



Crimes Legislation Amendment (Terrorism) Bill, Sydney

Opera House Trust Amendment Bill.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [8.02 p.m.]: I move:

That these bills be now read a second time.

The Crimes Legislation Amendment (Terrorism) Bill is the second bill implementing the counter-terrorist reform package announced by the Government on 14 May. Counter-terrorism is a co-ordinated effort involving each jurisdiction in Australia. In 2002 Australian States and Territories including New South Wales referred power to the Commonwealth for terrorist matters and, as a result, the Commonwealth enacted broad-ranging terrorist offences in the Commonwealth Criminal Code Act 1995. These offences deal with every aspect of terrorist activity, including planning, training, membership, financing and organisation. Since that time the Government has not rested. New South Wales has participated in counter-terrorist planning and training exercises under the banner of the national anti-terrorism plan. Our police have developed their tactical hostage rescue and bomb disposal skills, and developed their ability to respond to a terrorist situation in order to protect the citizens of New South Wales.

In 2002 the Government enacted the Terrorism (Police Powers) Act, which gives police extraordinary powers to stop and search persons and vehicles, or to search areas and buildings, in order to prevent a terrorist attack, or after an attack to assist in catching the terrorists red-handed. We have established the Counter-Terrorism Co-ordination Command within NSW Police, which conducts investigations with other State and Commonwealth agencies into terrorist activity in New South Wales. The Government has boosted the NSW Police budget by \$2.1 million per annum to fund the Counter Terrorism Co-ordination Command, thus ensuring that police have all the necessary equipment and training needed to respond to a terrorist attack. In addition, the Government is spending a further \$9.1 million on new equipment for counter-terrorist response, including new bomb disposal equipment such as bomb disposal robots and bomb containment vessels.

The Counter Terrorism Co-ordination Command's counter-terrorist skills and equipment are regularly tested in exercises. The latest of these exercises has been Exercise Explorer, which was conducted in May and which culminated in a mock explosion at the Holsworthy Barracks on 31 May. On 6 May the Premier announced the establishment of the counter-terrorism laws task force, which includes officials from my department and the police and emergency services portfolios. The task force will monitor and review the laws of New South Wales and make recommendations for legislative amendments. In early June the first of these legislative amendments was made—the creation of a presumption against bail for persons charged with terrorist offences under the Commonwealth Criminal Code. This bill makes a range of other amendments to New South Wales legislation. When it comes to prosecuting persons accused of terrorist activity under the law the first line of defence will be the terrorist offences created by the Commonwealth Criminal Code. Indeed, all persons arrested and charged in New South Wales to date have been charged with Commonwealth terrorist offences. There are limited circumstances, however, where New South Wales criminal offences will be relevant in a prosecution of terrorist activity, for instance, when there is incidental criminal activity discovered during an investigation or when there is no clear evidence that the incident was motivated by terrorism, as defined by the Commonwealth legislation, but the actions are clearly criminal under New South Wales law.

In light of the referral of power to the Commonwealth for terrorism matters, New South Wales law will not create any specific terrorist offences, but will focus on ensuring that offences of the type committed by terrorists, namely offences against the person and offences against property, are relevant and comprehensive. The bill will also clarify the trigger for the use of the powers provided to police under the Terrorism (Police Powers) Act 2002 and will augment the existing powers by introducing a power for the Commissioner of Police to set up cordons and give reasonable directions to government bodies and agencies to facilitate the exercise of the powers. I will now outline the various elements of the bill.

Schedule 1 relates to amendments to the Crimes Act 1900. Item [1] inserts a definition into section 4 of the Crimes Act in respect of the use of poisons and other destructive or noxious things. Currently, there are a number of offences relating to poisoning another person, with increasing penalties relative to the intention of the offender and the harm caused to the victim. The definition makes clear that the offences in the Crimes Act are not limited to merely placing a poison in someone's drink but extends to modern terrorist tactics such as introducing a poison gas into an airconditioning system—or on a train, as happened in Tokyo—or the use of forms of radiation. Items [2] to [6] of schedule 1 deal with explosives offences. While we must be alert to the sophisticated forms of terrorism that may involve nerve gas, viruses or other toxins, it is clear the most common terrorist weapon remains the bomb.

These offences also have a more general policy application, as regardless of whether a person has terrorist motives or

not they should not be possessing or using explosives or bombs unless they have a lawful or legitimate reason to be doing so. New South Wales has a range of explosives offences in several pieces of legislation. These amendments deal with the criminal offences in the Crimes Act rather than the regulatory offences contained in the Dangerous Goods Act. Item [2] amends section 48 of the Crimes Act, which currently uses quite anachronistic terminology. The new section 48 will cover placing explosives in buildings, public places as well as in forms of transport.

