



**Full Day Hansard Transcript (Legislative Council, 26 March 2013, Proof)**  
**Proof**

Extract from NSW Legislative Council Hansard and Papers Tuesday, 26 March 2013 (Proof).

**LAW ENFORCEMENT AND NATIONAL SECURITY (ASSUMED IDENTITIES) AMENDMENT BILL 2013**

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.**

**Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [6.07 p.m.]: I move:

That this bill be now read a second time.

The Law Enforcement and National Security (Assumed Identities) Amendment Bill 2013 implements recommendations of the Report on the Statutory Review of the Law Enforcement and National Security (Assumed Identities) Act 2010. The bill makes minor amendments to the Law Enforcement and National Security (Assumed Identities) Act 2010. The Act commenced on 29 September 2010 to facilitate cross-border recognition of assumed identities. The Act was based on the model laws endorsed by the then Standing Committee of Attorneys-General in 2004, with provision to allow individual jurisdictions to make non-critical variations. An assumed identity is a false identity used by an officer or other person for a period of time to investigate an offence, gather intelligence in relation to criminal activity or administer witness protection programs.

The Act permits chief officers of authorised law enforcement agencies to approve the acquisition and use of documents in assumed names. The Act requires the Minister for Police to undertake a review of the Act as soon as possible after 12 months from the commencement of the Act, and table a report on the review within three months of that date. The delay in completing the review was due to the time taken to complete consultation with stakeholders, including the Australian Security and Intelligence Organisation, which proposed amendments to the Act independently of the review. The Act is an important piece of legislation and the Government wanted to get these amendments right. The review found that the policy objectives of the Act remain valid and no substantive amendments are required. However, four minor amendments were recommended.

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I now turn to the bill's provisions. As the Commonwealth does not administer a register of births, deaths and marriages, Commonwealth agencies rely on mutual recognition provisions of State and Territory assumed identities laws to obtain evidence to support their assumed identity authorities. Under section 11 of the Act, "the chief officer of a law enforcement agency under a corresponding law" can apply for an order to require the Registrar of Births, Deaths and Marriages to make or cancel an entry of an assumed identity in the New South Wales Births, Deaths and Marriages Register. This enables, for instance, the NSW Police Force to request the equivalent of Roads and Maritime Services in another jurisdiction to issue a driver's licence in the assumed name of an undercover officer from the NSW Police Force.

The Australian Security and Intelligence Organisation advised that it may not be able to rely on its Commonwealth assumed identity authorities to apply for an entry in the New South Wales Births, Deaths and Marriages Register under the Act because the Australian Security and Intelligence Organisation is defined as an "intelligence agency" and not a "law enforcement agency" under the Commonwealth Crimes Act 1914. Consequently, Commonwealth intelligence agencies would generally need to obtain both an assumed identity authority under the New South Wales Act and the Commonwealth Act in order to support their assumed identities. This duplication is an impediment to both cross-border recognition of assumed identities and reducing red tape.

The amendment to section 11 will address this by ensuring that law enforcement and intelligence agencies, as defined under corresponding laws such as the Commonwealth Crimes Act 1914, can apply to an eligible judge for an entry in the New South Wales Births, Deaths and Marriages Register. Sections 11 (3) and 14 (3) of the Act provide that applications to make or cancel entries in the New South Wales Births, Deaths and Marriages Register must be heard in a closed court. These provisions were introduced to the Act as part of the model laws process in recognition that details regarding assumed identities need to be highly confidential for the safety of those adopting assumed identities and for the success of the operation being undertaken. A consequence of these amendments appears to be that where some applications were previously being heard in chambers they are now being heard in a closed court with the requirement to lodge affidavits with the Supreme Court Registry

and matters being listed on the Supreme Court schedule.

The Australian Security and Intelligence Organisation considers that hearing applications in chambers rather than in a closed court without the need for listing in the Supreme Court registry or the lodging of affidavits with the registry would better protect the confidentiality of applications. The bill amends sections 11 (3) and 14 (3) to provide for applications to be heard in judges' chambers. Hearing applications in chambers will mean that applications will not be listed in the Supreme Court's daily schedule. The Supreme Court of New South Wales will institute procedures that will guarantee the confidentiality and security of affidavits that are made in support of such applications, if any. The Supreme Court has advised that such affidavits could be dealt with in a similar way to affidavits made in support of applications for surveillance device warrants.

The third amendment concerns delegations of chief officers of law enforcement agencies. Under section 39 of the Act, a chief officer may delegate to a senior officer of a law enforcement agency any of the chief officer's functions under the Act. No more than four delegations per law enforcement agency may be in force at any one time, which is in keeping with the model laws on assumed identities. Under section 39 (4) (a) of the Act a "senior officer in police" means an assistant commissioner or a deputy commissioner. At present, the NSW Police Force Commissioner has delegated his functions only to officers attached to the specialist operations arm of the Police Force. There is a growing demand for use of assumed identities to gather intelligence and investigate cybercrime by a broader range of units within all law enforcement agencies authorised under the Act.

Cybercrime is increasing at a rapid rate. The spread of technology-based crimes requires legislation to keep pace and agencies to have the capacity to respond already at hand. Local area commands, for example, are part of field operation and are not specialist. Yet they, too, are responsible for investigating much of the criminal activity taking place on the internet, including but not limited to social media sites such as Facebook. Consequently, the bill will increase the number of delegations a law enforcement agency may have in force from four to five. During the review consultation process the NSW Police Force requested that a chief officer's power of delegation be increased from four to six senior officers. However, the review considered the needs of law enforcement agencies with the overall need to minimise variations to the model laws on assumed identities. The review therefore found that to balance the need for an adequate number of delegations and to minimise the deviation from the model laws, an appropriate compromise would be increase the number of delegations to five.

The Act requires participating law enforcement agencies to conduct regular reviews of authorities granted to determine whether use of the assumed identities are still necessary. There are also audit and reporting requirements under the Act, with agencies required to report on the number of assumed identities that were granted or revoked, a description of activities undertaken by officers who were granted an assumed identity, and information on any fraudulent or unlawful activity. This will not change. The Act contains sanctions against the misuse of an assumed identity and provides that a senior law enforcement officer supervises the acquisition or use of the assumed identity where an authority is granted to a civilian.

Finally, the bill amends paragraphs (c) and (g) of section 39 (4) of the Act to reflect organisational changes of the New South Wales Crime Commission and Australian Crime Commission, which are authorised law enforcement agencies under the Act. These are straightforward amendments that serve a good purpose. They will strengthen the cross-border recognition of assumed identities, and help our law enforcement agencies investigate and prevent crime. I commend the bill to the House