NSW Legislative Assembly Hansard

Police Powers Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 14 November 2006.

Second Reading

Ms LINDA BURNEY (Canterbury—Parliamentary Secretary) [12.10 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Police Powers Legislation Amendment bill 2006, which contains amendments to police powers legislation in a number of different respects. Firstly, there are amendments to the Law Enforcement (Powers and Responsibilities) [LEPAR] Act 2002, which has been in operation for nearly a year now. These amendments address a number of different issues that have become apparent during the implementation of the new Act. Secondly, the bill makes amendments to the Police Powers (Drug Detection in Border Areas Trial) Act 2003 arising out of an Ombudsman review of that scheme. Thirdly, the bill makes amendments to the Terrorism (Police Powers) Act 2002 arising out of a legislative review of that Act. Finally, there are amendments to a number of Acts to facilitate the State-wide roll-out of the criminal infringement notice scheme, which has been trialled in 12 local area commands and will now be available in all areas after a number of amendments are made as recommended by the Ombudsman in his review of the trial.

I turn now to the details of the bill. Schedule 1 makes various amendments to the Law Enforcement (Powers and Responsibilities) Act 2002. Items [2] and [3] of schedule 1 make amendments to personal search powers. The changes allow a police officer who is conducting an ordinary search to require the person to remove his or her socks, in addition to his or her shoes. There is also a new power to require a person to open his or her mouth or shake their hair if the police officer has a reasonable suspicion that the person is concealing something in those places. Failure to comply is an offence. Operational police have reported that some offenders, particularly drug dealers, are secreting small objects in their mouth and hair. The new law makes it clear, however, that this power does not give police the right to forcibly open a person's mouth.

Item [4] of schedule 1 allows a police officer who is conducting a search of a student at a school to also search the student's bag, regardless of whether the student is carrying the bag at the time. Item [6] of schedule 1 amends section 28 to make it clear that where an officer is searching a person for a dangerous implement, the officer has a choice to either ask the person to hand over the suspicious object or to simply confiscate the item if that is the safer course of action to take. Item [11] of schedule 1 amends section 82 to make it clear that the power conferred on a police officer to enter and remain on premises where the apparent victim of a domestic violence offence has issued an invitation to do so even if another occupier expressly refuses the authority of the police to do so.

Items [12] to [14] of schedule 1 make amendments to the emergency Cronulla powers that were implemented last year. These minor amendments will permit a police officer of or above the rank of superintendent to revoke an authorisation, made in connection with a public disorder, that prohibits the sale of liquor from licensed premises. Currently, the police officer must be of or above the rank of inspector. The emergency alcohol-free zone powers are also strengthened by requiring people to remove alcohol from the zone immediately rather than simply putting away the alcohol. The police officer may seize the liquor if the direction is not obeyed. Part 7 of the LEPAR Act deals with crime scene powers.

Items [17] to [23] of schedule 1 make a number of amendments to the crime scene powers to clarify how crime scenes are established, allow crime scene powers to be exercised with the aid of assistants, broaden the role of scene of crime officers, and allow vehicles, vessels and aircraft that are within an established crime scene to be searched without the need for a further warrant. However, this may only occur where the police officer suspects on reasonable grounds that it is necessary to do so to preserve, or search for and gather, evidence of the commission of the offence in connection with which the crime scene was established or the police officer is authorised to do so by some other lawful authority.

Currently, section 201 of the LEPAR Act provides that certain warnings must be given when law enforcement officers are exercising coercive powers, for example, identifying themselves as police officers and warning people that failure to comply with a request is an offence. The bill simplifies this regime, makes it more consistent, and clarifies which police powers it applies to. Items [36] to [42] of schedule 1 make amendments to provide that no warning is required if a person has already complied with the direction; police are not required to warn the person that failure to comply with the direction is an offence unless the person has been given a chance to comply and has failed or refused; an officer has only to identify themselves once; one warning can cover a situation where an officer is exercising a number of powers or where there is more than one officer exercising powers; and police powers exercised under other Acts are not subject to section 201. These Acts

have their own accountability provisions, if needed.

These are sensible amendments. They balance the public's right to be confident that police will exercise their powers accountably and openly, with a commonsense, practical approach to policing. Item [28] of schedule 1 allows any person from whom any fingerprint or palm print has been taken to request the Commissioner of Police to destroy them if the offence in connection with which they were taken is not proven. The Commissioner of Police is required to destroy them as soon as practicable after receiving such a request. This is merely providing a legislative base for an administrative practice that has been in place for many years. Item [47] of schedule 1 extends these arrangements to fingerprints and palm prints taken before the relevant amendment commences. Section 353AC of the Crimes Act 1900 currently provides that a police officer who serves a penalty notice on a person under the Criminal Procedure Act 1986 may require the person to submit to the taking of fingerprints and palm prints, and that such prints are to be destroyed on payment of the penalty under the penalty notice.

