

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.**

**Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.25 p.m.]: I move:

That this bill be now read a second time.

The Law Enforcement (Controlled Operations) Amendment Bill 2012 implements recommendations of the recently tabled "Report on the Review of the Law Enforcement (Controlled Operations) Act 1997". To implement those recommendations, the bill will amend the Law Enforcement (Controlled Operations) Act 1997 and the Surveillance Devices Act 2007, and makes consequential amendments to the Law Enforcement (Controlled Operations) Regulation 2012. The review found that overwhelmingly the Act was operating well and achieving its objectives.

Those objectives are, first, to provide law enforcement agencies with the investigative tools they need to effectively investigate serious crime, particularly organised crime and drug trafficking. To this end, the Act permits the chief executive officer, or a senior delegate, of each prescribed agency to authorise suitably trained officers to undertake, as part of an approved controlled operation, what would otherwise be illegal activities—in other words, controlled operations. Secondly, the Act would provide a strict system of accountability for the approval of controlled operations and the conduct of controlled activities by ensuring that authorisations are granted only in accordance with statutory guidelines, and by providing external monitoring of compliance with those requirements by the New South Wales Ombudsman. Thirdly, the Act would safeguard officers by providing an indemnity against departmental, criminal or civil prosecution for all controlled activities they undertake. Fourthly, the Act would remove any doubt as to the status of evidence obtained in the course of a controlled operation by ensuring that all such evidence would be classified as legal and prima facie admissible.

The review made two recommendations that aim to streamline the controlled operations process and assist law enforcement agencies to reduce red tape. The first recommendation is that law enforcement agencies be permitted to nominate a secondary law enforcement officer. Presently an application to conduct a controlled operation must nominate a principal law enforcement officer. The principal law enforcement officer is the officer who will conduct and have responsibility for the controlled operation. That responsibility also extends to other duties, such as reporting on the conduct of the operation, once the operation has been conducted.

The review received a submission from a law enforcement agency that one of the reasons for requiring amendments to applications was that the principal law enforcement officer was unavailable at the time when a controlled operation was to be conducted. That may have been as a result of illness or conflicting duties. Accordingly, the bill will amend the Act to allow law enforcement agencies to nominate a secondary law enforcement officer. The secondary law enforcement officer must be nominated when an application for an authority to conduct a controlled operation is made. The secondary law enforcement officer will assume the

responsibilities of the principal law enforcement officer when the principal law enforcement officer is unavailable.

The bill amends the Surveillance Devices Act 2007 to permit civilian participants in authorised controlled operations to wear surveillance devices to record a conversation they are party to, without seeking a surveillance device warrant. Currently section 7 (4) of the Surveillance Devices Act 2007 permits law enforcement officers who are participating in an approved controlled operation and operating under an assumed name or identity—in other words, they are undercover—to wear surveillance devices to record a conversation they are party to without seeking a surveillance device warrant. However, no similar exemption is provided for civilian participants in a controlled operation. Section 7 (3) (a) of the Law Enforcement (Controlled Operations) Act 1997 states that a civilian participant:

must not be authorised to participate in any aspect of a controlled operation unless the chief executive officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation.

Therefore, a civilian participant is permitted to participate in a controlled operation only when it is unfeasible for a law enforcement officer to do so. It might be noted that the exemption provided for in the Surveillance Devices Act applies only to law enforcement officers who are acting undercover. A law enforcement officer acting undercover is comparable to a civilian participant who, although not operating under an assumed identity, is acting covertly on behalf of a law enforcement agency. Providing this exemption will save police and courts time in preparing and giving consideration to surveillance device warrants and also will be in line with the policy objectives of the Act.

The use of surveillance devices by civilian participants will still be subject to the safeguards provided for within the Law Enforcement (Controlled Operations) Act 1997. The intended use of the device would be included in the operational plan and would be a matter that the chief executive officer of the relevant law enforcement agency would have to consider when deciding whether or not to authorise the controlled operation. The bill also makes consequential amendments to the Law Enforcement (Controlled Operations) Regulation 2012. Those consequential amendments provide for the secondary law enforcement officer within the code of conduct and other written notices. The amendments within the bill will assist law enforcement agencies in the conduct of controlled operations and reduce red tape. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Dr Peter Phelps and set down as an order of the day for a future day.**