

TERRORISM (POLICE POWERS) AMENDMENT (INVESTIGATIVE DETENTION) BILL 2016

First Reading

Bill introduced on motion by the Hon. Mike Baird, read a first time and printed.

Second Reading

Mr MIKE BAIRD (Manly—Premier, and Minister for Western Sydney) (16:23): I move:

That this bill be now read a second time.

Our State, like many communities around the world, is grappling with the threat of terrorism. Recent incidents in the heart of our community have shaken us to our core and unfortunately in so many ways led to the loss of some innocent lives. This fact must remain foremost in our minds as we continue to respond to the threat of terrorism with appropriate laws and preventative measures. This fact must serve as a constant motivation for us to ensure we do everything we can to reduce the threat to our communities. This fact will cause my Government to be resolute in its commitment to take every possible action to protect our community.

Ensuring that New South Wales police have the powers they need to investigate, prevent and combat terrorist acts is a key element of our resolve. We thank our Commissioner of Police, who is doing an outstanding job, and the men and women on the front line who do us proud on a daily basis.

The New South Wales Government has already taken a number of steps to advance the safety and security of the people in New South Wales. We have tightened bail laws to ensure that those who pose an unacceptable risk to the community are not eligible for bail. We have placed restrictions on illegal firearms and have created tougher penalties for illegal gun possession. We have committed \$47 million to fight violent extremism, hand in hand with our communities, through support to New South Wales schools, young people, families and local organisations. It is important to understand within those programs that a key part of the motivation has to be that we do everything we can to protect our youth across the State. That is a key focus and resolve that we have.

The terrorist threat is evolving and our response must therefore evolve and respond to that threat. Terrorism plots are developing more quickly than ever before and often it is only a matter of days before they are enacted. Terrorism organisations are waging war through social media. ISIS has used social media to effectively turn 30,000 people into fighters for their cause. We know they are targeting messages to young Australians. Because of this capability, the forensic requirements in terrorism cases are incredibly complex and time consuming. At the same time, the age of those perpetrating acts of terrorism continues to fall. Younger and younger people are getting caught up in this brutal web. We must adapt to the shifting terrorism landscape.

The countering violent extremism programs that this Government has introduced aims to build social cohesion, support the community and schools and are based on best practice evidence. Expert teams have been deployed across New South Wales schools to work proactively with identified schools and respond as required. Further training has been provided to counsellors and resources have been developed for our teachers and parents to help them understand this threat and to help them protect our youth. We are also developing a service with phone and online support, and information for individuals, families, friends and community members.

The Minister for Multiculturalism recently announced that 14 organisations would receive a total of \$8 million under the Community Partnership Action [COMPACT] grants program to promote social cohesion and strengthen communities to resist extremism. At the same time, we must have law enforcement protections in place. We must be vigilant in ensuring that our police can respond effectively to the changing terrorism threat. Since using the preventative detention provisions in applications during Operation Appleby, New South Wales police have identified some critical operational gaps in our counterterrorism provisions and we must address these operational gaps. The bill does so, giving increased powers to New South Wales police to keep our communities safe.

The bill is modelled on a similar scheme to one that has operated in the United Kingdom for many years. The United Kingdom scheme has been an important tool for that country in its fight against terrorism. We have support for this bill from the Council of Australian Governments [COAG] with the Australian Capital Territory reserving its position. This bill was agreed in principle in April and COAG supported the New South Wales model for investigative detention of terrorist suspects being used as a basis for a nationally consistent model. In addition, New South Wales would introduce its legislation and, through this process, consult with other jurisdictions.

The bill assists the NSW Police Force to respond to and prevent terrorist acts by authorising the arrest, detention and questioning of any person who is suspected of being involved in a recent or imminent terrorist attack. This bill inserts a new section 25E, into the Terrorism (Police Powers) Act to permit a police officer to arrest and detain a person if there are reasonable grounds for suspecting

that the person has committed or will commit a terrorist act, possesses a thing connected with a terrorist act, or is involved in preparing for or planning a terrorist act. The terrorist act concerned must have occurred in the last 28 days or a police officer must have reasonable grounds to suspect that it could occur within the next 14 days.

A police officer must also be satisfied that detaining the terrorist suspect will substantially assist in responding to or preventing the terrorist attack. The bill adopts the existing definition of "terrorist act" contained in the Terrorism (Police Powers) Act. Acts of this kind are done with the intention of advancing a political, religious or ideological cause. They are also done with the intention of intimidating the public or coercing or influencing, by intimidation, the Government. Terrorist acts can create a serious risk to the health or safety of the public. Terrorist acts do not include advocacy, protest, dissent or industrial action.

The bill provides for an initial detention period of a terrorist suspect of up to four days with processes in place for a senior police officer to review the detention every 12 hours after arrest. In other words, eight times in the initial four days. The reviewing police officer must be independent of the investigation. The police must discontinue the investigation as soon as practicable after the police officer in charge of the investigation ceases to be satisfied that the person is a terrorism suspect or ceases to be satisfied that continuing the detention will substantially assist in responding to or preventing a terrorist act.

