



NSW Legislative Assembly Hansard

Law Enforcement (Controlled Operations) Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 8 March 2006.

Second Reading

Mr TONY STEWART (Bankstown—Parliamentary Secretary) [10.12 a.m.], on behalf of Mr Carl Scully: I move:

That this bill be now read a second time.

I am pleased to introduce the Law Enforcement (Controlled Operations) Amendment Bill. Parliament intended the Law Enforcement (Controlled Operations) Act 1997 to provide undercover officers with protection against criminal prosecution for offences committed in the course of a controlled operation, to put in place tight accountability mechanisms for the approval and oversight of controlled operations, to remove any doubt as to the legal status of evidence obtained in the course of a controlled operation and to enable police, and like bodies, to fight against crime and corruption.

Undercover operations are an important investigative tool enabling law enforcement agencies to gain evidence to assist in the prosecution of crimes including organised crime. The Act provides for the authorisation, conduct and monitoring of operations involving what might otherwise be unlawful activities. For example, in a drug operation an undercover operative posing as a buyer cannot actually take possession of the drugs without technically committing an offence. The Act legitimises the actions of undercover officers and other participants and permits evidence obtained during the course of authorised controlled operations to be classified as legal and prima facie admissible.

The Act governs controlled operations carried out in New South Wales by the Independent Commission Against Corruption, NSW Police, the New South Wales Crime Commission, the Police Integrity Commission and Commonwealth law enforcement agencies. A statutory review of the Act has been conducted. The review report recommended several significant changes to the Act including the expansion of the number of NSW Police senior officers able to authorise controlled operations, the expansion of the circumstances in which a retrospective authorisation may be granted and the introduction of cross-border provisions in relation to operations that cross over from New South Wales into other jurisdictions.

Currently, the Commissioner of Police can delegate his authorising function to five officers at or above the rank of superintendent. The bill expands the number of senior officers able to authorise controlled operations to include all officers at or above the rank of assistant commissioner plus two officers at or above the rank of superintendent. The latter two officers must be specifically nominated by the commissioner. Essentially, the changes mean that the number of NSW Police senior officers able to authorise controlled operations within New South Wales is expanded from six to twenty. The expansion of the number of NSW Police senior officers able to authorise controlled operations will improve the current system by making the authorisation process faster. The bill will thus enhance the ability of police, particularly in regional commands, to combat crime.

Section 14 of the Act has been amended to allow retrospective authority for unlawful activity not addressed in the original controlled operations authority. The principal law enforcement officer, the person in charge of a controlled operation, may, within 24 hours of unauthorised conduct being engaged in, apply for retrospective approval for that conduct. Section 14(5) outlines the strict conditions under which a retrospective authority may be granted. For example, the authorising officer must be satisfied that the participant had not foreseen, and could not reasonably be expected to have foreseen, that the circumstances would arise, and that had it been possible to foresee that those circumstances would arise authority for the relevant conduct would have been sought. A retrospective authority is not intended to replace the normal application and approval process and it is expected that retrospective authorisations will be infrequently applied for. However, the new provisions will help to ensure that evidence of criminal activity is not later rendered inadmissible at court.

The provisions relating to cross-border operations are aimed at achieving a national investigative framework. A national Leaders Summit on Terrorism and Multi-Jurisdictional Crime agreed to implement model laws for all jurisdictions and provide mutual recognition for a national set of model powers for cross-border controlled operations. The cross-border provisions seek to facilitate mutual recognition of activities that have been approved in accordance with corresponding legislation in other jurisdictions. In effect, an authorisation issued under the corresponding law of another jurisdiction will have effect in New South Wales as if it had been issued under the law of New South Wales. Conversely, an authorisation issued in New South Wales will have effect in another jurisdiction as if it had been issued under the law of that other jurisdiction.

In New South Wales the cross-border provisions will only apply to cross-border operations, that is, those that are conducted in New South Wales and at least one other jurisdiction. There are some significant differences

between the cross-border and intrastate provisions. One difference is that the duration of a cross-border authority is three months for a general authority and seven days for an urgent authority. In relation to an intrastate operation, that is, an operation within the geographical boundaries of New South Wales, a general authority is valid for six months and an urgent authority for 72 hours.

Another difference between the proposed cross-border and intrastate regimes relates to indemnities. For example, for intrastate operations, civil liability is excluded for any claim, action or demand where the conduct was in good faith and for the purpose of executing the Act. For cross-border operations the State will indemnify the participant in an authorised operation against any civil liability if certain requirements are met. Additionally, retrospective authorities will not be applicable in relation to cross-border operations. They will apply only to intrastate operations. It is envisaged that cross-border operations will comprise a small percentage of the total number of controlled operations undertaken by New South Wales agencies.

Any differences between cross-border and intrastate operations as a result of the implementation of the model laws should have little impact on day-to-day policing operations. Every aspect of a controlled operation is subject to strict controls and monitoring. All applications, whether for intrastate or cross-border operations, must contain sufficient detail to allow the authorising officer to make an informed decision about whether or not to authorise a particular controlled operation, and the written authority in each case sets clear parameters for the conduct of each controlled operation including any necessary conditions.

The Ombudsman will continue to have the same monitoring role for new approvals in line with the provisions of Part 4 of the Act. This will ensure that such operations are properly oversighted. The Ombudsman must be notified within 21 days of the granting of an intrastate or cross-border authority or variation of authority and within seven days of the granting of a retrospective authority. Additionally, authorising officers must notify the Ombudsman of the receipt of reports on completed operations. The Ombudsman is required to audit and inspect the records of each law enforcement agency at least once every 12 months. In conclusion, controlled operations are directed at obtaining evidence of crimes and corrupt conduct not readily acquired by traditional investigative methods. The amendments will enable police and other law enforcement officers to be more operationally responsive, improving the efficiency and efficacy of undercover operations. I commend the bill to the House.