



Full Day Hansard Transcript (Legislative Council, 28 May 2014, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 28 May 2014 (Proof).

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra)
[9.51 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Law Enforcement (Powers and Responsibilities) Amendment Bill 2014. The purpose of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to ensure that police have clear and effective powers to do their job protecting the community. This bill is an important part of the New South Wales Government's commitment to making the very difficult job of policing easier for the men and women of the NSW Police Force. The bill implements recommendations made by two reports regarding the statutory review of the Law Enforcement (Powers and Responsibilities) Act.

The first report, prepared by former Minister for Police, the Hon. Paul Whelan, and former shadow Attorney General, Mr Andrew Tink, dealt with parts 9 and 15 of the Act. The second report dealing with the balance of the Law Enforcement (Powers and Responsibilities) Act was a statutory review completed by the former Department of Attorney General and Justice, as it then was, and the Ministry for Police and Emergency Services. The amendments in this bill will strike the right balance between ensuring that police can do their job safely and efficiently while providing appropriate safeguards for members of the community when dealing with police.

I will now outline the key features of the bill. Schedule 1 to the bill contains amendments to part 9 of the Law Enforcement (Powers and Responsibilities) Act recommended by Mr Whelan and Mr Tink. Part 9 provides safeguards for suspects who are in the company of police for investigation and questioning in relation to an offence. The safeguards include the right to communicate with a friend, relative or lawyer and the maximum investigation period. Items [1] to [5] of schedule 1 will amend sections 109 to 111 of the Law Enforcement (Powers and Responsibilities) Act to clarify that there are two categories of people to whom the part 9 safeguards apply, being detained persons and protected suspects. A "detained person" is someone who is not free to leave the company of police. They are under arrest.

A "protected suspect" is a person who is voluntarily in police company. The term "protected suspect" will mean a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if the police officer believes there is sufficient evidence that the person has committed the offence and the person has been informed that they are entitled to leave at will. Item [6] creates new section 112A, which will ensure that the part 9 safeguards can be applied during the execution of a search warrant in the field. Currently, police have to freeze the search warrant and take a suspect back to the police station to have a custody manager administer the part 9 rights. Operational police advise that this is time consuming and impractical for both the person involved and police.

New section 112A makes special provision for the administration of part 9 rights to detained persons and protected suspects at the scene of a search warrant. It provides that a police officer at the scene who is independent of the investigation and not searching can exercise the functions of the custody manager. This role may be undertaken, for example, by the independent officer at the search. The provision allows for the custody record required under part 9 to be recorded as part of a video recording of the execution of the warrant. Part 9 imposes certain obligations on the custody manager to facilitate communication between the accused and a friend, relative or other support person.

New section 112A (2) (b) provides that these requirements need not be complied with if the officer acting as custody manager holds a reasonable suspicion that doing so may result in bodily injury to any person. This test, which is broader than the one applied to the communication obligations at a police station, reflects the fact that search warrants are conducted in the field and therefore pose a higher potential risk to the safety of officers and others and is a less controlled environment.

Items [9] to [15] of schedule 1 amend division 2 of part 9, which restricts the period during which a person can be detained for investigation. These limitations will only apply to detained persons and not protected suspects as they are free to leave at any time. The amendments do not alter the requirement in section 115 that the initial investigation period end at a time that is reasonable in all the circumstances. However, the maximum initial investigation period is extended from four to six hours. Police can seek an extension of the initial period by obtaining a detention warrant from

an authorised justice.

Currently an extension is limited to eight hours; however, the bill will change this to six hours so the total possible investigation period remains at 12 hours. Under sections 116 and 118 of the Law Enforcement (Powers and Responsibilities) Act all relevant circumstances of the case must be taken into account when determining what is a reasonable time for the initial investigation period and whether a detention warrant should be granted. The bill will amend these provisions to require that any period the person spent as a protected suspect be taken into account as part of these circumstances.

Items [17] and [19] of schedule 1 amend division 3 of part 9 to apply all of the safeguards contained in that division to protected suspects as well as detained persons. Item [18] will provide for the summary of part 9 rights which must be given to detained persons and protected suspects to be prescribed by way of regulation. Schedule 2 of the bill contains reforms to part 15 of the Law Enforcement (Powers and Responsibilities) Act recommended by Mr Whelan and Mr Tink. This includes remaking section 201, which sets out information police must provide to a person when exercising police powers. The section has been amended repeatedly over the years and has become complex and difficult for police to apply. The bill restructures and greatly simplifies what police must apply in the field.

New section 202 maintains the requirement that when exercising a power police provide their name and place of duty, evidence that they are a police officer, unless they are in uniform, and the reason for the exercise of the power. Police will be required to provide this information as soon as reasonably practicable unless they are giving a direction, requirement or request to a single person in which case the information must be provided beforehand. These amendments do not substantially shift the existing time frames that apply to these powers but provide a much simpler regime for police to comply with. New section 203 consolidates the existing warnings that police must give when issuing a direction, requirement or request that a person is required to comply with by law. A single warning will now be given.

