



Terrorism (Police Powers) Bill

Second Reading

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TERRORISM (POLICE POWERS) BILL

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Bill introduced and read a first time.

Second Reading

Mr CARR (Maroubra—Premier, Minister for the Arts, and Minister for Citizenship) [3.41 p.m.]: I move:

That this bill be now read a second time.

The events in the past 14 months have caused us to change our view about our safety as a nation. The terrorist attacks in New York and Bali show a new preparedness among terrorist organisations to strike at civilians with the aim of causing casualties. This morning, at a briefing with an FBI representative, I blanched at the use of the terminology "catastrophic attack, spectacular casualties", but this is the terminology now deployed. But it is also real to us, having experienced the funerals and the grief associated with Bali. The Bali bombing has brought terrorism to our doorstep. There have been revelations about the operation of terrorist organisations in our nearest neighbour, Indonesia. There have been special references to Australians as a target. There have been reports that intelligence analysts believe came from Osama bin Laden himself. All this would suggest that we have no alternative but to respond to the reality of a possible terrorist attack in New South Wales.

We have created a new 70-member Counter-Terrorism Command in the police force, under the command of Superintendent Norm Hazard, and we have increased funding to New South Wales police counter-terrorism. We have reviewed Commonwealth anti-terrorism legislation. We have looked at the legislation in the United States and the United Kingdom. We have committed ourselves to a partnership with the national Government, with Canberra, because our agencies must work closely together on these fronts. We have balanced two competing imperatives in drafting this legislation. Yes, we do need to be able to react effectively at short notice to the threat of a terrorist strike, or in the immediate aftermath of an attack. But, second, we need to remain calm in the face of terrorism and not surrender unnecessarily civil liberties that are part of the fabric of our working democracy. I would rather that these laws were not necessary. Sadly, they are.

The new powers given to police are confined to limited circumstances. As I have said repeatedly, it is not my instinct to fling at police and security agencies crudely increased powers. In any democracy there must be a healthy suspicion of law enforcement powers. We must carefully monitor their use. We have time-limited the increased powers and created a special trigger before they can be invoked. That is an alternative model to just saying that police shall have these extra powers to search, and to do so in all these circumstances.

We are not doing that. We are saying that where there is a credible terrorist threat, or where there has been an actual incident, for a period of seven days and two days respectively police will enjoy these increased powers. Then the powers automatically lift unless they are specifically renewed. That is a time limit on these powers. It is a check. It is a balance. Moreover, we are making sure that in these areas—as in all areas—the police and their behaviour are subjected to the oversight of the Police Integrity Commission and the Ombudsman. So there will be that review

capacity, as there ought to be. We want accountability to apply even where police are responding to terrorism.

This is how it would work: The new powers will be triggered, first, where the Commissioner of Police or a deputy commissioner is satisfied that there are reasonable grounds for believing there is an imminent threat of a terrorist attack, and the use of the new powers would substantially assist in preventing that act—which is not unreasonable—or immediately after a terrorist attack; or, second, where the commissioner or a deputy believe that the powers would assist in apprehending those responsible. Those are reasonable circumstances.

The new powers are not intended for general use. In ordinary circumstances we rely on standard police investigations and the co-operation of Australian and international law enforcement and intelligence agencies. However, when an attack is imminent, all resources must be able to be mobilised with maximum efficiency. Similarly, when an attack has just occurred, there is an increased chance of catching the terrorists, and this chance must be seized.

Clause 3 defines a terrorist act—and we have adopted the Commonwealth definition. This is essential to permit the maximum possible co-operation between the New South Wales Police and Commonwealth law enforcement agencies and ASIO. Everyone must be operating under the one definition. As defined, "terrorism" means "those acts intended to intimidate the Government or the public involving serious injury or danger to people, serious damage to property, or serious interference with an electronic system". Legitimate, non-violent protest cannot trigger the proposed powers.

Clauses 5 and 6 provide the limited circumstances in which the new powers that I outlined earlier may be invoked. Clause 8 gives the Commissioner of Police and two deputy commissioners the capacity to authorise the use of the new powers. Where none of these officers are available, an officer above the rank of superintendent, being a police senior executive position, may authorise their use. This succession planning will guard against the situation where a terrorist attack claims the most senior ranks of New South Wales Police.

Clause 9 provides a key safeguard. An authorisation must be approved or ratified by the Minister for Police. We inserted this in the legislation because we are insisting on civilian control at all times during this trigger period. If the Minister were not available at the time, ratification must occur within 48 hours, or else authorisation is terminated. The Minister may also revoke the authorisation at any time. Clause 11 sets out the duration of the authorisation. An authorisation to prevent a future terrorist act lasts for a maximum of seven days, extendable, with ministerial agreement, by another seven days. An authorisation under an attack lasts for a maximum of 24 hours, extendable, with ministerial agreement, by another 24 hours.

