Law Enforcement and Other Legislation Amendment Bill 2007

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LAW ENFORCEMENT AND OTHER LEGISLATION AMENDMENT BILL 2007

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Agreement in Principle

Mr DAVID CAMPBELL (Keira—Minister for Police, and Minister for the Illawarra) [5.23 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Law Enforcement and Other Legislation Amendment Bill 2007. The bill deals with amendments arising out of the Ombudsman's review of the Cronulla riots emergency powers, implementing the Government's election commitment to introduce move-on powers targeted specifically towards groups of intoxicated people, various amendments to clarify the operation of the Crimes (Serious Sex Offenders) Act 2006, and amendments to the Terrorism (Police Powers) Act 2002 arising out of a legislative review.

I refer to schedule 1, part 6A, Cronulla riot powers. Part 6A was enacted following the Cronulla riots in December 2005, the scale and severity of which was unprecedented in New South Wales. These powers are emergency powers, designed to allow police to prevent and control large-scale public disorder of the type witnessed in 2005, when existing general policing powers were not sufficient. With these powers police can act swiftly and decisively to deal with an emergency situation in extraordinary circumstances. At the time these powers were created the Iemma Government provided for a two-year Ombudsman review. The Ombudsman has provided his review and has found, as would be expected, that these powers have been used rarely and judiciously. In his conclusion the Ombudsman observed:

> Police appear to have been responsible and appropriately measured in their use of the Part 6A emergency powers to date. The available evidence indicates that authorisations to use the powers were only granted in circumstances where senior police were genuinely of the view that other, less intrusive policing measures would be insufficient to restore order or prevent further attacks.
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> Significantly, there were a number of public order incidents, or threats to public order, where senior commanders considered whether to authorise the use of the Part 6A powers, but opted not to as other effective and appropriate options were available to police.
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> On the rare occasions that use of the Part 6A powers was authorised, such authorisations generally appear to have been well founded, and in accordance with the legislative requirements and the intention of Parliament.

In summary, the Ombudsman's review found that the authorisation process was an important safeguard, the use of cordons and roadblocks had been effective, and the emergency use of powers without authorisation happened only once and with good effect. The review noted that the powers had not been tested fully as they had not been used that often. There have been occasions when police have considered using the powers but were able to deal with the situation with general police powers. Based on the experience of the New South Wales Police Force, and in particular the Public Order and Riot Squad, these powers are a useful set of back-up powers to have in policing extreme examples of public disorder.

The Cronulla riots shocked the public. There is support within the community for police to have a greater range of measures to control or quell such disturbances. Police are conscious of the gravity of these powers and respect the confidence the Government has in its Police Force. The Commissioner of Police and his senior officers are acutely aware of the importance of considered and appropriate authorisation of such powers in urgent and extreme situations as permanent powers, ongoing oversight and accountability will be ensured via detailed police reviews each time the powers are used.

A report of these reviews will be provided to the Ombudsman, who will have continuing powers to review and report on the use of the powers. This bill provides for further safeguards in relation to the authorisation and use of the powers. An amendment to section 87D provides that the nature and extent of the authorisation should be appropriate to the type of emergency that occurs. This will ensure that the powers, when used, should be tightly focused. For example, if there is a large-scale public disorder occurring in one suburb in Sydney, the size of the target area should be fashioned to deal with that situation. The entire city should not be made a target area. Recommendation 2 of the Ombudsman's review proposed that Parliament consider whether further safeguards

are required to provide an assurance of the right to peaceful assembly.

The Government is firmly of the view that these emergency powers are intended to be used only in the most extreme circumstances and cannot be used for assemblies that are peaceful. Currently under the Act an authorisation cannot be given unless there is, or there is threatened in the near future, a large-scale riot or other civil disturbance that gives rise to a serious risk to public safety and that the exercise of the special powers is reasonably necessary to prevent or control the public disorder. The Government is, therefore, of the view that no legislative requirement is required to guarantee the right of peaceful assembly. The Act is clear that authorisations are not for circumstances like peaceful assemblies.