Item [3] amends section 55 to create an offence of possessing or making explosives with intent to injure another person. The amendments will increase the maximum penalty from 5 years to 10 years imprisonment. The mental element of "intent to cause injury" justifies such an increase. It is also important that such preparatory offences carry appropriate penalties, so that when police investigations intercept terrorist preparations at an early stage significant sentences are available.

Item [4] amends the heading of part 3B of the Crimes Act to include "explosives". Item [5] creates a new offence under section 93FA of possessing or making of explosives. The new offence under section 93FA has two limbs: the unlawful making or possession of an explosive, formerly section 545D, and the possession of an explosive in a public place, formerly covered under section 545E. As well as relocating the offence in the newly renamed part 3B of the Crimes Act, the bill increases the maximum penalties for making or possessing an explosive from one year to two years and possessing an explosive in a public place from two years to five years imprisonment. One of the difficulties with framing explosives offences is that many everyday common items, such as household cleaning products, can be explosive. Subsection (4), therefore, creates a defence in relation to both of these offences of reasonable excuse or lawful purpose.

Item [8] deletes section 545D. Item [6] amends section 200 of the Crimes Act and creates an offence of possession, custody or control of an article with intent to destroy or damage property. The amendment differentiates between possession of an ordinary item, which will continue to carry a maximum penalty of three years imprisonment, and possession of explosives, which will now carry a maximum penalty of seven years. Item [7] of the schedule amends section 203A of the Crimes Act, which defines "public facility" for the purposes of sabotage offences. The amendment includes a public computer system in the definition of "public facility". This will ensure that attacks, including computer virus attacks, on such important facilities as the Australian Stock Exchange come within the scope of the sabotage offence. The maximum penalty for this offence is 25 years.

Schedule 2 contains amendments to the Criminal Procedure Act 1986. Schedule 2 inserts the newly created offences under section 93FA into table 2 of the Criminal Procedure Act 1986. This will enable the prosecution to choose to have a matter dealt with either summarily or on indictment. That, in turn, allows less serious offences to be dealt with more efficiently in the Local Court. Schedule 3 contains amendments to the Terrorism (Police Powers) Act 2002. The Government enacted the Police Powers (Terrorism) Act 2002 following the Bali bombings to give police extraordinary powers to act in emergency situations when there were grounds to believe a terrorist act might be about to occur or had just occurred. Where the Act is triggered, by a very senior police officer, a range of powers of stop and search are available to police to attempt to frustrate a terrorist attack or rapidly close the net on terrorists who may be leaving the scene of an attack. While this Act has not been used, it has been tested in counter-terrorism exercises. Experience in working with the Act in exercises has shown that clarification is required to the trigger to activate the powers and also that some additional powers are needed.

Item [1] of schedule 3 amends the trigger at section 5 of the Act. This is the trigger for activating the powers in advance of a terrorist act. The Government's intention with this legislation is to give NSW Police the capacity to act when a senior and experienced officer, on the basis of the information available, and in light of that officer's experience, feels it is necessary to do so, in order to forestall a possible terrorist attack. In the real world of terrorist investigations, the information available may come from a number of different sources and may not be clear or precise. Police may be gathering surveillance information by watching suspects. Intelligence may be received from overseas agencies about international activities or connections. Information may be shared between other Australian security organisations. In the light of this combination of information, the activities of suspects may raise concerns amongst officers knowledgeable in terrorist methods that the suspects may be going to mount an attack of some kind in the near future. The timing of this activity may also be significant. It may be occurring just before the visit of a foreign VIP or a major public event.

The type of information may not be exact, for example police may not necessarily have an understanding of the form the terrorist threat might take whether it is a car bomb, a suicide bombing or a shooting. The concern the police have must be based on evidence. The trigger does create a genuine test. But that test must have a relatively low threshold given the consequences if police do not act. The bill amends the test to read that the senior police officer is "satisfied there are reasonable grounds to believe there is the threat that a terrorist act may occur in the near future". The second limb of the existing test remains and must also be satisfied. It is that the senior police officer is "satisfied that the exercise of the powers will substantially assist in preventing the terrorist act". There must be a concern of an act occurring in the near future. This prevents the legislation from being triggered merely by reference to the general background threat that exists against this country. There must be some combination of factors suggesting that an act may be about to occur. The use of the term "threat", with its connotations of risk and uncertainty, makes it clear that the reasonable belief that there is the threat that a terrorist act may occur in the near future can be based on information that is itself uncertain or vague.

