



## Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill.

### Second Reading

**Miss CHERIE BURTON** (Kogarah—Parliamentary Secretary) [10.00 a.m.], on behalf of Mr Bob Carr: I move:

That this bill be now read a second time.

The Freedom of Information Act is an important part of modern government. But in light of September 11 and Bali we have to strike a better balance between public access to information and protection of the community. We cannot rely on the same assumption, the same world view we had before September 11. In a world under threat, we have to act within the assumption that attacks are being planned all the time. We have to assume terrorists are soaking up publicly available information, searching for targets and opportunities to inflict further attacks on the United States and her allies.

The fact is government agencies now hold significantly more documents containing sensitive counter-terrorism information than when our freedom of information law was enacted in 1989. We cannot allow the Freedom of Information Act to become an unwitting tool in terrorists' designs. That is why the Government is introducing legislation to better protect the security of counter-terrorism and other sensitive law enforcement information. Commonwealth freedom of information laws have always included a national security exemption, and the Northern Territory and Victorian Parliaments have recently passed similar laws. But here, in the biggest and arguably most vulnerable State, we still have not acted. The legislation I introduce today closes the gap. It is true New South Wales already has an exemption to protect certain documents relating to law enforcement and public safety, but we need a simple and comprehensive counter-terrorism exemption to stop sensitive information being inadvertently released or deliberately sought.

This bill provides that exemption. It protects security and risk management plans concerning private and public critical infrastructure; ensures intelligence agencies can prepare and share sensitive documentation without risking release; protects intelligence about particular people, groups or activities that may present a threat to the security of the State; and protects plans for prevention, preparedness, response or recovery that may reveal vulnerabilities or risks that could be exploited by terrorists and that means, for example, protecting information about the location and quantity of medical supplies in the event of a chemical attack, information that does not readily fall within any of the current exemptions in the Freedom of Information Act.

I believe that the proposals in this bill strike the right balance between public access and public protection. The exemptions will apply only where restricted access is reasonably necessary for the proper administration of government. A decision to invoke any of the exemptions in the bill will be reviewable internally within agencies. If that fails to satisfy applicants, they can seek external review of the decision from the Ombudsman or the Administrative Decisions Tribunal.

I turn now to some of the detail of the bill. The bill extends the types of documents that may be exempt from disclosure under the Freedom of Information Act. Documents that could reasonably be expected to facilitate the commission of a terrorist act or prejudice terrorism prevention, preparedness, response or recovery may be exempt from disclosure. For consistency, the definition of terrorist act used in the Terrorism (Police Powers) Act will apply to this exemption. The formulation for this exemption mirrors the four phases of counter-terrorism response under the National Counter Terrorism Plan agreed to by the Commonwealth, the States and Territories. This exemption will assist the State to perform its responsibilities under the National Counter Terrorism Plan, without fear that documents created in accordance with it may be inappropriately released.

Documents created by the Counter Terrorism Co-ordination Command in New South Wales Police may be exempt from disclosure as may documents created by the State Crime Command in New South Wales Police in the exercise of its intelligence functions. This exemption replaces the current provision in the Freedom of Information Act that exempts from disclosure all documents created by the New South Wales Police Information and Intelligence Centre, which has been disbanded and its intelligence functions moved to State Crime Command. This amendment will ensure that intelligence documents that were protected from release under the previous command structure continue to be protected.

Documents created by the Corrections Intelligence Group of the Department of Corrective Services in the exercise of its intelligence functions may also be exempt from disclosure. The New South Wales Crime Commission will be exempt from the operation of the Freedom of Information Act in relation to its investigative and reporting functions. This exemption is consistent with that afforded to other important investigative agencies such as the Independent Commission Against Corruption and the Police Integrity Commission. The Crime Commission investigates and reports

on the most serious crimes, and relies heavily on informants. Therefore confidentiality needs to be assured for investigations to succeed.

The exemption proposed in the bill may reduce the chance of accidental or inadvertent release of sensitive documents. It may also help facilitate information sharing between the Crime Commission and other intelligence collecting organisations, and that reflects one of the big lessons the United States authorities learnt from September 11 that effective counter-terrorism needs seamless co-operation between intelligence agencies. The bill will also reduce the diversion of precious Crime Commission resources to FOI compliance. This is an additional part of the Government's counter-terrorism response, a small but significant step in helping tilt the balance against terrorists and in favour of security. It is part of the delicate balancing act we have been undertaking since September 11 to maintain our cherished rights and freedoms while closing the gaps exploited by terrorists to inflict mayhem and carnage on innocent civilians. This is an important bill for our national security and I commend it to the House.

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