

Passed by both Houses



New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 1999

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 1999*



New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 1999

Act No , 1999

An Act to amend the *Law Enforcement (Controlled Operations) Act 1997* to enable urgent applications to be made and urgent authorities to be granted with respect to controlled operations; to extend the range of persons who may be involved in controlled operations; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Law Enforcement (Controlled Operations) Amendment Act 1999*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136

The *Law Enforcement (Controlled Operations) Act 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit “or renewal” from the definition of *authority*.

[2] Section 3, definition of “chief executive officer”

Insert at the end of paragraph (d) of the definition:

and

- (e) in relation to a law enforcement agency prescribed by the regulations, the chief executive officer (however described) of that agency,

[3] Section 3, definition of “controlled operation”

Insert at the end of paragraph (c) of the definition:

or

- (d) carrying out an activity that is reasonably necessary to facilitate the achievement of any purpose referred to in paragraph (a), (b) or (c),

[4] Section 3, definitions of “law enforcement agency” and “law enforcement officer”

Omit the definitions. Insert instead:

law enforcement agency means each of the following:

- (a) the Police Service,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,
- (d) the Police Integrity Commission,
- (e) such of the following agencies as may be prescribed by the regulations as law enforcement agencies for the purposes of this Act:
 - (i) the Australian Federal Police,

- (ii) the National Crime Authority,
- (iii) the Australian Customs Service.

law enforcement officer means:

- (a) an officer or employee of a law enforcement agency or a person who is seconded to such an agency, including (but not limited to) a police officer, or
- (b) a member of a police force or police service (however described) of another State, a Territory or another country.

[5] Section 3A

Insert after section 3:

3A Act not to affect certain matters

- (1) This Act does not affect, and is taken never to have affected, the existence or exercise of any discretions (including any administrative or judicial discretions) that, apart from this Act, may lawfully be exercised in relation to the commencement, conduct or conclusion of legal proceedings.
- (2) Without limiting subsection (1), the discretions referred to in that subsection include the following:
 - (a) any discretion as to whether or not legal proceedings should be commenced or terminated,
 - (b) any discretion as to whether or not evidence should be admitted in legal proceedings,
 - (c) any discretion as to how a person found guilty in respect of a charge should be dealt with.
- (3) This section applies to all activities, whether or not they are engaged in for the purposes of, or in the course of, an authorised operation.
- (4) In this section, *legal proceedings* includes disciplinary proceedings.

[6] Section 5 Applications for authorities

Omit section 5 (2), (2A) and (2B). Insert instead:

- (2) An application for an authority may be made:
 - (a) by means of a written document, signed by the applicant, or by means of a facsimile transmission of a document so signed (a *formal application*), or
 - (b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an *urgent application*).
- (2A) In any application, whether formal or urgent, the applicant must provide the following particulars:
 - (a) a plan of the proposed operation,
 - (b) the nature of the criminal activity or corrupt conduct in respect of which the proposed operation is to be conducted,
 - (c) the nature of the controlled activity in respect of which an authority is sought,
 - (d) a statement of whether or not the proposed operation, or any other controlled operation with respect to the same criminal activity or corrupt conduct, has been the subject of an earlier application for an authority or variation of an authority and, if so, whether or not the authority was given or variation granted.
- (2B) The regulations may make provision for or with respect to the following matters:
 - (a) the circumstances in which an urgent application may be made,
 - (b) the procedure for making an urgent application,
 - (c) the extent to which a chief executive officer is to be satisfied as to the validity of the circumstances in which an urgent application is made,
 - (d) the keeping of records in relation to an urgent application,
 - (e) the form in which a formal application may be made.

[7] Section 8

Omit the section. Insert instead:

8 Form of authority

- (1) An authority to conduct a controlled operation may be granted:
 - (a) by means of a written document, signed by the chief executive officer, or by means of a facsimile transmission of a document so signed (a *formal authority*), or
 - (b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an *urgent authority*).
- (2) An authority, whether formal or urgent:
 - (a) must identify the operation by reference to the plan referred to in section 5 (2A) (a), and
 - (b) must identify the law enforcement officer who is to conduct the operation, and
 - (c) must identify each person who may engage in controlled activities for the purposes of the operation, and
 - (d) must state whether or not any such person may operate under an assumed name, and
 - (e) must identify:
 - (i) with respect to the law enforcement participants, the nature of the controlled activities that those participants may engage in, and
 - (ii) with respect to the civilian participants, the particular controlled activities (if any) that each such participant may engage in, and
 - (f) in respect of an urgent authority, must specify the period (not exceeding 72 hours) for which the authority is to remain in force, and
 - (g) in respect of a formal authority, must specify the period (not exceeding 6 months) for which the authority is to remain in force, and
 - (h) must specify any conditions to which the conduct of the operation is subject under section 6 (1) (a).

- (3) A person is sufficiently identified for the purposes of subsection (2) (b) or (c) if the person is identified:
 - (a) by an assumed name under which the person is operating, or
 - (b) by a code name or code number,so long as the assumed name, code name or code number can be matched to the person's identity by reference to documentation kept by the chief executive officer.
- (4) Unless it sooner ceases to have effect, an urgent authority ceases to have effect 72 hours after it is granted.
- (5) A chief executive officer who grants an urgent authority must ensure that written notes are kept of the following matters:
 - (a) the date and time when the authority was granted,
 - (b) the identity of the law enforcement officer to whom the authority was granted,
 - (c) the particulars referred to in subsection (2).
- (6) The regulations may make provision for or with respect to the following matters:
 - (a) the procedure for granting an urgent authority,
 - (b) the keeping of records in relation to an urgent authority,
 - (c) the form in which a formal authority may be granted.

