



Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Bill 2013 (Proof)

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LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (ARREST WITHOUT WARRANT) BILL 2013

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Second Reading

Debate resumed from 13 November 2013.

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.01 p.m.], on behalf of the Hon. Michael Gallacher: 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 purpose of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to ensure police have clear, simple and effective powers of arrest to protect the community.

The Law Enforcement (Powers and Responsibilities) Act governs the day-to-day interactions of over 16,000 police with the people of New South Wales. It is critical police that have the powers they need to get on with their job and keep the community safe.

Three weeks ago, former Police Minister the Hon. Paul Whelan and former Shadow Attorney General Mr Andrew Tink were asked to provide the Government with urgent advice to finalise the statutory review of the Law Enforcement (Powers and Responsibilities) Act.

They were asked to give immediate priority to addressing police concerns with section 99 of the Act, which sets out police powers to arrest without a warrant. Police have raised concerns that section 99 is complex and difficult to apply. This has resulted in offenders escaping conviction and at times large police payouts for wrongful arrests, even where the arrest is made by a police officer in good faith.

Concerns with section 99 were also raised in a recent decision by Judge Conlon of the District Court. In his judgement, Judge Conlon argued section 99 was in urgent need of amendment. He stated:

The community would be entitled to be concerned that the provisions of this section do not take account of the extreme variables that confront police officers in dealing with aggressive, violent situations, especially when persons are under the influence of drugs and alcohol.

Judge Conlon went on to state:

This section needs to be re-legislated by persons who have a realistic appreciation of the many volatile situations in which it is desirable for arrest to be affected by police officers.

Mr Tink and Mr Whelan considered all these problems and challenges in preparing their report on section 99.

As part of their review, Mr Tink and Mr Whelan met with senior members of the NSW Police Force, the Ministry for Police and Emergency Services and the Department of Attorney General and Justice. Their discussions included senior operational police to ensure the proposed changes would deliver improvements at the front line of community policing.

The reviewers considered police powers to arrest without a warrant in all other Australian jurisdictions, as well as in the United Kingdom.

Their considerations were also influenced by a 2012 Bureau of Crime Statistics and Research report on the effect of arrest and imprisonment on crime. The report assessed the extent to which the probability of arrest, the probability of imprisonment and imprisonment duration impact on crime rates.

Importantly, the Bureau of Crime Statistics and Research report found the biggest deterrent to criminals is the risk of arrest.

Mr Tink and Mr Whelan have now delivered their report and the New South Wales Government considers their recommendations provide a common sense way forward on this matter. The reforms they propose, and which are outlined in this bill, can give the community confidence police will have the powers they need to keep the peace across the communities of New South Wales.

The Government is pleased to say these reforms have the full support of the NSW Police Commissioner, Mr Andrew Scipione.

There are a number of important things to note about the proposed amendments to section 99.

The bill will clarify that police can arrest without a warrant for any offence they reasonably suspect a person is committing or has committed. The reviewers found that poor drafting had resulted in differing interpretations on this matter, with some suggestions that police could only arrest without a warrant for an offence committed in the past if it was a serious indictable offence. The proposed new section 99 (1) (a) makes it abundantly clear the police can arrest without a warrant for any offence, whether in the act of being committed or having been committed in the past.

Having formed a reasonable suspicion that an offence is being or has been committed, under proposed section 99 (1) (b) a police officer can place a person under arrest if satisfied it is reasonably necessary to do so for one of the reasons set out in the section.

The proposed new section 99 (1) (b) replicates and simplifies the existing reasons for arrest contained in section 99 (3) of the Act. It also introduces new reasons to arrest without a warrant that better reflect the circumstances in which police are called on to act in order to keep the community safe.

Crucially, the bill gives police the power to arrest without a warrant to preserve the safety and welfare of any person, and not only the person arrested. This issue was raised by Judge Conlon and the Government agrees that police should have the power to arrest without a warrant if a person other than the offender is at risk. This could include victims of domestic violence, ambulance officers who attend the scenes of assaults and violent confrontations, as well as innocent bystanders.

A similar power exists in Victoria, Queensland and Western Australia.

The new section 99 also gives police the power to arrest because of the nature and seriousness of the offence. This gives police the certainty to act swiftly in the case of serious crimes, without having to consider whether any other reason to arrest without a warrant exists.

Under an amended section 99, police will be able to arrest a suspected offender without a warrant if the person's identification cannot be readily ascertained by other means or if the officer suspects on reasonable grounds the identity information supplied is false.

The realities of everyday policing are also reflected by the inclusion of a power to arrest without warrant a suspected offender who is fleeing from police or the scene of a crime and to obtain property in the possession of the person that is connected with the offence.

Further, the amended section 99 clarifies that a police officer may arrest a person without a warrant if directed to do so by another police officer who has reason to lawfully arrest that person. A similar provision exists in the Victorian Crimes Act. The reviewers agreed with NSW Police Force that this would be a valuable inclusion in the context of large and complex policing operations.

Section 99 will also be amended to make clear to the arresting police officer that an arrest may be discontinued and the person released without requiring the suspect be brought before an authorised officer. This may occur where inquiries reveal the reasons for arrest no longer exist or if police decide it is more appropriate to deal with the matter in some other manner, for example by issuing a caution, penalty notice or court attendance notice.

Finally, section 99 will be amended to make clear that a person who is lawfully arrested under this section may be detained for the purpose of an investigation in accordance with part 9 of the Act. This amendment is intended to remove uncertainty about whether a person who is otherwise lawfully arrested can be detained for questioning under part 9.

The Government thanks the reviewers, Mr Andrew Tink and the Hon. Paul Whelan, for their outstanding efforts in bringing this complex and challenging issue to such a speedy resolution. They have done a great service, not only to the NSW Police Force but also to the people of New South Wales who will be the ultimate beneficiaries of giving police clearer and more effective powers to keep communities safe.

The job of frontline police is already hard enough without having to deal with legal loopholes. We want to uncuff the police so that they can handcuff criminals.

Mr Tink and Mr Whelan are continuing their review of the Law Enforcement (Powers and Responsibilities) Act, including particular concerns regarding section 201 and part 9. They will provide a further report before the end of 2013, with legislation to be introduced in 2014.

I commend the bill to the House.