Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.05 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Terrorism (Police Powers) Amendment Bill 2010. The bill gives effect to recommendations made in a statutory review of the Terrorism (Police Powers) Act 2002 conducted recently by the Department of Justice and Attorney General. The statutory review also took into consideration the recommendations made by the Ombudsman in his 2008 review of parts 2A and 3 of the Act. The Terrorism (Police Powers) Act confers special powers on police officers to deal with imminent threats of terrorist activity and to respond to terrorist attacks. The Act was drafted in the aftermath of the September 11 attacks in 2001, and in conjunction with a reference of powers to the Commonwealth to allow for a nationally consistent set of terrorism offences.

The Act provides for extraordinary powers to be exercised by police in limited circumstances. The powers relate to the ability to exercise special search and seizure powers in a target area, place a person in preventative detention and undertake covert searches authorised by warrant. The powers are able to be exercised only when it is believed a terrorist attack is about to occur, or in the immediate period after it has occurred. Unsurprisingly given the special nature of the powers, they have been used sparingly since the Act commenced, but have been kept under constant review. Two previous statutory reviews were conducted in 2005-06 and 2007.

The amendments in the bill represent the result of the third such statutory review and make minor amendments to the Act to clarify its operation. The review was conducted in late 2009 and sought comment from the public and key stakeholders regarding whether the objectives and provisions of the Act remained valid. A number of submissions were made, and the response to each of the points raised in those submissions can be found in the review. Following consideration of the Ombudsman's previous review and the submissions made, the statutory review found that the objectives of the Act remain valid and made 15 recommendations to improve the operation of its provisions. Eleven of these recommendations will be implemented as a result of the current bill. Of the balance, one proposes an amendment to the regulations, which are currently being drafted. Two involve operational matters for the New South Wales Police Force, and one recommends further consultation. Any necessary amendments arising from that consultation will be progressed separately.

I turn now to the substantive amendments contained in the bill. Item [1] of schedule 1 provides a definition of impaired intellectual functioning. The Ombudsman noted that there were inconsistent definitions in the Act regarding incapable persons and recommended that the definition be made consistent. The Government supported this recommendation and has adopted a definition recommended by the Ombudsman, which also is used in the Law Enforcement (Powers and Responsibilities) Act 2002. This should make the definition easy for the police to use and provide satisfactory protection for those who are unable to adequately represent their own interests.

Item [2] provides that police must provide a written statement regarding the use of the special search powers under the Act within 30 days of a request being made. The Bar Association noted in its submission that whilst the Act provided for people subject to the powers to request a statement from police that the search was conducted in pursuance of the Act, it did not provide a time frame within which such a statement should be provided. The provision will remedy this oversight. Item [3] inserts a new section that gives the Supreme Court the power to order that where it is in the interests of justice to do so, the Legal Aid Commission should provide legal aid to a person in relation to preventative detention proceedings. This is an unusual provision, which will override the general tests that are applied by the commission in considering whether to grant someone legal aid. However, the Government accepts the Ombudsman's recommendation, given the extraordinary nature of preventative detention proceedings. It is also noted that the preventative detention provisions have never been used. Hence, it is unlikely that this provision will result in any significant adverse resource requirements for the commission.

In his report, the Ombudsman noted that the Act provides that where a police officer is satisfied that the grounds on which a preventative detention order was made have ceased to exist, they must make an application to have the order revoked. However, there is no provision requiring the release of the person in such circumstances. Item [4] of the bill inserts a provision providing that a person is to be released immediately in these circumstances. Items [5] through [8] of the bill relate to the requirements under the Act for a person being detained under a preventative detention order to be informed of certain matters. The new provisions will ensure that the person is informed of their general right to contact the Ombudsman and the Police Integrity Commission. The Act provides strict restrictions regarding the contact that a person detained under a preventative detention order may have. Item [10] implements a recommendation of the Ombudsman: that detainees be entitled to have contact with authorised chaplains where they are detained.

Item [12] also implements the recommendations of the Ombudsman regarding the assistance that police officers should provide to vulnerable detainees—those under 18 or with impaired intellectual functioning. The provision will require police officers responsible for a detainee to assist, as far as reasonably practical, such persons to exercise all of their contact rights under the provisions in the Act. Given the extraordinary circumstances that would be prevailing should a preventative detention order ever be made, the Act also provides for communications with detainees to be monitored. However, the Act also provides for a strict penalty for persons monitoring such communication who inappropriately disclose the subject of that communication. Item [14] inserts a new provision that ensures that such a monitor may seek legal advice regarding their obligations under the Act, without risking committing the disclosure offence.

Item [20] removes the current provision of the Act, which requires the destruction of records relating to covert searches conducted under the Act that are no longer relevant to an investigation. This provision was originally included in the Act as a safeguard of the privacy of those subject to a covert search. However, it was noted in the Ombudsman's review that the destruction of these records limits the ability of any independent oversight agency to properly review the exercise of the powers. As such, the Government agrees with the Ombudsman's recommendation that the requirement to destroy the records should be removed in order to enable proper oversight of the covert search provisions.

Items [17] to [19] and items [21] to [25] relate to the reporting requirements under the Act. The Ombudsman recommended that his limited reporting role under the Act should be extended indefinitely, given the seriousness of the powers involved. The Government was happy to endorse this long-term oversight role and, given the limited use of the Act thus far, has implemented a rolling scheme of reviews every three years. The current monitoring role of the Ombudsman is preserved. The Government has taken the opportunity to link the timing of the statutory reviews of the Act to this Ombudsman reporting period, such that the Government can conduct its reviews consistently taking into account the Ombudsman's most recent findings.

Unfortunately, the threat of terrorism remains a real concern to our society. Since the spate of attacks worldwide following 2001, Australia has been fortunate to avoid a major terrorist attack on our soil. But recent convictions and further arrests regarding terrorist activity in this country serve as stark reminders that we can never rest easy, thinking that we will never be subject to a terrorism-related emergency. The powers given to those agencies in the Terrorism (Police Powers) Act are indeed extraordinary but are balanced by appropriate safeguards, and experience has shown that they have only been called upon when required. The present bill is an acknowledgement that those powers continue to be justified and ensures that this State is best placed to deal with any approaching threat in an effective manner without unduly encroaching upon civil liberties. I commend the bill to the House.