

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

Page: 60

Bill introduced on motion by Mr Barry O'Farrell, read a first time and printed.

Second Reading

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney) [4.27 p.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to ensure that 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 more than 16,000 police officers with the people of New South Wales. It is critical that the police have the powers they need to get on with their job and keep the community safe. Less than three weeks ago, I asked former police Minister the Hon. Paul Whelan and former shadow Attorney General Mr Andrew Tink to provide the Government with urgent advice to finalise the statutory review of the Law Enforcement (Powers and Responsibilities) Act. I asked them 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.

The job of front-line police is already hard enough, without being made harder by having to deal with legal complexities. The legislation seeks to "uncuff" the police so they can handcuff criminals. Concerns with section 99 were also raised in a recent decision by Judge Conlon of the District Court. In his judgement, Judge Conlon argued that 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 effected by police officers.

Mr Tink and Mr Whelan considered all these problems and challenges in preparing their report on section 99. I believe, in Judge Conlon's terms, they have a realistic appreciation of the challenges that confront our police officers. 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.

Mr Tink and Mr Whelan considered police powers to arrest without a warrant in all other

Australian jurisdictions, as well as those in Britain. Their considerations were also influenced by a 2012 Bureau of Crime Statistics and Research report on the effect of arrest and imprisonment on crime. That report assessed the extent to which the probability of arrest, the probability of imprisonment and imprisonment duration impacted 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 that their recommendations provide a common-sense way forward on this matter.

The reforms they propose, which are outlined in this bill, can give the community confidence that police will have the powers they need to keep the peace across the varying communities of New South Wales. I am pleased to say that these reforms have the full support of the New South Wales Commissioner of Police, 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.

New section 99 (1) (a) makes it abundantly clear that 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 new 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. 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, 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. 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 day-to-day 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 who 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 New South Wales police 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 when 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.

I thank the reviewers, Andrew Tink and Paul Whelan, for their outstanding efforts in bringing this complex and challenging issue to such a speedy resolution. The combination of those two former political foes is akin to bringing together Ian Chappell and Tony Greig to play for the same side—that is, the public of New South Wales. In their work on this legislative amendment Paul and Andrew have done a great service not only to the NSW Police Force but also to the people of the State, who will be the ultimate beneficiaries of giving police clearer and more effective powers to keep communities safe. Mr Tink and Mr Whelan are continuing their review of the entire Law Enforcement (Powers and Responsibilities) Act, including particular concerns regarding sections 201 and part 9. They will provide a further report before the end of 2013, with legislation to be introduced early in 2014. I commend the bill to the House.

Debate adjourned on motion by Mr John Robertson and set down as an order of the day for a future day.