That section and related sections currently in the Crimes Act are transferred from the Crimes Act 1900 to the Law Enforcement (Powers and Responsibilities) Act 2002 by schedule 4.1 [1]. Item [30] of schedule 1 amends the transferred section 138A relating to fingerprinting persons who receive penalty notices, to make it clear that a requirement to submit to the taking of prints may be requested before or after the penalty notice has been served. Item [31] of schedule 1 provides that the prints are to also be destroyed if a court deals with the penalty notice offence and dismisses the relevant charge or arrives at a finding of not guilty for the charge or if the penalty notice is withdrawn. Item [45] of schedule 1 extends the period at the end of which a review of the LEPAR Act is required to be carried out. The amendment requires the principal provisions of the Act to have been in operation for three years before the review is required.

Schedule 1 also contains a number of other minor amendments such as: updating the reference to the position of clerk of a Local Court, now the registrar; clarifying provisions relating to occupier's notices; allowing for another authorised officer to extend a warrant if the original authorised officer is not available; transferring the provision relating to arrests by a commander of an aircraft from the Crimes Act 1900 to the LEPR Act, and updating an outdated reference in the provision; extending time out for the calculation of time spent in lawful custody so that time spent in obtaining a crime scene warrant is disregarded, which is similar to the treatment of other types of warrants; requiring a search warrant in respect of suspected drug premises to be applied for by the police officer who is in charge of an investigation into the suspected use of the premises as drug premises, rather than any police officer of or above the rank of sergeant; removing the requirement that a police officer make a record of certain matters when another police officer has already made a record of those matters; and allowing the Ombudsman to require information from a public authority, as well as the police, in connection with the exercise of functions under the LEPAR Act.

Schedule 2 revives, with modifications, the drug detection scheme that operated under the Police Powers (Drug Detection in Border Areas Trial) Act 2003—the Drug Detection Trial Act—which allowed police to establish check points in a search area, to stop vehicles at the check points and to use dogs to carry out general drug detection in relation to the vehicle. The principal change to the scheme, as revived by the amendments, is that it will operate under an authorisation issued by the Commissioner of Police or another designated officer, as defined by item [5] of schedule 2, rather than under a warrant-based system. This will make it more consistent with the schemes provided for by the Terrorism (Police Powers) Act 2002 and the Law Enforcement (Controlled Operations) Act 1997.

Schedule 2 inserts new section 6 that sets out the new procedure for applying for, and granting, an authorisation to exercise powers conferred by the scheme. The designated officer will be able to issue an authorisation to exercise the powers conferred by the Drug Detection Trial Act on the same sort of grounds as a judge was permitted to issue a drug detection warrant under the previous scheme. In addition, the amendments will require the application to include details of past applications in relation to the area and of past operations in relation to the area. The designated officer will be required also to be satisfied that the nature and extent of the proposed drug detection operation is appropriate to the suspected criminal activity concerned.

Schedule 2 inserts new section 14 that provides for authorisations to remain in force for up to 14 days, unless sooner revoked. Under the previous scheme, drug detection warrants had effect for only 72 hours. Another key change to the scheme is that it will extend to all parts of the State that are outside the metropolitan areas of Sydney, Newcastle and the Illawarra. In addition, a search area may be comprised of an area of up to five square kilometres, rather than a maximum of one square kilometre under the previous scheme, and police may establish more than one check point in a search area and may move check points at any time. These changes will increase the flexibility and mobility of operations, as well as making the operations less predictable and more difficult to evade. To complement the changes, schedule 2 [13] replaces the previous signage requirement with an obligation on police to ensure that adequate measures are in place to ensure the safety of persons and vehicles approaching the checkpoint.

Schedule 2 [10] and [11] make adjustments to the provisions of the Act that require police to issue a warning to persons who fail to comply with requests, in line with the changes made to section 201 of the Law Enforcement

(Powers and Responsibilities) Act by Schedule 1. Schedule 2 [19] to [21] require the Ombudsman to undertake another review of the scheme, as modified, at the end of the period of 12 months after the commencement of the relevant provisions. For that purpose, the powers of the Ombudsman are extended so as to allow the Ombudsman to inspect the records of NSW Police at any time. Schedule 2 [22] provides that the scheme is revived from the commencement of the relevant amendments and will have effect for 18 months.

The new 18-month trial steps up the fight against the transportation of illicit drugs into, out of, and around New South Wales. The new regime is closely modelled on the highly successful controlled operations legislation, and will incorporate the changes to police practice and procedure recommended by the Ombudsman following his review of the previous scheme. Schedule 3 amends the Terrorism (Police Powers) Act 2002. The proposed amendments arise directly from the review conducted in accordance with section 36 of the Act. On the whole, the review concluded that the Act strikes a good balance between extraordinary law enforcement powers that will be effective in preventing an imminent terrorist act or investigating a suspected attack, and the necessary tests and safeguards to ensure that these powers are used only in urgent and appropriate circumstances. However, several legislative amendments were identified to clarify the original policy intention of certain provisions.

