That is the purpose of my amendments and, indeed, they reinforce the current position in terms of warrants. I am a little disappointed that the Government and Reverend the Hon. Fred Nile have interpreted our view as somehow attacking the police or trying to tie up police time. Indeed, in these amendments, which provide for 21 days, and in another amendment I will move later, we are strengthening the police position to ensure that probity and scrutiny by a judge will show that after the expiration of 21 days the police applied for a warrant for an additional listening device and it was granted.

These amendments will safeguard police in any future court hearing or trial by ensuring that the current process of 21 days is merely maintained. Until today we had not heard the State Government criticise the provision of 21 days. I am honoured to support Greg Smith, who has done an outstanding job of representing the work of local police officers and as the local member in the north-western suburbs of Sydney. I am familiar with that area, having worked there as a police officer. I am proud to stand beside Greg Smith in relation to these amendments.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.40 p.m.]: It is unfortunate that the Leader of the Opposition has been seconded into this argument. As I said, it does not fit within his normal status as a person who strongly supports law enforcement authorities. I would have thought it would have been more suitable for the Hon. Catherine Cusack or the Hon. Don Harwin, who are not as passionate about supporting authority. I certainly am not personally affronted by the fact that the Leader of the Opposition has drawn the short straw in raising those arguments.

I repeat the point that I made previously: this has been a national scheme, which ultimately will require us to recognise other States' legislation and vice versa—for other States to recognise our legislation. This is an essential part of the scheme of getting that recognition, and balances and compromises have been struck between law enforcement authorities and police. This is an important aspect of that legislation. To suggest that every other jurisdiction that has passed legislation of this kind can have 90 days but our police can have only 21 days for the reasons advanced by the Leader of the Opposition will tie up the police in more paperwork.

As the Leader of the Opposition correctly pointed out, this is a maximum provision. Basically he is saying that even if the judicial officer is satisfied on the basis of all the information provided that a lengthy period of up to 90 days is required, that judicial officer would be required to truncate that period to 21 days and make the police reapply at the end of that period. That is a ridiculous suggestion. The Standing Committee of Attorneys-General and the Australasian Police Ministers Council certainly did not embrace it nor, for that matter, did the other parties

who made submissions embrace it. Earlier I said that included amongst those who supported the 90-day period was the International Commission of Jurists—and we know what bleeding hearts they are—

Ms Lee Rhiannon: Oh, honestly!

The Hon. JOHN HATZISTERGOS: Another bunch of bleeding hearts, the Council for Civil Liberties actually supported it. Does Ms Lee Rhiannon want to see where on the Richter scale the Opposition sits? She would only have to cross-reference it by that position. There is the International Commission of Jurists and the Councils of Civil Liberties at one end and right at the other end is the New South Wales Opposition.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 17

Mr Ajaka	Mr Gay	Mrs Pavey
Mr Clarke	Ms Hale	Mr Pearce
Mr Cohen	Dr Kaye	Ms Rhiannon
Ms Ficarra	Mr Khan	*Tellers,*
Mr Gallacher	Mr Lynn	Mr Colless
Miss Gardiner	Ms Parker	Mr Harwin

Noes, 20

Mr Brown	Reverend Dr Moyes	Mr Tsang
Mr Catanzariti	Reverend Nile	Ms Voltz
Mr Costa	Mr Obeid	Mr West
Mr Della Bosca	Mr Primrose	Ms Westwood
Ms Griffin	Ms Robertson	*Tellers,*
Mr Hatzistergos	Mr Roozendaal	Mr Donnelly
Mr Kelly	Mr Smith	Mr Veitch

Pairs

Ms Cusack	Mr Macdonald
Mr Mason-Cox	Ms Sharpe

Question resolved in the negative.

Amendments negatived.

Clauses 20 to 32 agreed to.

The Hon MICHAEL GALLACHER (Leader of the Opposition) [4.51 p.m.], by leave: I proudly move Opposition amendments Nos 4 and 5 in globo:

No. 4 Page 29, clause 33 (1), line 18. Omit "5 business days". Insert instead "2 business days".

No. 5 Page 29, clause 33 (2), line 23. Omit "5 business days". Insert instead "2 business days".

A short time ago the Attorney General made a strong argument for standardisation of legislation between New

South Wales and the other States. He said it was extremely important that we have consistency across the States to ensure that police have certainty when working across jurisdictions. It is for that reason that I move Opposition amendments Nos 4 and 5. A short time ago the Attorney General also told us that this would ensure judicial oversight, which is not at present provided for in New South Wales, and that this would add to the level of protection being sought by the Opposition. He said that there was no judicial oversight in New South Wales and he came up with a magical figure of five business days.

The Attorney General said—he was not all that open about it—that a number of other jurisdictions with which he seeks consistency have similar provisions for two business days rather than five. We are breaking new ground by providing for judicial oversight that has never been included in legislation—a wonderful concept put forward by the Attorney General. If we are to have a 90-day period within which warrants are to be in force, we should ensure that, where possible, we have consistency on the two-day issue. The Attorney General convinced me about the necessity for consistency with other States to ensure that they are capable of working with law enforcement officials in New South Wales.

In the current climate, a two-day period would be sufficient time for police to advise the Attorney General and to seek judicial approval for an emergency warrant. We do not believe it is necessary to have five business days, which is the proposal that we have before us. The Government has not yet proved that it is necessary to have five days within which to obtain an emergency warrant. The Attorney General said that that is in place in New South Wales right now and he is seeking consistency across jurisdictions. A significant number of jurisdictions that are working in this area have applied for a two-day rule. Given the earlier contribution of the Attorney General, I am proud to have moved Opposition amendments Nos 4 and 5.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.54 p.m.]: The Government's proposal is very simple and the decision that members have to make is also very simple: Do they support the police, or do they oppose the police? It is very simple.

The Hon. Michael Gallacher: The last card!

The Hon. JOHN HATZISTERGOS: It is true. Existing law does not require any judicial oversight. The existing provision contains no time limits whatsoever. All it requires is that a notice be served on the Attorney General. This provision will enhance oversight by requiring judicial approval. The police, who obviously have objections about having to move from one scheme to another—to a scheme that has judicial oversight—have asked the Government for five business days. I repeat the question: If members support the police, they will give them five business days. If they do not, they will oppose the Government's proposal.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Gay	Mr Pearce
Mr Brown	Ms Hale	Ms Rhiannon
Mr Clarke	Dr Kaye	Mr Smith
Mr Cohen	Mr Khan	
Ms Ficarra	Mr Lynn	*Tellers,*
Mr Gallacher	Ms Parker	Mr Colless
Miss Gardiner	Mrs Pavey	Mr Harwin

Noes, 18

Mr Catanzariti	Reverend Nile	Mr West
Mr Costa	Mr Obeid	Ms Westwood
Mr Della Bosca	Mr Primrose	
Ms Griffin	Ms Robertson	
Mr Hatzistergos	Mr Roozendaal	*Tellers,*
Mr	Mr Tsang	Mr Donnelly
	Ms Voltz	Mr Veitch

Kelly Reverend Dr Moyes		

Pairs

Ms Cusack	Mr Macdonald
Mr Mason-Cox	Ms Sharpe

Question resolved in the affirmative.

Amendments agreed to.

Clause 33 as amended agreed to.

Clauses 34 to 36 agreed to.

Part 3 as amended agreed to.

Parts 4 to 6 [Clauses 37 to 63] agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendments.