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NSW Legislative Council Hansard

COURT SECURITY BILL

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Second Reading

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [6.00 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.

I have previously announced my intention of introducing court security legislation. The proposed Court Security Bill 2005 is designed to ensure greater protection for court facilities and the people who use them.

Presently, Sheriff's officers rely upon the inherent jurisdiction of the court and limited legislative powers in exercising court security functions. By contrast, the new Court Security Bill provides a sound statutory basis for the exercise of court security powers in New South Wales courts.

The bill provides court security officers with a range of new powers that are specifically directed at ensuring the secure and orderly operation of courts. These include powers of search and seizure, a prohibition on bringing certain restricted items into court premises, a requirement to provide identification details in limited circumstances, and the power to give directions where a person's behaviour intimidates or harasses other people in court premises.

The judiciary has an important role relating to security and the conduct of proceedings in the court room. The provisions of the bill do not derogate from the inherent power of the judiciary to control the conduct of proceedings. The power of the court concerning contempt of the court is not diminished by the legislation.

Indeed, the bill bolsters the courts' powers by providing that a judicial officer may order that members of the public, or particular individuals, be denied entry or leave the court premises. Such an order may be made where it is necessary for securing order and safety in court premises. A penalty of up to \$5,500 applies for contravening such an order.

It is a fundamental element of our justice system that the public has a right of access to the courts of law. The proposed legislation reinforces the public's right to enter and remain on court premises, subject to certain necessary qualifications, such as compliance with security arrangements.

The role of the media in reporting on court proceedings is also recognised in the legislation. The bill accommodates the practice of members of the media of recording interviews on the steps of the court.

Of course, media activities must be conducted having due regard to other people wishing to attend court. Thus, while journalists may enter an exterior area of the court premises for the purpose of making a media report, they must not obstruct or impede access to the court building.

This concession does not apply to the use of recording devices inside the court building.

Mobile telephones may be used as phones inside court premises. However, the use of cameras and mobile telephones to record images or sound inside the court building is an offence. Where a recording device is used in contravention of the legislation, the device and any associated film, tape or other recording medium may be confiscated.

The prohibition is a general security measure and is designed to prevent people inappropriately photographing witnesses or recording proceedings.

The needs of the legal profession are also addressed. The bill provides for exemptions regarding the use of dictaphones by members of the legal profession outside the actual courtroom. The use of recording devices may also be authorised by a judicial officer or in other prescribed circumstances.

The bill makes it an offence to be in possession of certain "restricted items" in court premises. A "restricted item" is a prohibited weapon within the meaning of the Weapons Prohibition Act 1998 and any other knife that is not otherwise caught by that Act. Firearms covered by the Firearms Act 1996 are also classified as restricted items for the purposes of the bill.

Where a person illegally attempts to bring a restricted item into court premises, they may be subject to a fine of up to

\$11,000 or a term of imprisonment of up to two years, or both.

The bill also incorporates the concept of an "offensive weapon" as defined in the Summary Offences Act 1988. Whereas restricted items cover particular types of weapons, an "offensive weapon" covers anything that is made, or adapted for use for causing injury to a person, or intended to be used to injure or menace a person, or damage property.

The prohibition on possessing a restricted item or an offensive implement in court premises does not apply where the item is an exhibit in court proceedings, is in the possession of police, a custodial officer, a court security officer, or is brought into court premises at the direction of a judicial officer.

Honourable Members will appreciate the need to be proactive about court security. To ensure the restrictions set out in the bill can be enforced, the proposed legislation provides court security officers with a range of powers, including the power to search people and to stop and search vehicles entering court premises.

Searches of people entering court premises may be conducted by requiring a person to walk through an electronic scanner, or by passing an electronic metal detection device over the person's outer clothing.

Where a security officer has reasonable grounds for believing that a person may be in possession of a restricted item or an offensive weapon, the officer may conduct a personal search. This may involve the security officer quickly running their hands over the person's outer clothing or the removal and examination of overcoats, hats, shoes or bags.

