

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

Second Reading

The Hon. CATHERINE CUSACK (11 :55): On behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

This Government is resolute in its commitment to take every possible action that we can to protect our community.

Ensuring that NSW police have the powers they need to investigate and combat terrorist acts is a key element of our resolve.

The New South Wales Government has already taken a number of steps to advance the safety and security of the people of 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 created tougher penalties for illegal gun possession.
 - We have committed \$47 million to fight violent extremism through support to New South Wales schools, young people, families and communities.

The Government is taking strong action to keep the community safe.

But we must continue to respond to the changing terrorist threat.

The significant increase in usage of social media by terrorist organisations, the speed of individual radicalisation to violent extremism, particularly young people, are all part of a shifting terrorism landscape.

The countering violent extremism programs that this Government has introduced aim 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 to incidents of violent extremism. Further training has been provided to counsellors, and resources developed for teachers and parents.

We are also developing a service with telephonic and online presences to provide information and support to individuals, families, friends and community members.

The Minister for Multiculturalism recently announced that 14 organisations would receive a total of \$8 million under the COMPACT grants program to promote social cohesion and strengthen communities to resist violent extremism.

At the same time, we need to have protections in place and improve the ability of police to respond effectively to the changing terrorism environment.

Since utilising preventative detention provisions in applications arising from matters related to Operation Appleby, the NSW Police identified some operational gaps in our counter terrorism provisions.

This bill addresses these operational gaps and gives increased powers to NSW Police to keep our community safe.

The scheme is modelled on a similar scheme operating in the United Kingdom.

The purpose of this bill is to protect the community by assisting NSW Police to respond to and prevent terrorist acts.

This bill assists NSW Police 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 act.

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.

A person under 14 years of age cannot be arrested or detained under the bill .

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 be satisfied that detaining the terrorist suspect will substantially assist in responding to or preventing the terrorist act. Responding to a terrorist act includes by apprehending and prosecuting those involved in committing the terrorist act and preventing those persons and their associates from committing further terrorist acts.

The bill adopts the existing definition of " terrorist act " contained in the T errorist (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 Governme nt. 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 initial detention period of a terrorist suspect is for up to four days, with processes in place for a senior police officer to review the detention every 12 hours after arrest. The reviewing police officer must be independent of the investigation.

Police must discontinue the investigation as soon as practicable after the police officer in char ge 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 allows an eligible j udge to e xtend the detention period beyond the initial 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 j udge is sat isfied that:

- the investigation is being conducted diligently and 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 t errorist 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 in vestigation techniques that may be required to protect the community from terrorism.

Detention warrants may only be issued by an " eligible Judge " . This refers to a j udge of the Supreme Court authorised to issue a covert search warrant under the Terrorism (Police Powers) Act. The eligible j udge is acting as persona designata, rather than sitting as a c ourt. Whilst this necessarily involves the eligible j udge in the investigative process to some degree, this is the approach regularly taken in New South Wales for the grant of warrants.

Clause 25I of the bill expressly provides that an eligible j udge who deals with an application for a detention warrant in relation to a person is to d isqualify 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 coul d occur in 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 act, 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 8 hours in any 24 hours of detention, and to have reasonable breaks during any period of questioning.

Clause 25K of the bill estab lishes a mechanism to protect sensitive criminal intelligence relied on by p olice to inform detention applications. This includes information the disclosure of which would prejudice investigations, reveal a confidential information source, reveal confident ial police investigative techniques or endanger a person's life or physical safety. The bill allows an eligible j udge the discretion to determine that information is criminal intelligence. Criminal intelligence may be relied on by the eligible j udge without disclosing it to the suspect or their legal representative. The eligible j udge must make a record that criminal intelligence was relied on. If the eligible j udge declines to determine that information is criminal intelligence, p olice are entit led to withdraw the information as grounds for issuing the warrant, rather than risk having the information disclosed to the suspect.

Clause 25M of the bill permits access to a lawyer and a support person for the suspect, with the capacity for p olice to se ek 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.

Police may monitor the contact the suspect has with family members and others while in investigative detention. Contact with the legal representative of the suspect may not be monitored.

The bill provides legislative safeguards to protect detained persons, including additional safeguards for young persons and other vulnerable persons, as does the comparable scheme in the United Kingdom.

The special safeguard provisions contained in Division 3 of Part 3 of the Law Enforcement (Powers and Responsibilities) Regulation 2005 apply to young persons aged 14 to 17 years of age and other vulnerable persons who may be detained under the bill. These special safeguard provisions include the entitlement to have a support person present during any investigative procedure.

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 (NSW) 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 the 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 Police Commissioner's report 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.

We are taking every possible action we can to protect our community and to protect our youth. These powers 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.

The Hon. ADAM SEARLE (11:56): I lead for the Opposition on the Terrorism (Police Powers) Amendment (Investigative Detention) Bill 2016. The Opposition does not oppose the bill. The object of the bill is to amend the Terrorism (Police Powers) Act 2002, the principal Act, to authorise the arrest, detention and questioning of a person who is suspected of being involved in a recent or an imminent terrorist act for the purposes of assisting in responding to or preventing the terrorist act. Additionally, the bill extends by three years the sunset date until which membership of a terrorist organisation is also a State criminal offence.

New South Wales already has a regime of detention without charge. It is set out in the principal Act and has existed for more than a decade. It has been used very sparingly and the Ombudsman suggested not long ago that the provisions be rescinded as they had never been used. However, more recent events have meant that that suggestion has not been explored further.

This bill proposes two major differences to the current regime. One is not to restrict the regime to those aged 16 years and over. If this bill is enacted the regime will apply to those aged 14 years and over. The proposal for extension has been supported by Bret Walker, the former Independent Monitor of National Security Legislation, someone whose views on these issues the Opposition takes very seriously. The second major change is to allow suspects to be questioned while being detained.

The bill does not simply amend the principal Act by altering the regime but inserts a new Part 2AA into the principal Act entitled "Investigative detention powers". New section 25A provides:

The object of this Part is to authorise the arrest, detention and questioning of a person who is suspected of being involved in a recent or imminent terrorist act for the purposes of assisting in responding to or preventing the terrorist act.

The powers are directed against a terrorism suspect. A terrorism suspect is defined widely and extends to a person who possesses a thing that is connected with the commission or preparation of or planning for a terrorist act. It extends to a future terrorist act, even if the identity of the person committing the terrorist act, the kind of act or timing or location of the act has not been established.

New section 25C defines investigative detention as:

... the detention of a terrorism suspect for investigation into a past or future terrorist act for the purposes of assisting in responding to or preventing the terrorist act.