Schedule 3 [1] requires the Commissioner of Police, when giving an authorisation, or any other officer who gives an authorisation, to be satisfied that the nature and extent of the powers to be conferred by the authorisation are appropriate to the threatened or suspected terrorist act. Schedule 3 [2] amends section 14 (2) of the Terrorism (Police Powers) Act to clarify that the special powers conferred on police officers through an authorisation under the Act can be exercised whether or not the officer has been provided with a copy of the authorisation, or informed of all the terms of the authorisation. This ensures that police can use these powers without having to be informed of the parts of the authorisation that are not relevant to their area of operations.

Schedule 3 [3] and [4] amends sections 17 (3) and 18 (2) of the Terrorism (Police Powers) Act so as to be consistent with section 204 of the Law Enforcement (Powers and Responsibilities) Act, so that the provision reads that a police officer must not detain any longer than is reasonably necessary rather than "may detain for a long as necessary". This makes the provisions more consistent with the Law Enforcement (Powers and Responsibilities) Act. Schedule 3 [5] amends section 23 to impose a duty on a plain-clothed police officer to provide the person subject to the exercise of the power with their name and rank and other information in the same way as is required under the Law Enforcement (Powers and responsibilities) Act.

Schedule 3 [6] amends section 23 to insert a notice provision in relation to offences contained in the Act, similar to the notice provisions in section 201 of the Law Enforcement (Powers and Responsibilities) Act; namely a warning that a failure to comply with a direction is an offence under the Act. All of the commonsense amendments made to section 201 by schedule 1 of this bill are also picked up here. Schedule 3 [7] clarifies section 27O, which concerns the covert search warrant powers, to allow police to do things to maintain the secrecy of their search. Schedule 3 [8] amends section 36 of the Act to provide that it be reviewed every two years rather than annually. As the emergency powers have been authorised only once and never used, it is considered that a review every two years is adequate. This time frame will also fit well with the Ombudsman reports into the covert search warrant scheme and the preventative detention scheme.

The amendments proposed in this bill will improve the Act and bring it into line with the Law Enforcement (Powers and Responsibilities) Act. Schedule 4 contains various amendments that will facilitate the statewide operation of the Criminal Infringement Notices Scheme. The scheme has been operating as a trial across 12 police local area commands since 2002. The Ombudsman has reviewed the scheme and, whilst finding it to be generally successful, has recommended a number of legislative and procedural improvements. The bill implements the legislative changes proposed by the Ombudsman. A statewide rollout of the penalty notice scheme is proposed for mid next year and it is anticipated that by 1 May 2007, all police will be trained in the use of these penalty notices, and will have the legislative power to deal with these minor matters on the spot.

This simple reform benefits all police; it saves court time; and it diverts minor offenders away from the criminal justice system. Schedule 4.1 moves from the Crimes Act to the Law Enforcement (Powers and Responsibilities) Act provisions relating to taking of fingerprints of persons issued penalty notices, and a provision relating to the arrest of persons on aircraft. I have already explained the effect of those changes. It makes further minor statute law revision amendments. Schedule 4.3 makes amendments to the Criminal Procedure Act relating to the Criminal Infringement Notice Scheme. Part 3 of chapter 7 of the Criminal Procedure Act 1986 enables police officers to serve penalty notices, known as criminal infringement notices, on persons in certain areas for prescribed minor offences.

The bill amends the Criminal Procedure Act 1986 as follows. Currently, section 334 of the Act provides that such penalty notices may be served only personally. Schedule 4.3 [1] amends the Act to allow for penalty notices to also be served by post. Section 340 of the Act currently provides that a penalty notice may be withdrawn by a senior police officer before the due date for payment under the notice. Schedule 4.3 [2] provides, instead, that a penalty notice may be withdrawn at any time. Schedule 4.3 [3] provides that if a penalty notice is withdrawn any subsequent action taken, including any enforcement action, in relation to the notice is to be reversed and that

any costs in relation to that action are not payable and, if paid, are repayable.

Section 340 (3) (c) of the Act currently provides that if a penalty notice is withdrawn, further proceedings in respect of the alleged offence to which the notice relates may be taken against any person as if the notice had never been served. Schedule 4.3 [4] makes it clear that such proceedings may be taken only subject to any time limit within which the relevant proceedings for the offence are required to be commenced. Schedule 4.3 [6] provides that the Ombudsman is to review and report to the Attorney General and the Minister for Police by 30 November 2008 on the operation of the penalty notices scheme in so far as the provisions impact on Aboriginal and Torres Strait Islander communities.

The bill amends the Criminal Procedure Regulation 2005 as follows. Schedule 4.4 [1] extends the operation of part 3 of the Criminal Procedure Regulation 2005, which establishes a trial period for a penalty notice scheme for certain offences under the Crimes Act 1900 and the Summary Offences Act 1988, until 30 April 2007. Schedule 4.4 [2] removes the offence of common assault, under section 61 of the Crimes Act 1900, from the offences prescribed for which police officers may issue penalty notices. The bill makes a wide variety of amendments to improve and clarify the operation of police powers across the State. I commend the bill to the House.