



Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Wednesday 6 June 2007.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.09 p.m.], on behalf of the Hon. Eric Roozendaal: 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.

The Government is pleased to introduce the Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill. The bill proposes amendments to the Terrorism (Police Powers) Act to ensure that the Crimes (Administration of Sentences) Act and the Children (Detention Centres) Act, as the case may be, apply to persons detained in custody subject to a preventative detention order under the Terrorism (Police Powers) Act. In September 2005 a special meeting of the Council of Australian Governments on counterterrorism was held. At this meeting Commonwealth, State and Territory governments agreed to enact legislation to implement preventative detention orders to prevent terrorist acts or to preserve evidence relating to terrorist acts. State and Territory governments agreed to enact legislation providing for preventative detention for up to 14 days. As a result of constitutional constraints, the complementary commonwealth legislation provides for preventative detention for up to 48 hours only.

In December 2005 the Terrorism (Police Powers) Amendment (Preventative Detention) Act, which introduced part 2A—preventative detention orders—into the Terrorism (Police Powers) Act came into effect. Part 2A of the Terrorism (Police Powers) Act enables a designated New South Wales police officer to apply to the Supreme Court for a preventative detention order to enable the preventative detention of a person aged 16 years or over for up to 14 days in order to prevent an imminent terrorist act or to preserve evidence of a terrorist act that has taken place. A designated police officer can apply to the Supreme Court for an interim preventative detention order for up to 48 hours in the absence of the person against whom the order is sought to be made. Following the making of an interim order the Supreme Court hearing must take place in the presence of the person subject to the interim order for the purpose of confirming a preventative detention order.

Police can make arrangements with the Commissioner of Corrective Services for a preventative detainee to be detained in a correctional centre under section 26X of the Terrorism (Police Powers) Act 2002. Section 26X (3) expressly permits the regulations to exclude preventative detainees from being subject to the application of any of the provisions in the Crimes (Administration of Sentences) Act 1999 or the Children (Detention Centres) Act 1987. At present no provisions are excluded by the regulation. It is arguable that by making reference to the power to exclude provisions of those Acts—that is, the Crimes (Administration of Sentences) Act 1999 or the Children (Detention Centres) Act 1987—it is implied that both Acts do apply

to the extent that they are not otherwise excluded.

However, there may be some slight ambiguity as to whether this is indeed the case. In order to ensure there is no doubt that the original intention of the legislation was for preventative detainees to be subject to the same rules regarding their care, control and management as all other inmates and to remove any further doubt, this bill will amend the terrorism (Police Powers) Act 2002 in a generic way to clarify that the Crimes (Administration of Sentences) Act 1999 or the Children (Detention Centres) Act 1987 apply to preventative detainees. However, as foreshadowed by section 26X (3), there will be provisions in the Acts and in the subordinate legislation that should not apply. Section 26X (3) allows for these provisions to be excluded by way of regulation. It is proposed that an amending regulation will be prepared in the near future to specify which provisions do not apply. These might include, for example, the entitlement of inmates to visits or communication with people outside the detention centre.

I turn now to the detail of the bill. Proposed section 26X (2A) will clarify that the provisions of the Crimes (Administration of Sentences) Act 1999 and the Children (Detention Centres) Act 1987 apply to any person detained under a preventative detention order, except to the extent that any such provision, first, is inconsistent with a requirement of that Act or the arrangement made for the person's detention; second, entitles a person to visit the person or entitles the person to communicate with another person because that Act makes detailed provision for such matters; or, third, is excluded by the regulations. Clause 2 provides for the commencement of the proposed Act on the date of its assent. Clause 3 is a formal provision that gives effect to the amendment to the Terrorism (Police Powers) Act 2002 set out in schedule 1. The schedule sets out the amendment to section 26X of the Terrorism (Police Powers) Act 2002, as I have outlined.

Terrorism presents our community with some very hard policy decisions. The task that confronts us all is to meet the terrorist threat while preserving the aspects of our society that mark us out as a free and open democracy. If a person is to be detained under a preventative detention order the legislation needs to be clear about which laws pertain to the person under the preventative detention order and which laws do not. This Government is ever vigilant in ensuring that legislation is in fact robust enough and capable of dealing with any possible outcome, and it continues to review and update its laws to keep up with the ever-present threats of Terrorism in today's society. I commend the bill to the House.