However, in implementing recommendation 4 the Government will provide further safeguards in relation to the right of peaceful assembly by ensuring that part 6A, police procedures regarding the authorisation and review process, includes particular reference to peaceful assemblies. Senior police officers who make an authorisation will, therefore, be required to articulate the reasons for granting the authorisation. Clearly, an application for an area to be the target of an authorisation that relates only to a peaceful assembly should not be granted.

An amendment to section 87M will allow police officers to seize and detain any item that is likely to be used to contribute to or to inflame a public disorder, for example, clothing and iconography with inflammatory or derogatory messages when there is an authorisation in place. This would allow police to seize items such as the t-shirts and materials with racist messages that were seen in the Cronulla riots. A new section 87MB will enable police to deal with large groups of people who marshal outside a target area with the intent to travel to and participate in a riot. This was a phenomenon that we witnessed during the Cronulla riots.

Existing section 87N will be amended to make the test clearer and to add two additional safeguards. Section 87N allows the emergency use of the powers under the division in circumstances where an authorisation under section 87D has not yet been given. The first safeguard is that the emergency use of the powers must now be preapproved by a senior police officer. This preapproval can be given in writing or orally, and it can be given over the phone or police radio. Secondly, there will be a three-hour time limit on the use of these emergency powers before an authorisation under section 87D must be given.

The senior officer with whom the preapproval power should rest was the subject of much debate in the other place. The Government's reasoned approach to the issue is that the power should lie with an officer of or above the rank of inspector. However, due to the adoption of an amendment moved by the Opposition, the bill now states that only a superintendent or local area commander can exercise this function. As the Attorney General explained in the other place, this amendment will effectively make the legislation unworkable in a dramatic situation where urgent police action is required in response. It would leave the police in an untenable position in which an authorisation may not be able to be obtained at the time it needs to be obtained, leading to a volatile situation unfolding and the police being powerless to deal with it. That is why the Government will move an amendment in Committee to restore the bill to its original state and put the right balance back into the legislation to ensure that it is workable.

Continuing with the detail of the bill, a redrafted section 87O will ensure that the Ombudsman will continue to keep these powers under scrutiny. It is hoped that there will not be other occasions to use these powers. But if they are employed the Ombudsman will be free to report on the incidents in his annual report. These are emergency powers and in making them permanent the Government believes that the right balance has been struck between necessary safeguards and providing the New South Wales Police Force with the tools to proactively, swiftly and efficiently deal with an imminent or occurring large-scale public disorder.

Schedule 2 to the bill contains amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 that relate to the dispersal of intoxicated persons. These amendments implement a commitment made by the Government at the March 2007 election. Item [2] enacts new section 198 to confer on police officers the power to give directions to a person in a group of three or more seriously intoxicated persons in a public place for any such person to leave the place and not return for a period that does not exceed six hours. The power is exercisable if the police officer believes on reasonable grounds that the person's behaviour is likely to cause injury to other persons, damage to property or otherwise give rise to a risk to public safety. The new powers, which will complement the existing "move-on" provisions in part 14 of the Act, are directed towards putting a stop to crime and antisocial behaviour before it occurs. These powers will allow police to take a proactive approach to the problem by defusing potentially volatile situations before they get out of hand.

Schedule 3 amends the Crimes (Serious Sex Offenders) Act 2006 and the Bail Act 1978 as part of the Government's ongoing commitment to ensure the protection of the community from serious recidivist sex offenders. Item [1] amends section 3 to make it clear that the primary object of the Act is to provide for the extended supervision and continuing detention of serious sex offenders so as to ensure the safety and protection of the community. Items [2], [6], [7] and [18] are administrative amendments that provide that applications are to be brought in the name of the State of New South Wales. Item [21] inserts proposed section 24A, which entitles the Attorney General to act on behalf of the State of New South Wales for the purposes of applications under that Act. Item [5] amends section 11 to enable a condition that a person resides at an address approved by the

Commissioner of Corrective Services to be imposed on an extended supervision order or interim supervision order.

