



# NSW Legislative Council Hansard

## Law Enforcement (Power and Responsibilities) Amendment (In-car Video Systems) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 9 December 2004.

### Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [8.04 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.

I am pleased to introduce the Law Enforcement (Powers and Responsibilities) Amendment (In-car Video Systems) Bill 2004.

One of the Recommendations of Justice Wood of the Royal Commission into the NSW Police was that all dealings between police and citizens be electronically recorded.

The In-Car Video system (ICV) comprises both digital video and audio components capable of recording interactions between police and the community.

The significant benefits of ICV are that it enhances officer safety and provides an accurate independent witness to events, protecting both police and members of the public against unfounded allegations of improper conduct and behaviour.

Currently there is no prohibition on the recording of video images in NSW. However, recording conversations by means of a listening device is an offence under the *Listening Devices Act 1984* unless both parties consent.

The bill therefore creates an exemption from the *Listening Devices Act* to enable police to use ICV to audio-record interactions with members of the public regardless of whether consent is given.

I would now like to describe the technical aspects of the ICV system. The system consists of two video cameras, a recorder, a monitor, a wireless microphone and control mechanisms to allow an audio and video recording to be made.

One camera is able to point forward, the other backwards. The monitor and control centre are mounted within easy reach of the driver's seat. A wireless microphone is worn on the lapel of an officer to allow the audio recording of events outside the car.

The ICV system commences recording automatically when the primary lights are turned on, the alert button is pressed or the radar is locked on. Additionally, the ICV system can be manually activated via the master switch or the remote microphone.

Approximately 350 highway patrol vehicles will be fitted with ICV with the rollout to be completed by mid 2005. ICV is not only limited to highway patrol officers but will extend to any police officer using a vehicle fitted with ICV.

ICV has been trialled in the Holroyd Local Area Command and the results are encouraging. There have been no negative comments from members of the public in relation to the use of ICV and since the pilot commenced there have been no complaints in relation to officer behaviour.

I would now like to take the opportunity to address the specific features of the bill.

Where highway patrol vehicles have been fitted with ICV it will be a requirement that ICV record any situation where that vehicle is pursuing or otherwise following another vehicle with the intention of stopping or detaining that vehicle. This would include traffic stops or situations where a highway patrol car is required to intercept a vehicle escaping from the scene of a crime.

Additionally, ICV will be used in situations where a vehicle has been pulled over and police are investigating an offence arising out of that stop. The offence may not necessarily be traffic related but may be, for example, drug related.

The use of ICV will also include Random Breath Testing where an officer is conducting such stops within the immediate vicinity of their police vehicle.

Any police officer, not just the driver of a particular police vehicle, will be able to utilise the ICV system.

Whilst the bill removes the necessity for consent to the audio recording this does not mean that the recording will be done in secret. Either immediately before recording of a conversation commences or as soon as practicable after recording has

commenced police will be required to inform members of the public that their conversations are being audio recorded.

There will be no compulsion on individuals to answer police questions.

Once an officer arrests a person, the audio component of the ICV system must be turned off at the first reasonably practicable opportunity. The inclusion of the wording 'the first reasonably practicable opportunity' is intended to ensure police officers' safety. If an arrested person is violent towards police and has to be subdued then an officer must be able to contain that person before switching off the audio component of the ICV.

Similarly, if the arrested person is part of a group and police are continuing to exercise investigative or other powers in relation to that group or vehicle it will, under this bill, be permissible for both components of the ICV to continue recording as long as the arrested person is removed from the area that is being captured by the ICV.

It is important to understand that the use of the term 'arrest' in this bill, for example at section 108E, means the officer telling the person that they are under arrest and not just by the fact of the person's vehicle being pulled over or detained. This is the same position taken under Random Breath Testing legislation where the police officer's use of stop and Random Breath Testing powers does not constitute an arrest (until the person show positive).

A person is not under arrest merely because their vehicle has been pulled over and they are being audio and visually recorded by ICV. It is clearly intended that ICV be used to audio record the initial or 'front end' interaction between an officer and a member of the public.

Persons who have been recorded on ICV will be able to view the recordings at a police station.

Recorded events will be stored for a minimum of 2 years.

In conclusion this bill will ensure that police are able to audio record conversations via the use of ICV regardless of whether all parties to the conversation consent. The proposed legislative improvements will enhance officer safety and provide an accurate record of events capable of protecting both police and members of the public against unfounded allegations of improper conduct and behaviour. I commend this bill to the House.