



NSW Legislative Council Hansard

Sheriff Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 2 March 2005.

Second Reading

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [6.07 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 Sheriff Bill 2005 repeals and replaces the Sheriff Act 1900 with new, updated legislation.

The office of Sheriff is one of the oldest continuing offices in English law, with its history extending back into the Middle Ages. It was first established in Australia by letters patent known as the Charter of Justice, issued in 1823.

The Charter of Justice carries over certain common law powers of the Sheriff under English law. Subsequent legislative powers built upon these powers, culminating in the Sheriff Act 1900.

While the Sheriff's role in NSW has changed over the last century, the Sheriff remains responsible for three key areas, namely juries, the security of the courts, and the enforcement of court orders.

The Sheriff's responsibilities concerning juries are fairly well laid out in the Jury Act 1977. The new Court Security Bill 2005 provides a statutory basis for the exercise of security powers in New South Wales courts. Certain other Acts confer functions on the Sheriff, such as the enforcement of civil judgments under courts' legislation.

The activities undertaken by Sheriff's officers in these areas of responsibility are quite distinct. The Sheriff Bill recognises these varied functions and provides that the Sheriff has, and may exercise, such functions as are conferred under any Act or law.

The bill provides that the Sheriff may delegate his or her powers and also provides for the exercise of the Sheriff's functions by an alternate in legal proceedings to which the Sheriff is a party.

The court or the Coroner may order that the Sheriff's functions are to be exercised by an alternate where the proceedings may affect the Sheriff's interests. This may, for example, include proceedings to enforce a judgment or any inquest or inquiry under the Coroners Act 1980.

Both police and correctional services officers are required by legislation to take an oath or make an affirmation of office. In undertaking their various statutory functions, Sheriff's officers exercise some powers that are analogous to those of police officers and correctional officers.

The Sheriff Bill introduces a similar requirement for the Sheriff and each Sheriff's officer to take an oath or make an affirmation. The requirement has important symbolic value and reflects the significant role Sheriff's officers have in carrying out duties in the public interest.

The bill contains a number of protections relating to the role and office of the Sheriff.

It will be an offence to hinder or obstruct the Sheriff, Sheriff's officers, or other persons exercising the Sheriff's functions. A penalty of up to \$11,000, 12 months imprisonment, or both, may apply for a breach of the provision.

The existing Sheriff Act 1900 provides that it is an offence to impersonate the Sheriff or an officer of the Sheriff. The new bill builds upon this provision to further protect the integrity of the office of the Sheriff.

A person exercising the Sheriff's functions will be required to carry, and produce on demand, a certificate of identification in the prescribed form.

Under the legislation, it will be an offence for a person who is not a Sheriff's officer, to wear or possess a Sheriff's officers' uniform. The use of Sheriff's insignia, other than in the course of exercising the functions of the Sheriff, will be an offence.

There are a number of exceptions to the restrictions on the wearing or possession of Sheriff's officers' uniforms or insignia. These include circumstances where the Sheriff has given authorisation or for the purposes of public entertainment.

The carrying on of an activity under an operating name that includes the word "sheriff" will also be prohibited under the legislation, unless the Sheriff consents to its use.

The proscriptions as to the wearing or possession of Sheriff's uniforms and use of the term "Sheriff" parallel similar

restrictions relating to police officers contained in the Police Act 1990.

The bill abrogates the provisions of the Charter of Justice that provide for the appointment of the Sheriff and Sheriff's deputies.

The Sheriff is currently appointed and holds office under the provisions of the Public Sector Employment and Management Act 2002. The reference to Sheriff's deputies in the Charter is also redundant, as this position no longer exists.

The Sheriff Bill also amends the Ombudsman Act 1974.

Currently, the conduct of Sheriff's officers is excluded from the coverage of the Ombudsman's Act. The amendment will enable complaints to be made to the Ombudsman regarding the conduct of Sheriff's officers, as well as court security officers. The exception is where the officer's conduct is engaged in at the direction of a court, or a Judge or Magistrate presiding over proceedings before a court.

In addition, the handling of complaints relating to Sheriff's officers will be addressed in updated training guidelines that are being developed by the Sheriff.

The bill updates the provisions underpinning the role of the Sheriff and Sheriff's officers. The legislation, which complements the Court Security Bill, will commence as soon as the regulations and new guidelines are finalised.

I commend the bill to the House.

The Hon. DAVID CLARKE [6.08 p.m.]: The Sheriff Bill, which repeals and replaces the Sheriff Act 1900 with updated legislation, is not opposed by the Opposition. In New South Wales the Sheriff is responsible for three key areas: juries, the security of courts and the enforcement of court orders. The Sheriff Bill recognises the varied and distinct functions undertaken by Sheriff's officers and provides that the Sheriff has and may exercise such functions as conferred under any Act or law. The bill introduces a requirement for the Sheriff and Sheriff's officers to take an oath of office or make an affirmation of office similar to that taken by police and correctional officers. The bill will make it an offence to hinder or obstruct the Sheriff, Sheriff's officers or other persons exercising the Sheriff's functions. The maximum penalty for such an offence is \$11,000 or imprisonment for six months, or both. A similar penalty will apply for the offence of impersonating the Sheriff or a Sheriff's officer and for the use of Sheriff's insignia other than in the course of exercising the functions of the Sheriff.

A person exercising the Sheriff's functions will be required to carry, and produce on demand, a certificate of identification in the prescribed form. The carrying on of activity under an operating name that includes the word "sheriff" will also be prohibited under the legislation, unless the Sheriff consents to its use. The bill also will amend the Ombudsman Act 1974 to enable complaints to be made to the Ombudsman regarding the conduct of sheriff's officers as well as court security officers. Currently, the conduct of Sheriff's officers is excluded from the coverage of the Ombudsman Act. In the circumstances, the Opposition does not oppose the bill.

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [6.10 p.m.], in reply: I thank the honourable member for his contribution to the debate, and I commend the bill to the House.