

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [11.47 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Criminal Organisations Legislation Amendment Bill 2009. The Crimes (Criminal Organisations Control) Act 2009 commenced on 3 April 2009 and introduced a scheme for the declaration of criminal groups by an eligible judge of the Supreme Court, on application by the Commissioner of Police. Once an organisation is so declared, the activities of its members will be able to be significantly restricted and disrupted by virtue of control orders issued by the Supreme Court. Under that Act, an eligible judge may make a declaration in relation to a particular organisation if he or she is satisfied that members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represents a risk to public safety and order in New South Wales.

Subsequently, interim control orders and control orders may be made against members of the declared organisation with two main consequences for these "controlled members". First, they will be prohibited from associating with other controlled members of the organisation. Secondly, they will be ineligible to apply for or to hold licences in a number of high-risk industries, such as the security and tow truck industries. The Criminal Organisations Legislation Amendment Bill makes amendments to a number of Acts to clarify and support the operation of the Crimes (Criminal Organisations Control) Act 2009. The bill amends the Crimes (Criminal Organisations Control) Act 2009 to permit the Supreme Court, where satisfied that the Commissioner of Police has taken all reasonable steps to effect personal service of an interim control order and those steps have failed, to extend the period within which the interim control order must be served, and specify alternative means for effecting service.

The bill also creates a new offence of recruiting a person to be a member of a declared organisation, which is applicable to controlled members of the organisation and carries a maximum penalty of five years imprisonment. Police have evidence that a number of youth gangs are being used by some criminal organisations to "feed" their gangs with members. We also know that some of the most violent disputes between clubs are where members of one gang offer inducements for members of other gangs to "patch" over and join their organisation. The offence will help stamp out these practices by deterring recruitment activity, the poaching of members, and the associated violence. It will also stop one club from going to another to seek to amalgamate or join forces.

The bill also amends the Law Enforcement (Powers and Responsibilities) Act 2002 to create a search warrant for organised crime offences which must be approved by an officer of the rank of superintendent or above, be applied for to the Supreme Court on the basis of reasonable suspicion, and will be valid for seven days. The new class of search warrant is necessary in order to combat the highly sophisticated and organised criminal activity perpetuated by criminal gang networks. The powers conferred by criminal organisation search warrants are the same as for existing search warrants, with the only differences being, first, the threshold for applying for the warrant is pitched at the level of the applicant's "reasonable suspicion", rather than a belief; and, second, warrants will be available for a period of seven days, rather than 72 hours.

The different threshold for criminal organisation search warrants is balanced by the fact that warrants will only be able to be granted by a judge at the Supreme Court level. This threshold is consistent with the threshold for obtaining surveillance device warrants and covert search warrants, and is justified in this instance on the basis that organised crime offences, unlike crimes committed by an individual or casual group of offenders, often involve high levels of organisation and planning. The lower threshold will enable police to cut through existing practices of systematic concealment and collusion often associated with organised crime offences. Similarly, the longer warrant duration is reflective of the fact that investigations into organised criminal activity often demand considerably higher levels of planning and logistical organisation.

The new class of search warrant is accompanied by the following safeguards: first, only a judge at the Supreme Court level will be authorised to grant warrants; secondly, the application for the warrant will need to be authorised by a senior police officer holding the rank of superintendent or above; thirdly, police will be required to report annually on the exercise of the search warrant powers; and, fourthly, the New South Wales Ombudsman will have an ongoing oversight role in relation to the scheme. In addition, warrants will not be available in respect of all criminal offences but, rather, restricted to an organised crime offence defined as any serious indictable offence arising from "organised criminal activity", defined as activity which is carried out on an organised basis, and carried out to advance the objective of obtaining material benefits from conduct constituting a serious indictable offence, and/or committing serious violence offences.

An activity will be deemed to be carried out on an "organised basis" if it is planned, organised, structured or otherwise carried out in a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant. In addition, the bill makes amendments to the Pawnbrokers and Second-

hand Dealers Act 1996, the Motor Dealers Act 1974, the Motor Vehicles Repairs Act 1980, the Tow Truck Industry Act 1998, the Commercial Agents and Private Inquiry Agents Act 2004 and the Liquor Act 2007 to create a means for the Commissioner of Police to make available to regulators in these industries confidential criminal intelligence relating to associates of declared criminal organisations, so as to restrict their participation in these industries.