Failing to comply with a requirement to undergo a search or deposit an item, or immediately leave the court premises, will constitute an offence carrying a maximum penalty of up to \$550.

The search provisions of the bill contain a number of safeguards, consistent with the Law Enforcement (Powers and Responsibilities) Act 2002.

These safeguards include a requirement that a security officer must ask for the person's co-operation. As far as is reasonably practicable, the officer must also inform the person to be searched as to whether they will be required to remove outer clothing, such as overcoats, during the search and why it is necessary to do so. A personal search must be conducted as quickly as possible, with minimal invasiveness and in a way that provides reasonable privacy.

Special protections are included in the bill for searching children. Where a child is under the age of 12 years, the legislation provides that they must be searched by a female officer. Children under the age of 12 years entering court premises must also be in the company of a responsible adult.

When conducting a search of a person, a court security officer may ask the person to produce for inspection an item, which the officer believes on reasonable grounds is a restricted item or offensive weapon. The officer may also ask questions about the item, that are reasonable in the circumstances.

The person may be required to deposit with a security officer any item that an officer believes on reasonable grounds is a restricted item or an offensive weapon. Such items may also be confiscated.

In certain, limited circumstances, court security officers may also require a person who is on court premises to provide their name and address and reason for the person's visit to the court premises.

Such particulars may only be required where the officer believes on reasonable grounds that the person has committed an offence on court premises or is carrying a restricted item or offensive implement. It is an offence not to comply with the requirement or to provide particulars that are false or misleading.

In exercising these powers, court security officers must identify themselves as security officers. Court security officers are required to carry identification at all times while exercising their functions under the legislation. Officers must also give reasons for exercising a power, and a warning that a failure to comply may be an offence.

There have been a number of instances where real and potential acts of intimidation and other forms of confrontation in court premises have been directed at prosecution witnesses, victims or their families. This kind of behaviour is totally unacceptable and has the potential to undermine the administration of justice.

The bill seeks to address this situation by providing court security officers with a power to give a direction to a person or a group of people. The proposed provision is based upon provisions of the Summary Offences Act.

A direction may be given where the officer has reasonable grounds to believe that a person's behaviour is obstructing another person, constitutes harassment or intimidation of another person; or is likely to cause fear to another person of reasonable firmness.

A direction must be reasonable for the purpose of reducing or eliminating the obstruction or other relevant behaviour. Failure to comply with the direction without reasonable excuse is an offence and may result in a penalty of up to \$2200.

The bill also empowers a court security officer to arrest a person in court premises without a warrant, if the person is in the act of committing an offence under the legislation or the officer believes on reasonable grounds that they have committed an offence.

A power of "hot pursuit" has been included in the bill. That is, court security officers may pursue a person who has absconded from the court premises in an attempt to avoid arrest. Where a court security officer effects an arrest, they must hand the person over to a police officer or bring them before an authorised justice, as soon practicable.

An officer may use such force as is reasonable in exercising powers under the proposed legislation.

The safeguards previously outlined apply to the giving of directions and the exercise of a power of arrest under the legislation.

That is, an officer must identify himself or herself as a court security officer, give reasons for exercising the power, and give a warning that a failure to comply may be an offence.

The information must be provided at the time the power is being exercised. Where a court security officer is exercising a power of arrest, the information must be provided prior to the exercise of the power, if it is practicable to do so. If not, it must be provided as soon as it is reasonably practicable after arrest.

The powers in the bill provided for under the legislation may generally not be exercised in respect of a judicial officer or a person being dealt with by a police officer, unless the officer has requested the security officer's assistance.

Nevertheless, the powers may be exercised where the security officer is acting at the direction of a judicial officer. Court security officers may also exercise their powers to prevent a person from causing harm to himself/herself or to another person, or causing damage to property, or to prevent a person escaping from lawful custody.

