

## Second Reading

**The Hon. JOHN HATZISTERGOS** (Attorney General, and Minister for Industrial Relations) [3.48 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 Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009. The bill introduces a scheme for a new class of search warrant—the covert search warrant—to assist police and other law enforcement agencies in the investigation of serious criminal offences, and creates new search warrant powers in relation to the examination of computers. The bill is part of the New South Wales Government's ongoing commitment to providing law enforcement agencies with the necessary armoury to respond effectively to major crime and keep the community safe.

The essential feature of the new covert search warrant scheme is the power to enter and search premises without the occupier's knowledge and delay the subsequent notification to the occupier. The use of covert search warrants is not intended to be an everyday event. In addition to the legislative restrictions of the scheme, which I will expand upon shortly, covert search warrants will not be necessary in many cases. Furthermore, the execution of a covert search warrant is considerably resource intensive and logistically difficult. Surveillance teams are required to ensure that the occupier is elsewhere, a covert entry to the house must be made, the area needs to be monitored to ensure that the occupier does not return, and so on.

The new scheme recognises that there may be cases in which law enforcement agencies would benefit from obtaining covert access to premises to obtain intelligence or evidence in relation to a serious criminal offence. By conducting a covert search, the police could monitor the organisation and development of criminal activity without notifying the suspects that they are under surveillance. Premature notification to a suspect of the existence of an investigation may lead to an investigation failing, notwithstanding the commission of serious offences. Searches of clandestine drug laboratories are but one example of where there may be the need to covertly examine the premises to determine whether the manufacturing process is sufficiently advanced for the seizure of evidence to occur.

These are tough new policing powers, and the Government has therefore taken care to ensure that the scheme is appropriately restricted and accompanied by strict judicial oversight and comprehensive safeguards. Covert search warrants will be available only in connection with certain serious offences and may be authorised only by a Supreme Court judge. Before a warrant can be granted the issuing judge must be satisfied that it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier, and specifically give consideration to the nature and gravity of the searchable offence and the extent to which the privacy of any person not believed to be knowingly concerned in the commission of the offence is likely to be affected. Furthermore, while the issuing judge may authorise that service of an occupiers notice be delayed for up to six months at a time, service may be delayed beyond 18 months only in exceptional circumstances and may not be delayed beyond three years in total.

Law enforcement agencies will be required to report certain matters to the issuing judge following execution of the covert search warrant, a copy of which is to be furnished to the Attorney General. In addition, agencies will be required to report annually on the exercise of covert search warrant powers, as will the New South Wales Ombudsman, who will have an ongoing oversight role in relation to the scheme. The scheme is based on the existing scheme for covert search warrants for terrorism offences and incorporates the same safeguards and protections, in particular, the need to seek approval from a senior officer prior to making an application and the need to seek a warrant from the Supreme Court. The scheme also draws upon the operation of covert search warrants in other Australian jurisdictions. As mentioned, the bill also creates new search warrant powers in relation to the examination of computers. These powers are based on existing Commonwealth provisions and will strengthen the ability of New South Wales law enforcement agencies to effectively investigate technologically concealed criminal activity. I now turn to the main detail of the bill.

New section 46A provides that covert search warrants will be able to be obtained only in relation to specified serious offences. These are generally indictable offences punishable by imprisonment for a period of seven years or more that involve various drug, sexual and other serious offences. New section 46B provides that only a Supreme Court judge may issue a covert search warrant. New section 46C provides that applications for covert search warrants must be authorised by certain senior police officers and members of the Police Integrity Commission and the New South Wales Crime Commission. New section 47 contains the grounds on which an application for a covert search warrant may be made. The eligible applicant must suspect on reasonable grounds that there is, or within 10 days will be, in or on the premises a thing of a kind connected with a searchable offence and consider that it is necessary for the entry and search to be conducted without the knowledge of the occupier of the premises.

New section 47A contains the authority conferred by covert search warrants—namely, entry to the subject premises without the occupier's knowledge, the impersonation of another person for the purpose of executing the warrant, and the doing of anything else that is reasonable to conceal from the occupier anything done in the execution of the warrant. The executing officer may also gain access to the subject premises, if necessary, by entering adjoining and adjacent premises without the knowledge of the occupier of those premises. Provision is made elsewhere in the bill for the occupier of the subject and adjoining premises to subsequently be notified of the entry.

