

Legislative Council Hansard – 21 June 2017 – Proof

**TERRORISM LEGISLATION AMENDMENT (POLICE POWERS AND PAROLE) BILL
2017***Second Reading***The Hon. DAVID CLARKE (15:31):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

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

Leave granted.

Australia will never forget the tragedy that unfolded in Martin Place on 15 and 16 December 2014. The Lindt Cafe siege brought the evil and violence of terrorism to the heart of Sydney, just minutes from this Chamber. Tragically, when the siege ended, only 16 of the 18 hostages had escaped alive. We continue to mourn the loss of Tori Johnson and Katrina Dawson—Australians with friends and families who loved them, and full lives ahead of them. The hostages had their lives scarred for no other reason than they happened to be there at that time, on that day. In circumstances that most of us can barely imagine, they showed incredible resolve and bravery.

We again pay tribute to the courage of the police who responded to a complex, difficult situation. The officers that day went in not knowing whether they would come home alive. Their actions reinforce our determination to equip the Police Commissioner with the powers he or she needs to combat terrorism. The events of Lindt siege are foremost in our mind today. And so too are the attacks in Melbourne and around the world over the past 12 months—London, Manchester, Orlando, Istanbul, and many more. Just in the past few days, planned attacks in Paris and Brussels have been stopped by brave police action. What we have seen again and again is that terrorists are evolving their methods—becoming bolder and more self-sufficient. These global events are powerful reminders that we can never be complacent in Australia. As a Government, the safety and security of the community is always our highest priority. And with this bill, we ensure that New South Wales will continue to have not just the strongest counterterrorism laws in Australia, but some of the strongest laws anywhere in the world.

First and foremost, this bill responds to the key recommendations of the State Coroner's report on the Lindt Cafe siege, released on 24 May 2017. As members would recall, on 8 June 2017, we announced that the Government had accepted and supported all 45 of the Coroner's recommendations. We also committed to immediately legislate to provide certainty to New South Wales police when required to use force—including lethal force—during terrorist incidents. While police do have existing powers to use force where the public is in danger, the Coroner's report found that there was some doubt among officers about the legal position they were in during the Lindt Cafe siege. To remove that uncertainty, the bill allows the Commissioner of Police to authorise the use of force, including lethal force, that is reasonably necessary to defend anyone threatened by a terrorist incident—or to secure the release of hostages, where planned and coordinated police action is required. Police officers who use force in these circumstances will not incur criminal liability where they act in good faith.

The bill does not affect existing police powers to respond to emergency situations or to apprehend offenders. In addition to amending the law on use of force, this bill also further strengthens parole laws in New South Wales—by creating a presumption against parole for anyone with demonstrated support for, or links to, terrorism. That presumption will apply to offenders with links to terrorism irrespective of the offence for which they are in custody. These changes build on the Government's announcement in May 2017 that radicalisation would now be considered as part of parole decisions in New South Wales. And it was the leadership of New South Wales on this issue that was recognised at the recent Council of Australian Governments meeting in Hobart, where first Ministers agreed to adopt our approach as part of a coordinated national response. It is a reminder that when it comes to policing and security, New South Wales is setting the standard for Australia. And it is a standard we intend to maintain. Since the Lindt Cafe siege, the Government and the NSW Police Force have taken comprehensive action to respond to the changing security environment, moving to strengthen the legal frameworks behind counterterrorism — including tightening bail laws and reforming firearms regulation. This legislation is the next step in that ongoing response.

I now turn to the detail of the bill. The bill before the House seeks to amend the Terrorism (Police Powers) Act 2002 and the Crimes (Administration of Sentences) Act 1999. The Terrorism (Police Powers) Act 2002 affords the NSW Police Force special powers to manage terrorism threats as they emerge. As it stands, the legislation permits certain special powers to be conferred on police to prevent a terrorist attack, and other powers to be enlivened for the purposes of an investigation in the immediate aftermath of an attack. The bill clarifies the ability of police officers to use force, including lethal force, in terrorist situations. The amendments to the Terrorism (Police Powers) Act 2002 are set out in schedule 1 to the bill. Clause 1 in schedule 1 inserts a new part 2AAA into the Act. The new section 24A makes provision for the Commissioner of Police to make a declaration where satisfied that an incident police are responding to is, or is likely to be, a terrorist act and where planned and coordinated police action is required to defend people threatened by the terrorist act, or to terminate their unlawful deprivation of liberty.

New section 24A also establishes the procedures by which the powers are to be activated. It requires that the Commissioner notify the police officer in charge of the officers responding that a declaration has been made. The Commissioner must also notify the Minister for Police, before or as soon as practicable after, a declaration is made. Where the Commissioner is not available, a Deputy Commissioner can make a declaration. The Commissioner must revoke the declaration if no further police response is required at the location of concern. Clause 1 also inserts a new provision, section 24B, relating to the use of force by those police responding to a terrorist act that has been declared by the Commissioner. Where a declaration is made, the police action that is authorised in responding to the terrorist act is the authorisation, direction or use of force, including lethal force, that is reasonably necessary, in the circumstances as the police officer perceives them, to defend persons threatened by the incident or to prevent or terminate their unlawful deprivation of liberty.

Police officers taking that action will not incur criminal liability where they act for the purposes of a police action plan and in good faith. It should be noted that police officers that act in good faith in reliance on the Commissioner's declaration are also to be protected from criminal liability even if that declaration is later found to have been invalid or is revoked in circumstances where the officer, acting reasonably, is unaware of the revocation. As I stated previously, the bill does not affect existing police powers to respond to emergency situations or to apprehend offenders. The parole changes amend the Crimes (Administration of Sentences) Act 1999 to insert a new division 3A in part 6 of the Act, and are set out in schedule 2 to the bill.

The new section 159B establishes that the new provisions apply to offenders with links to terrorism or violent extremism. This includes those serving a sentence for terrorism offences and those who have previously been convicted of, or charged with, terrorism offences. It also extends to offenders subject to a control order made under part 5.3 of the Commonwealth Criminal Code, being those who have advocated or supported terrorist acts, and those who have associations or affiliations with supporters of terrorist acts or violent extremism.

Under new section 159C, the State Parole Authority must not make a parole order for a terrorism offender unless satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism. In making such a determination, new section 159D, requires the parole authority to: have regard to any credible information it has on the risk that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism under the terms of the proposed parole order and in the future, and have regard in particular to whether the nature of any associations or affiliation that the offender has with any persons or groups advocating support for terrorist acts or violent extremism gives rise to any such risk.

The amendments also introduce new powers to revoke or suspend parole orders for terrorism offenders if the State Parole Authority becomes aware that the offender may engage in, or incite or assist others to engage in, terrorist acts or violent extremism. By clarifying the powers available to the Police Commissioner to use lethal force when responding to terrorist acts, and strengthening parole laws to keep potential terrorists off the street, this bill protects communities across our State. With these new measures, New South Wales will have the strongest counter terror laws in Australia, and some of the strongest anywhere in the world. I commend the bill to the House.

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