Where proceedings are being conducted in a court room, the powers may only be exercised if the security officer is satisfied that there is an emergency and there is insufficient time to obtain a direction from the presiding judicial officer.

Sheriff's officers currently perform court security functions. The bill provides that the Sheriff may appoint other persons who are licensed under the Security Industry Act 1997 to carry out security activities under the legislation.

I wish to assure Honourable Members that any personnel appointed by the Sheriff to perform court security functions will receive appropriate training before being permitted to undertake such duties.

Other provisions in the proposed legislation make it an offence to obstruct or impersonate a court security officer, allow penalty notices to be issued for minor offences under the legislation, and allow for signs relating to court security to be erected.

As outlined in the second reading speech, the Sheriff Bill 2005 provides for an amendment to the Ombudsman Act to enable complaints to be made to the Ombudsman regarding the conduct of Sheriff's officers, as well as court security officers in certain circumstances. Complaints handling will also be addressed in updated training guidelines that are being developed by the Sheriff.

The proposed legislation is designed to provide a balanced approach to the conduct of court security and is in line with legislative provisions in other Australian jurisdictions.

There has been extensive consultation with members of the judiciary and the legal profession on the bill.

The bill will commence once training for court security staff and regulations are completed.

The public must feel confident that court facilities operate in a safe and secure way. The proposed Court Security Bill is a significant and positive move towards ensuring the secure and orderly operation of courts.

I commend the bill to the House.

The Hon. DAVID CLARKE [6.01 p.m.]: The Court Security Bill, which is not opposed by the Opposition, deals with the important issue of security in our courts and tribunals. The bill provides court security officers with a range of new powers that are specifically directed at ensuring the secure and orderly operation of courts. The bill confirms that members of the public have a right, subject to certain qualifications, to enter and remain in areas of court premises that are open to the public. The role of the media in reporting court proceedings is also recognised in the bill. However, the bill enables a judicial officer to order court premises, or parts of court premises, to be closed to the public to ensure order and safety in court premises. The maximum penalty for contravening such an order is \$5,500. The bill makes it an offence for a person to be in possession of a restricted item—including a prohibited weapon, firearm or knife—in court premises without a reasonable excuse.

It will also be an offence for a person to use a recording device to record images or sound, or both, in court premises. However, mobile telephones may be used as telephones inside court premises. Exemptions apply regarding the use of the dictaphones by members of the legal profession outside the court room and the use of recording devices where authorised by a judicial officer. The bill contains search and seizure provisions, such as enabling a security officer to exercise certain search powers in respect of persons or vehicles entering or in court premises, enabling a court security officer to require a person to deposit restricted items and enabling a security officer to take possession of and to confiscate a restricted item or offensive implement. The bill also empowers a court security officer to arrest a person in court premises without a warrant if the person is in the act of committing an offence under the legislation or if the officer believes, on reasonable grounds, that they have committed an offence. Court security officers may also pursue a person who has absconded from court premises in an attempt to avoid arrest.

The new powers to be granted to court security officers are balanced by safeguards, including a requirement that a security officer must ask for a person's co-operation when searching that person. The officer must identify himself or herself as a court security officer, give reasons for exercising the direction or power of arrest, and give a warning that a failure to comply may be an offence. The powers provided in the bill may generally not be exercised in respect to a judicial officer or a person being dealt with by a police officer, unless the officer has requested the security officer's assistance. The Government has said that this bill is designed to provide a balanced approach to the conduct of court security and is in line with legislative provision in other Australian jurisdictions. The Government indicated that it has consulted extensively with members of the judiciary and the legal profession in relation to this bill, and that they are in broad agreement. In the circumstances, the Opposition supports this bill as one that is certainly most necessary at this time.

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [6.06 p.m.], in reply: I thank the Hon. David Clarke for his contribution to the debate. I commend the Court Security Bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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