



Crimes Legislation Amendment Bill

Second Reading

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CRIMES LEGISLATION AMENDMENT BILL

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Bill introduced and read a first time.

Declaration of urgency agreed to.

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.31 p.m.]: 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 *Crimes Legislation Amendment Bill 2002*. The Bill sets out a series of reforms to criminal legislation, concerning matters of both procedure and principle and is designed to facilitate the efficient delivery of criminal justice in this State.

I do not intend to address each proposed amendment in great detail, with one exception: detention of arrested persons for the purpose of carrying out a search warrant. I will return to this shortly.

For other matters, I provide the following short explanation of some of the Government's proposals:

BAIL ACT CHANGES

The Government seeks to remove the presumption in favour of bail where a person is charged with an offence alleged to have been committed while that person is an inmate of a correctional centre.

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

The Government seeks to add firearms offences to the list of 'serious children's indictable offence.'

CONFISCATION OF PROCEEDS OF CRIME ACT 1989

The Government seeks to ensure that a court, in making a pecuniary penalty order, may order the forfeiture of proceeds derived from the commercial exploitation of an individual's criminal past.

CRIMES ACT 1900

The Government seeks to clarify the original legislative intent that self-defence is available – in certain circumstances - where excessive force that causes death has been used; and allow health care workers who apply for an apprehended personal violence order not to supply their residential address in their application.

CRIMES (SENTENCING PROCEDURE) ACT 1999

The Government seeks to allow a Local Court to exceed its 3 year accumulated sentencing cap in circumstances where a prisoner has assaulted a prison officer. In other words, the Court may impose an additional consecutive sentence.

CRIMINAL PROCEDURE ACT 1986

The Government seeks to clarify that Magistrates can issue warrants for the arrest of accused persons who abscond or otherwise are not present in the course of court proceedings.

And important reforms to the *Mental Health Act 1990* and the *Mental Health (Criminal Procedure) Act 1990* aimed at improving the efficient management in this area.

For further explanation of these and other matters, I refer Honourable Members to the comprehensive Explanatory Note to the bill.

I encourage honourable members to examine the explanatory note and the Bill prior to the commencement of debate on the Bill.

I now turn to the matter of detention of arrested persons for the purpose of carrying out a search warrant.

Currently, where police are executing a search warrant, they may lawfully arrest a person on suspicion of having committed an offence in relation to a thing named in the search warrant or found at the premises in the course of executing the warrant.

The Crown Solicitor has advised that where a person is arrested at the scene of a search warrant he or she must either be brought before a justice as soon as is reasonably practicable, otherwise Part 10A of the *Crimes Act 1900* will apply. If police wish to continue to involve the person in the investigation at the scene of the search warrant, police must therefore take the person before a custody manager at a police station immediately so that the person can then be advised of his or her custody rights, and then return the person to the scene of the execution of the search warrant. Part 10A must be complied with in order for the detention to be lawful.

The amendments contained in the Bill ensure that police are able to execute search warrants in the presence of an arrested person without delaying the search by having to take the person before a custody manager at a police station and then returning to continue executing the search warrant. The amendments also ensure that, as far as is reasonably practicable, the arrested person receives the rights that he or she would otherwise be entitled to under Part 10A of the *Crimes Act 1900*.

These powers of detention may only be used where a person is lawfully arrested under section 8 of the *Search Warrants Act 1985* on the premises where a search warrant is being executed **and** the person's continued detention at the scene is related to the execution of the search warrant. It is important to note that

This proposal sets out no new powers of arrest.

These powers of detention are not intended to allow police to detain a person at the scene for questioning that would otherwise be subject to Part 10A; police may only question a person at the scene to facilitate the execution of the search warrant provided the person has been properly cautioned.

A person may be detained at the scene only if that detention is in connection with the execution of the search warrant, for example, where the arrested person's presence may assist the execution of the search warrant, or if the arrested person wishes to observe the execution of the search warrant.

The basic principle reiterated by the High Court of Australia and NSW Court of Criminal Appeal remains unaffected: the duty to bring an arrested person before a judicial officer as soon as reasonably practicable is one of the foundations of a democratic and just society.

Under this proposal, police have the power to detain a person:

who is arrested under section 8 of the *Search Warrants Act* 1985, and where that detention is in connection with the execution of the search warrant, for a period of time that is reasonable.

The question of reasonableness always needs to be considered on a case by case basis. For example, in the great majority of cases it is not expected that execution of a search warrant will take longer than 4 hours. There may be some situations however, where a longer period of time is reasonable. What is reasonable includes those matters set out under clause 23G.

Part 10A of the *Crimes Act* 1900 is amended to take account of the period of custody under Part 3A of the *Search Warrants Act* 1985. When determining what is a reasonable detention period under Part 10A, a police officer, justice or Court must consider the circumstances and time that a person was detained under Part 3A of the *Search Warrants Act* 1985.

Neither the Scheme set out under Part 3A of the *Search Warrants Act* 1985 or under Part 10A of the *Crimes Act* 1900 permit police to detain a person unreasonably or excessively.

Importantly, clause 356FA of the *Crimes Act* 1900 requires police officers, justices and Courts to have regard to the total period of continuous custody under both Part 10A and the *Search Warrants Act* 1985. Not only must there be regard to the reasonableness of each individual period of custody, but also to the reasonableness of the total 'real' time that a person is deprived of his or her liberty, before having to be brought before a justice

In conclusion, the Bill contains a number of changes that are necessary for the continuing development of an efficient and equitable criminal justice system in New South Wales. This Bill represents the Government's ongoing commitment to the review and improvement of the administration of justice in this State.

I commend the bill to the House.

Debate adjourned on motion by the Hon. John Jobling.

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