New section 48 sets out the grounds on which the two kinds of search warrants may be issued and enables a standard

warrant to be issued instead of a covert search warrant in specified circumstances. New section 49 specifies that things may be seized and detained in the execution of a search warrant and also enables a covert search warrant to authorise the placement of things in substitution for seized things. New section 49A authorises the return or retrieval of certain things seized or placed under a covert search warrant. Amended section 62 of the principal Act sets out the information to be contained in an application for a search warrant, including the considerations for the issuing judge when determining whether to issue a covert search warrant. As I mentioned, these include the extent to which it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier, the nature and gravity of the searchable offence, and the extent to which the privacy of any person not believed to be knowingly concerned in the commission of the offence is likely to be affected. The offences in section 63 of the principal Act are extended to the provision of false or misleading information in a report or occupiers notice in relation to a search warrant.

Section 66 of the principal Act is amended to require a covert search warrant to specify certain matters. New regulations will be developed prior to the commencement of the scheme in order for relevant forms to be prescribed in this regard. Section 67 of the principal Act is amended so as to alter the current requirements for service of occupiers notices in relation to the execution of standard warrants and to provide for service of occupiers notices in relation to the execution of covert search warrants. At present an occupiers notice is required to be personally served on an occupier on entry to premises, or as soon as practicable after, unless service is postponed. Service may be postponed on more than one occasion for up to six months at a time. New section 67 subsections (4) to (7) instead require personal service on entry or within 48 hours after entry. If this proves impossible an eligible issuing officer may make orders to bring the entry to the notice of the occupier otherwise than by personal service. These changes will create more certainty for both occupiers and law enforcement agencies alike.

New section 67 (8) requires service of an occupiers notice in relation to a covert search warrant as soon as practicable after the warrant is executed unless it is postponed under new section 67A. New section 67A enables an eligible issuing officer to postpone service of an occupiers notice in relation to a covert search warrant for an initial period of up to six months and on further occasions for up to three years in total. An eligible issuing officer may not postpone service for periods exceeding 18 months in total unless satisfied that there are exceptional grounds to justify the postponement. New section 67B requires an adjoining occupiers notice to be served on an adjoining occupier whose property is entered under a covert search warrant within specified periods, unless service is postponed or dispensed with by the eligible issuing officer. Section 73 of the principal Act is amended to provide for the expiry of a covert search warrant 10 days after the date on which it is issued. New section 74A requires a person executing a covert search warrant to report certain matters to the eligible issuing officer who issued the warrant within 10 days after the execution of the warrant or, if the warrant was not executed, within 10 days after the expiry of the warrant. A report is also to be provided if premises are entered for the purposes of returning or retrieving a thing under new section 49A. Copies of reports provided under the new section are to be given to the Attorney General.

New sections 75A and 75B contain the computer examination powers to which I referred earlier. New section 75A enables the removal of computers and similar devices from premises, the subject of a search warrant, for up to seven working days, or longer on application, for examination. New section 75B creates new search warrant powers in relation to the search and examination of computers, including access to computers "networked" to a computer at the search premises. New section 76A provides for applications under part 5 in respect of covert search warrants to be dealt with in the absence of the public. New section 76B makes it an offence to publish certain applications, reports and notices concerning search warrants. As I mentioned, the Ombudsman will have an ongoing oversight role in relation to the covert search warrant scheme.

Amended section 242 of the principal Act provides for the Ombudsman to monitor the operation of provisions of the Act relating to covert search warrants and to make a yearly report to the Attorney General and the Minister for Police. In addition, new section 242A requires the Commissioner of Police, the Commissioner for the New South Wales Crime Commission and the Commissioner for the Police Integrity Commission to each report annually on the exercise of the covert search warrant powers. In summary, the bill represents an important bolstering of law enforcement capability to assist in combating major crime in New South Wales. The Government takes these powers very seriously and is seeking to introduce them only with the strictest of safeguards and strong and effective oversight. I commend the bill to the House.