[8] Section 9 Duration of authorities

Omit "section 8 (1) (g)". Insert instead "section 8 (2) (f) or (g)".

[9] Section 10 Variation of authority

Omit section 10 (1). Insert instead:

- (1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief executive officer for a variation of an authority for any one or more of the following purposes:
 - (a) to extend the period for which the authority has effect,
 - (b) to provide for an alternative principal law enforcement officer for the operation,

- (c) to authorise additional or alternative persons to engage in controlled activities for the purposes of the operation,
 - (d) to authorise participants in the operation to engage in additional or alternative controlled activities.
- (1A) More than one application for a variation may be made in respect of the same authority, but no single variation may extend an authority for more than 6 months at a time.
- (1B) An application for a variation of an authority may be made:
- (a) by means of a written document, signed by the applicant, or by means of a facsimile transmission of a document so signed (a *formal application*), or
 - (b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an *urgent application*).
- (1C) The regulations may make provision for or with respect to the following matters:
- (a) the circumstances in which an urgent application may be made,
 - (b) the procedure for making an urgent application,
 - (c) the extent to which a chief executive officer is to be satisfied as to the validity of the circumstances in which an urgent application is made,
 - (d) the keeping of records in relation to an urgent application,
 - (e) the form in which a formal application may be made.

[10] Section 10 (6) and (7)

Omit the subsections. Insert instead:

- (6) A variation of authority may be granted:
 - (a) by means of a written document, signed by the chief executive officer, or by means of a facsimile transmission of a document so signed (a *formal variation of authority*), or
 - (b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an *urgent variation of authority*).

- (7) Unless it sooner ceases to have effect, an urgent variation of authority ceases to have effect 72 hours after it is granted.
- (8) A chief executive officer who grants an urgent variation of authority is to ensure that written notes are kept of the following matters:
 - (a) the date and time when the variation of authority was granted,
 - (b) the identity of the law enforcement officer to whom the variation of authority was granted,
 - (c) the terms of the variation.
- (9) The regulations may make provision for or with respect to the following matters:
 - (a) the procedure for granting an urgent variation of authority,
 - (b) the keeping of records in relation to an urgent variation of authority,
 - (c) the form in which a formal variation of authority may be granted.

[11] Section 11

Omit the section.

[12] Section 13A

Insert after section 13:

13A Defect in authority

An application for an authority or variation of authority, and any authority or variation of authority granted on the basis of such an application, is not invalidated by any procedural defect, other than a defect that affects the substance of the application, authority or variation in a material particular.

[13] Section 15 Reports on controlled operations

Omit “28 days” from section 15 (1). Insert instead “2 months”.

[14] Section 21 Ombudsman to be notified of certain matters

Omit section 21 (1) (a). Insert instead:

- (a) granting an authority or variation of authority, or

[15] Section 21 (2)

Omit “, renewal”.

[16] Section 22 Inspection of records by Ombudsman

Insert after section 22 (3):

- (4) Nothing in this section requires the Ombudsman to inspect records in relation to an authorised operation that has not been completed.

[17] Section 23 Annual reports by Ombudsman

Omit “authorities that have been granted, varied or renewed” from section 23 (2) (a).

Insert instead “formal authorities that have been granted or varied”.

[18] Section 23 (2) (a)

Omit “applications for the granting, variation or renewal”.

Insert instead “formal applications for the granting or variation”.

[19] Section 23 (2) (a1)

Insert after section 23 (2) (a):

- (a1) the number of urgent authorities or urgent variations of authorities that have been granted by the chief executive officer of that agency, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief executive officer of that agency, during the period to which the report relates,

[20] Section 23 (3)

Insert after section 23 (2):

- (3) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

[21] Section 27 Evidentiary certificates

Omit “, varying or renewing” from section 27 (b).

Insert instead “or varying”.

[22] Section 27

Insert “conclusive” before “evidence”.

[23] Section 29

Omit the section. Insert instead:

29 Delegations

- (1) Except as provided by this section (and despite any other Act or law to the contrary):
 - (a) the functions of a chief executive officer under this Act may not be delegated to any other person, and
 - (b) the functions of the Ombudsman under this Act with respect to the inspection of documentation referred to in section 8 (3) may not be delegated to any other person.
- (2) A chief executive officer may delegate any of the chief executive officer’s functions under this Act (except this power of delegation) to a person for the time being holding or acting in a position prescribed by the regulations as a position to which functions under this Act may be delegated.
- (3) A position cannot be prescribed as a position to which functions under this Act may be delegated unless it is a position within the body or agency concerned.

- (4) In the case of the Police Service, no more than 5 delegations may be in force under this section at any one time, and no more than 5 positions may be prescribed at any one time as positions to which functions under this Act may be delegated. The positions prescribed can only be positions that are of or above the rank of Superintendent.
- (5) In the case of any other law enforcement agency, no more than one delegation may be in force under this section at any one time, and no more than one position may be prescribed at any one time as a position to which functions under this Act may be delegated.
- (6) The functions of the Ombudsman under this Act with respect to the inspection of documentation referred to in section 8 (3) may be delegated to an Assistant Ombudsman.

[24] Section 32 Review of Act

Insert at the end of the section:

- (4) A further review is to be undertaken as soon as possible after 1 March 2001.
- (5) A report on the outcome of the review undertaken in accordance with subsection (4) is to be tabled in each House of Parliament by 1 June 2001.