SURVEILLANCE DEVICES AMENDMENT (MUTUAL RECOGNITION) BILL 2013

Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [3.31 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Surveillance Devices Amendment (Mutual Recognition) Bill 2013. The bill makes amendments to the Surveillance Devices Act 2007 to bring aspects of the Act into line with the model laws on cross-border investigative powers for law enforcement. These changes will facilitate mutual recognition of warrants and authorisations for surveillance devices between New South Wales and other jurisdictions.

The Surveillance Devices Act governs the use of surveillance devices, including optical surveillance devices, listening devices, and tracking devices. One of the key features of the Act is that it facilitates cross-border recognition of its provisions by other jurisdictions with similarly enacted model laws. Part 4 of the Act provides for the recognition of corresponding warrants issued under a corresponding law of another jurisdiction, with corresponding laws to be prescribed by regulation. There are currently no corresponding laws prescribed under the New South Wales regulation. At this stage, the Northern Territory is the only jurisdiction to have recognised the New South Wales Act as a corresponding law under its surveillance devices legislation.

New South Wales has entered into discussions with other jurisdictions to facilitate mutual recognition of the surveillance devices legislation. Some jurisdictions have requested that amendments be made to the New South Wales Act to address minor variations between it and the model laws, particularly where surveillance devices authorised under the New South Wales Act will be used in another jurisdiction. In order to facilitate mutual recognition, the bill contains amendments to the New South Wales Act to bring it more into line with the model laws.

In particular, the bill makes amendments to the Act relating to record keeping requirements and the types of offences for which surveillance device warrants may be obtained for use in a participating jurisdiction. These amendments will mean that requirements relating to warrants issued by a New South Wales court for a surveillance device used in another jurisdiction will accord with the model laws, but the existing regime, with its minor departures from the model laws, will continue to apply to warrants issued in relation to a device solely used in New South Wales.

I turn now to the detail of the bill. Items [1] and [2] of schedule 1 of the bill amend sections 20 and 28 of the Act in relation to what material must be specified in a surveillance device warrant or a retrieval warrant. Section 44 of the Act requires a person who has been issued a surveillance device warrant or retrieval warrant to report back to the issuing officer and the Attorney General on particular matters. For example, in relation to a surveillance device warrant the report needs to indicate whether a device was used pursuant to the warrant and specify the period during which the device was used, among other matters.

Section 44 states that the report back must be made within the time specified in the warrant. However, there is currently no obligation under sections 20 or 28 to specify such a time when issuing a surveillance device warrant or retrieval warrant. This is inconsistent with the model laws, and items [1] and [2] amend those sections to specify that warrants must specify the relevant timeframe, which is to be not less than 60 days after the expiry of the warrant. Part 3 of division 4 of the Act provides for emergency authorisation of the use of a device. In particular, section 31 allows a law enforcement officer to use a surveillance device without a warrant where he or she suspects or believes on reasonable grounds that, among other things, there is an imminent threat of serious violence to a person or substantial damage to property or that a serious narcotics offence will be committed.

Section 32 provides for the emergency authorisation of the use of a surveillance device in another participating jurisdiction, besides New South Wales, based on the grounds for authorised use set out in section 31. Unlike the New South Wales Act, the model laws do not permit the use of emergency authorisations in relation to serious narcotics offences. Item [3] of the bill therefore amends section 32 to provide that an emergency authorisation for the use of a device in a participating jurisdiction cannot be granted in connection to a serious narcotics offence in accordance with the model laws. The use of emergency authorisations for the purpose of investigating serious narcotics offences will continue to be permitted where the device is used within New South Wales.

Similarly, section 40 of the Act permits protected information to be used or communicated where it is necessary to help prevent or reduce the threat of serious violence to a person, substantial damage to property or the commission of a serious narcotics offence. Protected information is any information obtained from the use of a surveillance device. However, the model law provisions on protected information do not extend to serious narcotics offences. In order to align the provisions with the model laws, items [4], [5] and [6] of the bill amend section 40 to prevent the use of protected information relating to serious narcotics offences where it was obtained through the use of a device in a participating jurisdiction.

Items [7] to [11] of the bill amend reporting requirements under sections 44 and 45 of the Act where a device is used in a participating jurisdiction. Under section 44, a person who has been issued a warrant under the Act must report back to the issuing officer and Attorney General with prescribed information relating to the use of the warrant. However, the model

laws require the report to address the following additional matters: the benefit to the investigation on the use of the device; compliance with set warrant conditions; details of premises entered, things opened, removed, or replaced under a retrieval warrant; and compliance with set warrant conditions for a retrieval warrant.

Under section 45, the Attorney General is to prepare a report as soon as practicable after the end of each financial year, which includes information on the number of surveillance device warrants and emergency authorisations applied for and issued, and other matters. However, the model laws apply additional reporting obligations, including the number of: remote applications; refused applications, and the reasons why they were refused; extensions granted or refused, and why they were refused; arrests based on surveillance device information; and prosecutions based on surveillance device information. Items [7] to [11] amend these sections to make the reporting requirements consistent with the model laws where powers under the Act have been used in a participating jurisdiction. The existing reporting requirements will continue to apply to the exercise of powers within New South Wales.

Section 46 of the Act requires the chief officer of a law enforcement agency to keep records relating to warrants and emergency authorisations, and the use of surveillance devices and information obtained from the use of those devices. The information that must be kept is determined by the Attorney General in consultation with the chief officer of the law enforcement agency. However, the model laws prescribe a list of records that must be kept. Item [12] amends the section to make clear that it will continue to apply in New South Wales. Item [13] creates proposed new section 46A, which will mean that the same records required by the model laws have to be kept in relation to devices that are used in a participating jurisdiction. These amendments will ensure that the Surveillance Devices Act 2007 is consistent with the model laws as it applies to devices used in participating jurisdictions, and facilitate mutual recognition of the legislation, which will be invaluable to cross-border investigations with other Australian jurisdictions. I commend the bill to the House.

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