Item [9] inserts proposed section 14A into the Act, which enables an application to be made to the Supreme Court for a continuing detention order against a person who has been found guilty of the offence of failing to comply with the requirements of an extended supervision order or interim supervision order. Item [15] amends section 17 to require the Supreme Court to consider the nature of the breach before making a determination in relation to an application under proposed section 14A. Item [16] inserts proposed section 17A, which revokes an existing parole order if the person is made the subject of a continuing detention order under proposed section 14A. Item [20] amends section 22 to provide that if a matter the subject of an appeal is remitted by the Court of Appeal to the Supreme Court the order concerned continues in force. The Court of Appeal may make an interim order revoking or varying an extended supervision order or a continuing detention order if a matter is remitted to the Supreme Court. Item [19] amends section 20 to allow for the arrest of a person in respect of whom a warrant of commitment has been issued as a result of a continuing detention order, but who is currently not in custody.

Schedule 3.2 makes amendments to the Bail Act 1978 to provide for a presumption against bail for the summary offence of breaching an extended supervision order and to add an offence to the serious personal violence offences listed for the purposes of the presumption against bail for repeat offenders. Item [1] inserts proposed section 8F into the Bail Act 1978. The proposed section creates a presumption against bail for a person who is accused of the offence of breaching an extended supervision order or interim supervision order. Item [2] amends section 9D of the Bail Act 1978 to add the offence of attempting or assaulting with intent to have sexual intercourse with a child between the ages of 10 and 16 years, under section 66D of the Crimes Act 1900, to the list of personal violence offences for which a repeat offender may only be granted bail in exceptional circumstances.

Item [3] amends section 32 of the Bail Act 1978 to make it clear that the section that contains the matters to be taken into account when considering a bail application applies to offences to which proposed section 8F applies, but does not prevent consideration of matters relevant to the question of whether bail should not be refused. Item [4] amends section 38 of the Bail Act 1978 to require an authorised officer or court to record the reasons for granting bail for an offence to which proposed section 8F applies.

Schedule 4 to the bill makes various amendments to the Terrorism (Police Powers) Act 2002 arising from a legislative review of that Act. Sections 18 and 22 are amendments to clarify the existing power to stop, enter and search vehicles, vessels and aircraft. Section 26U is amended to provide that when a preventative detention order is in force in relation to a person, the power to enter and search premises for the person includes the power to enter and search vehicles, vessels and aircraft for the person. Section 27A is amended to extend the covert search warrant provisions to the search of vehicles, vessels and aircraft. Section 23 deals with the identification and other details that a police officer is required to disclose when exercising a special police power. The amendment clarifies that the information may only be provided after the power is exercised if it is not reasonably practicable to provide the information before or at the time of exercising the power. This makes the provision consistent with similar provisions in the Law Enforcement (Powers and Responsibilities) Act 2002.

The Preventative Detention Scheme in part 2A of the Act does not permit orders to be made against children under the age of 16 years. Section 26E is amended to provide that if a child under the age of 16 years is inadvertently detained, the child should be released into the care of a parent or other appropriate person. This change takes up a submission made by the Department of Community Services. Section 26ZA is amended to make the provision more consistent with the Law Enforcement (Powers and Responsibilities) Act 2002. Section 27U of the Covert Search Warrant Scheme is amended to clarify that occupier notices are to be served on each person who was believed to be concerned in the terrorist act for which the warrant was executed and who were occupiers of the subject premises at the time of the search. Schedule 4.2 makes an amendment to the Terrorism (Police Powers) Regulation dealing with delegations. Currently, the regulation is drafted with reference to specific position titles, and those titles may change over time. The amendment refers to assistant commissioner positions with reference to the relevant area of responsibility, rather than by reference to the specific title position. I commend the bill to the House.

Debate adjourned on motion by Mr Greg Smith and set down as an order of the day for a later hour.