Police have told us that a number of high-risk industries have been vulnerable to infiltration by persons who associate with criminal organisations. While they may not be fully patched-up members, their history shows a strong criminal involvement with members of those gangs. The new provisions will restrict the activities of these associates in the relevant industries. Finally, the bill amends the Surveillance Devices Act 2007 to authorise the use of protected information obtained through a surveillance device warrant in proceedings for criminal organisation declarations and for the making of control orders. I now turn to the detail of the bill.

Schedule 1 to the bill amends the Crimes (Criminal Organisations Control) Act 2009. Schedule 1 [1] enables the Supreme Court to make an order for substituted service of an interim control order on the person to whom it relates if it has not been possible to personally serve the order and, if substituted service also fails, to order its public notification. Schedule 1 [2] makes it an offence for a controlled member of a declared organisation to recruit another person to be a member of the organisation. The offence carries a maximum penalty of five years imprisonment. Items [3] to [5] of schedule 1 clarify that information may be published on the criminal organisations register 28 days after a control order is made in relation to a member of a declared organisation, unless an appeal against the order is lodged before the expiration of that period.

Schedule 2 to the bill amends the Law Enforcement (Powers and Responsibilities) Act 2002 to enable an eligible judge of the Supreme Court to issue a new form of search warrant. A criminal organisation search warrant may be applied for if there are reasonable grounds to suspect that there is, or within seven days will be, in or on premises a thing connected with an organised crime offence. An organised crime offence is a serious indictable offence arising from, or occurring as a result of, organised criminal activity. Organised criminal activity means any activity that is carried out to advance the objectives of committing serious violence offences or gaining material benefits from conduct constituting serious indictable offences, and is carried out in such a manner as to indicate that the activity is carried out on more than one occasion and involves more than one participant.

An application for a criminal organisation search warrant may be made only by a police officer authorised to make the application—by a police officer holding the rank of superintendent or above—and expires seven days after issue. The powers exercisable under such a warrant are essentially the same as those exercisable under a standard search warrant. The warrant may be issued by a Supreme Court judge only if there are reasonable grounds to do so, just as is the case now for an ordinary search warrant. Provision is made for the Ombudsman to inspect the records of the New South Wales Police Force every two years and report on the results of that inspection to ensure that the requirements of the 2002 Act are being complied with in relation to the new form of warrant. Provision is also made for annual reports on the exercise of the new search powers.

Schedule 3 amends the Pawnbrokers and Second-hand Dealers Act 1996, the Motor Dealers Act 1974, the Motor Vehicles Repairs Act 1980, the Tow Truck Industry Act 1998, the Commercial Agents and Private Inquiry Agents Act 2004 and the Liquor Act 2007 to enable the relevant regulatory authorities to refuse to grant or cancel authorisations to carry on occupations and activities under those Acts where the regulatory authorities have reasonable grounds to believe from information held or provided by the Commissioner of Police in relation to applicants for authorisations or holders of authorisations that, first, the applicants or holders are members of, or regularly associate with one or more members of, a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2009; and, second, nature and circumstances of the applicants or holders relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if they hold or continue to hold authorisations.

The amendments include provisions to ensure that any information provided by the Commissioner of Police to the regulatory authorities that he classifies as criminal intelligence is not disclosed in the reasons given by the regulator, although reasons must still be given to the extent that they do not disclose such intelligence. Nor is criminal intelligence to be disclosed in any subsequent review by the Administrative Decisions Tribunal, unless approved by the commissioner. Finally, schedule 3.6 to the bill amends the definition of "relevant proceedings" in section 4 (1) of the Surveillance Devices Act 2007 so as to enable protected information obtained from the use of a surveillance device to be used in respect of a declaration under part 2, and the making of control orders under part 3, divisions 1 and 2 of the Crimes (Criminal Organisations Control) Act 2009. Section 40 of the Surveillance Devices Act prohibits the use, communication or publication of protected information, except for specified purposes, including "relevant proceedings" under the Act. This amendment will ensure that such information can be used in the application for a declaration against an organisation, or for the making of a control order against a member of that organisation. I commend the bill to the House.