Clause 13 makes it clear that the decisions of senior police are reviewable by the Police Integrity Commission. The Ombudsman's jurisdiction to oversight complaints about the inappropriate exercise of the powers under the bill is not affected. The information on which authorisations are made is likely to be highly sensitive intelligence material, quite possibly provided by co-operating Australian or foreign agencies. This information must be protected to ensure the continuing supply of this intelligence.

I turn to the new powers granted to police. Clause 7 sets out what the powers are for. They are to permit police to find a particular person, a target person; to find a particular vehicle, or a vehicle of a particular kind, a target vehicle; and to prevent a terrorist act in a particular area, a target area. They may also be used to target specific premises when a person or place authorisation permits. These different purposes recognise the range of possible scenarios.

Police might receive a warning that a particular type of vehicle will be involved in a terrorist attack. Or the information may be that a particular area is the target without telling us who it is, or how it will be attacked. The authorisation provisions are sufficiently flexible to allow persons to be described. A photo or a drawing may be used for this purpose. The target area provisions extend to persons or vehicles about to enter the target area, or persons and vehicles that have recently left the

area. Part 3 of the bill sets out the new powers. Clause 16 permits a police officer to direct someone to identify themselves if they suspect, on reasonable grounds, that the person is a target person or a vehicle is a target vehicle, or if the person is in a target area. It will be an offence not to comply without reasonable excuse, or to provide false answers. The maximum penalty is 50 penalty units or 12 months imprisonment, or both.

Clause 17 gives officers the power to stop and search a person if the officer suspects, on reasonable grounds, that the person is a target person, the person is in a target vehicle or is in a target area. Search powers may also be used in connection with a person found in suspicious circumstances in the company of a target person. The search may be a frisk search, running the hands over the outside of a person's clothing; an ordinary search—jackets, hats, gloves, shoes may be removed and examined; or it may be a strip search in very limited circumstances. Frisk searches and ordinary searches generally will be enough to determine if the person is carrying a gun or a bomb, for example.

Clause 18 permits a police officer to stop and search a vehicle and anything in the vehicle if the officer suspects, on reasonable grounds, that the vehicle is the target of the authorisation, a person in the vehicle is a target, or the vehicle is in a target area. Clause 19 permits an officer to enter and search premises if the officer suspects, on reasonable grounds, that a target person or a target vehicle is in the premises or if the premises are in a target area. Clause 20 permits an officer to seize and detain any item the officer suspects could be used or could have been used to commit a terrorist act.

An officer may also find things that are evidence of general offences, such as drugs. An officer may seize these things if he or she reasonably suspects that there may be evidence of a serious indictable offence. This threshold has been chosen in recognition of the intrusive nature of the new powers. Clause 22 makes it an offence without reasonable excuse to hinder an officer exercising these powers. Clause 23 requires officers to identify themselves and give reasons why they are exercising one of these powers as soon as practicable. If a person, a vehicle or premises have been searched, the person may also apply to the Commissioner of Police for a written statement that the powers were exercised under an authorisation. That has been adopted from the legislation in the United Kingdom.

Part 4 of the bill permits members of law enforcement agencies of other Australian jurisdictions to be authorised to use the powers. This recognises that in an emergency we may want to maximise our capacity to respond to an incident, especially in specialist search units. Part 5 of the bill contains important additional safeguards. Clause 26 requires a report to be provided to the Minister for Police and the Attorney General by the commissioner as soon as practicable after the expiry of an authorisation. Clauses 27 and 28 provide for the return or disposal of property seized under the powers.

Clause 36 provides for annual reviews of the Act. Schedule 2 to the bill contains amendments to the State Emergency and Rescue Management Act 1989. These new powers are not exercised as part of the authorisation system I have already described. They are separate powers. These new powers deal with the reality of chemical, biological and radiological weapons. Persons exposed to these agents may unintentionally expose others. Tokyo in 1995 is an example. Many casualties occurred, not through direct exposure to the gas but through persons touching the skin or clothing of others who had already been exposed.

The bill creates a power for a senior police officer who is satisfied there are reasonable grounds to authorise a person who may have been contaminated to be kept in a particular area, quarantined and decontaminated. Schedule 2 also permits police officers to remove a vehicle or object from the danger area and to direct persons not to interfere with such an object. These powers have been designed to complement existing Commonwealth powers, and are necessary to maximise the ability of New South Wales Police to protect our people.

At least eight people from my electorate died in Bali. I do not want—none of us wants—to see more casualties, more suffering and more bereavement in our homes because of a terrorist strike.

These powers are designed to increase our capacity to prevent such a strike, as well as to increase our capacity to respond effectively to a strike if that tragedy should befall us. The bill has been properly crafted. We have created the balance that people would expect. It will be followed by other States around Australia. I look forward to the day when terrorism has been so comprehensively defeated, blocked, and eliminated that we can remove this legislation from the statute books of New South Wales.

Debate adjourned on motion by Mr Fraser.

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