The bill enables an eligible judge to extend the detention period beyond the initial four-day period in increments of up to seven days up to a maximum total period of detention of 14 days. The bill includes protections to ensure that the detention period is not extended unless an eligible judge is satisfied that the investigation is being conducted diligently without unnecessary delay; there are reasonable grounds for suspecting that the person continues to be a terrorism suspect; there are reasonable grounds for suspecting that any future terrorist act could occur in the next 14 days, or so occur if the suspect is released; and the extension will substantially assist in responding to or preventing the terrorist act concerned. The maximum detention period of 14 days reflects the complex investigation techniques that may be required to protect the community from terrorism.

The bill ensures that detention warrants may only be issued by an eligible judge. This refers to a judge of the Supreme Court authorised to issue a covert search warrant under the Terrorism (Police Powers) Act. The eligible judge is acting as a *persona designata* rather than sitting as a court. Whilst this necessarily involves the eligible judge in the investigative process to some degree, this is the approach regularly taken in New South Wales for the grant of warrants. Clause 25L of the bill expressly provides that an eligible judge who deals with an application for a detention warrant in relation to a person needs to disqualify him or herself from presiding over any subsequent trial of the person in relation to the same matters.

Whilst detained, terrorist suspects may be questioned in connection with the terrorist act for which the person was arrested or in connection with any other terrorist act that occurred within the last 28 days or that could occur within the next 14 days. A detained person may also be questioned about another offence where there are reasonable grounds for suspecting the person has committed the offence and that the offence is related to the terrorist attack or that postponing the investigation may jeopardise it. The bill requires that a suspect be given the opportunity to rest for a continuous period of eight hours in any 24 hours of detention and to have reasonable breaks during any period of the questioning.

Clause 25M of the bill permits access to a lawyer and a support person for the suspect with the capacity for police to seek a direction prohibiting contact with a specified lawyer or support person. A prohibited contact direction may only be issued where the eligible judge is satisfied that the direction is reasonably necessary to achieve the purposes of detention of the suspect. The police may monitor the contact the suspect has with family members and others while in investigative detention. Contact with a legal representative of the suspect may not be monitored. The bill requires legislative safeguards to protect detained persons, including additional safeguards for young persons and other vulnerable persons, as does a comparable scheme in the United Kingdom. It is important to note that under this bill a person under the age of 14 cannot be arrested or detained.

The special safeguard provisions contained in division 3 of part 3 of the Law Enforcement (Powers and Responsibilities) Regulation apply to young persons aged 14 to 17 years of age and other vulnerable persons who may be detained under the bill. The special safeguard provisions include the entitlement to have a support person present during any investigation. A problematic gap in the current preventative detention scheme is the inability to protect sensitive criminal intelligence relied on by police to inform detention applications. Clause 25K of the bill rectifies this and establishes such a mechanism. This includes information, the disclosure of which would prejudice investigations, reveal a confidential information source, reveal confidential police investigative techniques, or

endanger a person's life or physical capacity. The bill allows an eligible judge the discretion to determine that information is criminal intelligence.

Criminal intelligence may be relied on by the eligible judge without disclosing it to suspects or their legal representatives. The eligible judge must make a record that criminal intelligence was relied on. If the eligible judge declines to determine that information is criminal intelligence, police are entitled to withdraw the information as grounds for issuing the warrant, rather than risk having the information disclosed to the suspect.

The bill extends the sunset provision of the New South Wales offence of membership of a terrorist group in section 310J of the Crimes Act 1900 (New South Wales) from September 2016 to September 2019. There is a similar offence under Commonwealth laws contained in section 102.3 of the Criminal Code of the Commonwealth. This amendment will ensure that suspects may continue to be arrested for the New South Wales version of the offence until the extended sunset date.

The Attorney General will review the operation of the bill as soon as possible after a period of three years from its commencement. A report on the outcomes of the review is to be tabled in Parliament. In addition, the Commissioner for Police must report annually on the exercise of powers under the bill. The report of the Commissioner of Police is to be tabled in Parliament by the Attorney General.

The Solicitor General has advised that the bill does not give rise to any inconsistency with Federal legislation. He is also of the view that there is a good argument that the bill is constitutionally justified as protective of the community, particularly in the context of recent terrorism events in Australia and in other parts of the world. This is indeed the precise purpose of this bill—to protect the community by assisting the NSW Police Force to respond to and prevent terrorist attacks.

This Government is taking every possible action to protect our community and to protect our youth. The powers under this bill enable the NSW Police Force to undertake appropriate actions in order to keep our community safe. They provide a necessary complement to efforts being made in communities to prevent engagement in all forms of violent extremism. I commend the bill to the House.

Debate adjourned.