

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

Page: 21357

Second Reading

Mr GEOFF PROVEST (Tweed—Parliamentary Secretary) [3.39 p.m.], on behalf of Mr Greg Smith: I move:

That this bill be now read a second time.

I am pleased to introduce the Law Enforcement and National Security (Assumed Identities) Amendment Bill 2013. This bill was introduced in the other place by the Hon. Michael Gallacher, the Minister for Police and Emergency Services, and introduced in this place by the Attorney General, the Hon. Greg Smith. The bill implements recommendations of the Statutory Review of the Law Enforcement and National Security (Assumed Identities) Act 2010 and makes minor amendments to that Act. The Act commenced on 29 September 2010 to facilitate cross-border recognition of assumed identities. The Act was based on 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 to table a report on the review within three months of that date. A delay in tabling the report was due to the time taken to complete consultation with stakeholders, including the Australian Security and Intelligence Organisation [ASIO], which proposed amendments to the Act independently of the review. The Act is an important piece of legislation—we want 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. I refer 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 NSW Registry of Births, Deaths and Marriages. This enables, for instance, the NSW Police Force to request a driver licence registry in another jurisdiction to issue a driver licence in the assumed name of an undercover officer from the NSW Police Force. The Australian Security and Intelligence Organisation advised that under the Act it may not be able to rely on its Commonwealth assumed identity authorities to apply for an entry in the NSW Registry of Births, Deaths and Marriages as 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 an assumed identity authority under both 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 agencies 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 NSW Registry of Births, Deaths and Marriages. Sections 11 (3) and 14 (3) of the Act provide that applications to make or cancel entries in the NSW Registry of Births, Deaths and Marriages 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 heard in chambers, they now are 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 lodging affidavits with the registry, would better protect the confidentiality of applications. Obviously, when dealing with organised crime, cybercrime and street crime the ideal approach is to maintain high confidentiality of those assuming names. I support the highly trained police officers, men and women, who work in this environment. They put their lives at risk, and sometimes their family's lives also, for the betterment of the local community. Overall, we owe them a great deal of gratitude for their dedication, diligence and integrity in performing these tasks. The bill will amend 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 made in support of such applications, if any. The Supreme Court has advised that such affidavits could be dealt with similarly 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 police officer means an assistant commissioner or a deputy commissioner. At present, the commissioner has delegated his functions to officers attached to the specialist operations arm only of police. There is a growing demand for assumed identities within the field operations arm of police to gather intelligence and investigate cybercrime. Cybercrime is increasing at a rapid rate. Local area commands, part of field operations, are responsible for investigating much of the criminal activity taking place on the internet, including through social media sites such as Facebook.

I think it would be remiss of me at this point not to congratulate the Minister for Police and Emergency Services on his Eyewatch initiatives on Facebook, which provides community-oriented information on crime. Particularly in regional areas, Eyewatch has been accepted by the wider community. The Deputy Speaker and I both have the pleasure of serving on the Rural Crime Advisory Council. Eyewatch is of great assistance to the Police Force today. Consequently, the bill will increase the number of delegations a law enforcement agency may

have in force from four to five. Finally, the bill proposes amending sections 39 (4) (c) and (g) of the Act to reflect organisational changes of the NSW Crime Commission and the Australian Crime Commission, which are authorised law enforcement agencies under the Act.

In many electorates, including the electorate of the recently appointed member for the Northern Tablelands and the members for the electorates of Monaro, Murray-Darling and Albury, there are cross-border issues. This Act will improve cross-border connections in order to simplify the movement of those officers during joint operations with Queensland and the Australian Capital Territory. Anything that can be done to reduce red tape and to improve the tools used by police to ensure they can carry out the difficult work they do is worthwhile. Working under assumed identities places them at risk on a daily basis. This will assist the Australian Security Intelligence Organisation and other State agencies in relation to witness protection programs.

I take my hat off to people who put their own lives and the lives of their families at risk.

Anything that can be done should be done to ensure their identities are protected, but at the same time still operating under the broad umbrella of the Supreme Court, a transparent and well-respected institution. 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.