These powers are extreme, but so are the consequences of not acting when, as it were, the terrorists are in the home

straight. The existing safeguards under the Act remain. The decision of senior police to activate the powers must be ratified by the Minister for Police. Similarly, when the powers are used, a report must be made by NSW Police to the Attorney General and the Minister for Police. The Act also has a built-in requirement that it be reviewed annually. The ongoing review of terrorism powers, and the experience gained from counter-terrorism exercises, also indicate that these additional amendments to the Act are needed.

Item [2] of schedule 3 creates a new section 14A, making clear that the Commissioner of Police or a senior delegate has the power to give reasonable directions to government bodies and agencies to facilitate the use of the counter-terrorism powers. Such a power may be used, for example, if there is a terrorist threat against Sydney's rail transport system. The size of this system and its complexity mean that if the powers under the Act to stop and search are activated, NSW Police will need assistance from the agencies controlling this infrastructure in order to effectively utilise the powers. In this situation, NSW Police may wish to shut down a part of the rail system. The bill will give the commissioner or a senior delegate the power to give reasonable directions to facilitate this kind of operation. Government agencies are authorised and required to comply.

Item [3] of schedule 3 creates new section 19A, which provides that where the powers are activated NSW Police may also cordon the designated targeted area or establish a cordon around or within a part of such an area. This would facilitate the exercise of the stop-and-search powers that exist, in particular by allowing police to set up roadblocks. It will help police control movement into and out of an area where it is suspected that terrorist acts may occur or have occurred. Schedule 4 to the bill contains an amendment to the State Emergency and Rescue Management Act 1989, clarifying in section 4—"Definitions"—that an actual or imminent terrorist act may be classed as an emergency under this Act, permitting a range of emergency powers to be activated in consequence.

I refer, finally, to the cognate bill, the Sydney Opera House Trust Amendment Bill. I am pleased to introduce that bill today as a cognate bill. It contains a series of tough new laws to protect the security of the Opera House. The Opera House has a unique place in our cultural life and history of Sydney. The iconic stature of the Opera House makes it particularly vulnerable as a target of potential terrorist and other criminal conduct. It is, therefore, necessary to take special steps to protect it. The Government has already allocated \$13.6 million since April 2003 to be spent on improving security at the Opera House site. The new laws introduced today support these measures by ensuring that real deterrents are put in place. Many of the prohibited acts are dangerous, and can put the lives of front-line workers, such as Opera House staff and police, at risk.

Many people have been concerned about the damage done to the Opera House sails last year. The new provisions will ensure that such damaging acts are punished appropriately. It will be a criminal offence to trespass on the Opera House, with a maximum penalty of two years imprisonment. Trespass on the Opera House with intent to cause damage or to commit certain offences, or to seriously disrupt the operations of the Opera House, will be punishable by a maximum of seven years imprisonment. Intentional or reckless damage to the Opera House will attract a maximum penalty of five years imprisonment. In addition, the bill makes minor amendments of an administrative nature. The availability of these offences will not prevent a court from requiring offenders to compensate the Opera House for criminal damage. Furthermore, NSW Police will not be prevented from charging a person with another offence that incurs a greater penalty.

Earlier today in this House—I take it in anticipation of the introduction of this bill—my colleague the honourable member for Epping suggested that there was a discrepancy in the penalties for the Sydney Opera House offences: a seven-year maximum penalty for trespass with intent, but a five-year maximum for causing malicious damage. The reason for the difference in penalties is that the trespass with intent offence is extremely broad and covers intent to commit not only malicious damage but also intent to disrupt the running of the Opera House or some other more serious criminal offence. Because of the wider range of criminality encompassed by the offence, we must give the courts power to impose serious penalties when there has been serious criminality that needs to go beyond the five-year maximum that exists for malicious damage, which is a more targeted and more narrow offence.

If somebody has seriously damaged the Opera House, police are not limited to charging that person with malicious damage. For instance, if they used explosives in committing the damage they may be charged with an explosives offence, which has a 10-year maximum penalty. The purpose of the malicious damage offence is to provide further protection to a Sydney architectural icon, a cultural icon, the most distinctive symbol of New South Wales. It is not to cover the entire field of terrorist activity. In summary, these proposed new offences are vital to the ongoing protection of what is almost certainly arguably these days Australia's most enduring symbol. I commend the bills to the House.

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