New section 204A states that if a police officer fails to provide their name and/or their place of duty when exercising a power as required by the provisions, the failure will not render the exercise of the power or anything resulting from it invalid. This provision will not, however, apply to such a failure if it relates to a direction, requirement or request to a single person. Further, it will not apply if the officer fails to provide this information after being asked for it.

Police will still be expected to provide their name and place of duty when exercising the relevant powers covered by the provisions. New section 204A is only intended to act as a safety net for inadvertent breaches of this requirement. To ensure that a proper assessment of the impact of these reforms is made, item [15] of schedule 2 will add a provision requiring the Ombudsman to scrutinise police compliance with the name and place of duty obligations for 12 months after commencement of the provisions. The Ombudsman will report back to the Government on this issue and the report will be tabled in Parliament. Items [2] to [14] of schedule 2 make consequential and other minor amendments resulting from the reforms to part 15.

Schedule 3 to the bill implements recommendations made by the statutory review of the Law Enforcement (Powers and Responsibilities) Act 2002. Items [1] and [14] clarify that a search under the Act can include searching a person's mouth. Items [1], [3] and [26] clarify how the protections that apply to searches operate in relation to transgender people by replicating relevant provisions from the Crimes (Forensic Procedures) Act 2000 that police will be familiar with. Items [4] to [13] and [18] amend a number of provisions to replace the term "request" with "requirement" wherever the provision contains a request that must be complied with by law. The Act currently uses the terms interchangeably, which has caused confusion. The review recommended using "requirement" where the person must comply. Items [15] and [16] clarify that a search of a person in lawful custody can be carried out immediately before or during transportation to or from a place of detention. There was uncertainty about whether a person could be searched before they were put in a police van. This amendment clarifies that they can and will assist in addressing issues raised by the Deputy State Coroner in the matter of Jason Plum.

Items [17] and [19] will restructure the search powers contained in the Act as recommended by the statutory review. The existing definitions of "ordinary search" and "frisk search" will be combined into one consolidated search power set out in proposed section 30 at item [21]. Item [22] retains the existing test in section 31 for conducting a strip search in the field but amends the test applicable at a police station in accordance with a recommendation of the Ombudsman. Item [24] amends section 32 to make clear that police can delegate their search power to another person in order to comply with the requirement that searches be conducted by a person of the same sex. Item [23] removes superfluous references to persons other than police conducting searches in a number of provisions as they are unnecessary. Item [25] clarifies that police can ask questions during a search but only if they relate to issues of personal safety associated with the search.

Items [27] and [28] contain amendments to section 33 relating to strip searches, including clarifying that a person of the opposite sex can be present during a strip search if the person being searched gives their consent. Further, they restrict the grounds on which a person aged between 10 and 18 years or who has impaired intellectual functioning can be strip searched. Item [29] creates new section 34A, which will provide for consensual searches. Before conducting such a search police will have to ask the person for consent and provide certain information to them. The provision ensures police have explicit power to search a person in accordance with the consent provided.

Item [30] aligns the considerations for an authorised officer issuing a notice to produce documents with those of the officer applying for the notice. Items [31] to [36] amend sections 82 to 84 to allow police to exercise powers to preserve the scene at premises where a domestic violence offence has occurred. Police will be able to remain at a dwelling and exercise some preservation powers if they reasonably suspect such an offence has occurred at the dwelling and it is reasonably necessary to preserve evidence of the offence. Items [37] to [41] make amendments to provisions governing crime scene powers, including extending the powers a police officer can exercise prior to the issue of a crime scene warrant to include certain non-intrusive investigation powers, and extending the period during which crime

scene powers can be exercised from three to four hours, and six hours in prescribed rural areas.

Items [44] and [45] make amendments to clarify that anything police can do with consent must be done with informed consent. Items [42] and [43] make amendments to the provisions governing crime scene warrants, including allowing a person to seek a review of the grounds on which a warrant was issued. Items [46] and [47] amend the provisions relating to in-car video to, amongst other things, remove the prohibition on admitting evidence of conversations recorded after a person's arrest. This amendment follows a suggested review of the provisions in a decision of the Court of Criminal Appeal. The amendment does not alter the existing requirements as to admissibility of admissions made by the accused but allows a recording, if it happens to be made by in-car video, to be admitted where it presently cannot.

Item [49] provides the Commissioner of Police with discretion to order the destruction of photographs, fingerprints and palm prints taken in relation to an offence. Items [50] to [54] make minor amendments to vehicle and traffic powers in the Law Enforcement (Powers and Responsibilities) Act 2002. Those powers will be moved to the Road Transport Act 2013 so that all powers of this type are located in one place. Schedule 4 contains amendments to the Law Enforcement (Powers and Responsibilities) Regulation with regard to record-keeping requirements, inspection of records and forms. Schedule 5 makes consequential amendments to a number of other pieces of legislation which are needed as a result of the reforms contained in the bill. I thank the Hon. Paul Whelan and Mr Andrew Tink for their effort in preparing their review reports. The recommendations they made and the reforms contained in this bill will greatly assist the Police Force in undertaking its very important work protecting the community. I commend the bill to the House.