



Speech By
Hon. Mark Ryan


MEMBER FOR MORAYFIELD

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COUNTER-TERRORISM AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Resumed from 13 June (see p. 1547).

 **Hon. MT RYAN** (Morayfield—ALP) (Minister for Police, Fire and Emergency Services and Minister for Corrective Services) (5.24 pm), continuing: I rise to continue my introductory speech for the Counter-Terrorism and Other Legislation Amendment Bill. Members may recall that yesterday I was speaking to some of the proposed amendments contained in that bill and I will continue my contribution in that respect. The proposed amendments that I was talking about limit the use of evidence obtained from the search following compliance with an access requirement. The use of information obtained as evidence in criminal proceedings not related to a declared emergency situation or terrorist emergency, is restricted to:

- indictable offences with a maximum penalty of at least seven years imprisonment; or
- the offence of grooming children under the age of 16 in section 218B of the Criminal Code.

The existing safeguards under the terrorist emergency powers also apply, including limitations on the exercise of the powers to only during the period of the declared terrorist emergency.

The bill proposes further amendments to the terrorist emergency powers to enable police to take and use a person's biometric information to establish or confirm their identity. This includes potential offenders. The power enables digital photographs of the person to be taken and used in relation to the reception and identification of persons, including for the purposes of a Terrorist Emergency Reception Centre.

In circumstances where a person has been required to provide evidence of their identity and the person fails to comply or if a police officer reasonably suspects that the evidence is false, the proposed amendment enables the use of photographs in a biometric system. The amendment also provides a power to take a person's fingerprints electronically to enable real time comparison of the fingerprints against those in a national fingerprint database.

The power to take a person's biometric information is limited to during the declared terrorist emergency. The person's biometric information is to be destroyed, as soon as is reasonably practicable, when it is no longer needed for an investigation or prosecution or for an inquiry or inquest.

Police responding to critical incidents such as hostage events, armed offenders or incidents involving the use of improvised explosive devices, act on minimal information in a time critical and high-pressure environment. The fact that an incident is terrorism related may not be immediately identified.

Regardless of the perpetrator's motivation, such critical incidents need to be managed and resolved in a consistent way with the ability to have a smooth transition from an emergency situation to a terrorism emergency once the incident is identified as being terrorism related.

To address this, the bill proposes to insert new extraordinary emergency powers into part 2, 'Emergency situation', of the Public Safety Preservation Act. The extraordinary emergency powers enable police to:

- control the movement of persons;
- search a person and anything in their possession, without warrant, for anything relevant to the emergency situation;
- require access information to enable a search to be conducted of a storage device, such as mobile phones and tablet computers;
- require a person's name, address and date of birth; and
- collect and use a person's biometric information to establish or confirm their identity.

These amendments are reflective of the powers available during a declared terrorist emergency and provide a level of consistency in the powers police have to respond to these types of critical incidents.

Not all emergency situations will be of a sufficient scale or complexity to necessitate the use of these powers. For example, a siege involving a person threatening self-harm or a hostage situation involving a few persons where police can distinguish the offender from the victims would not be sufficient to trigger the use of the new powers.

Significant safeguards ensure that these powers are only available and used where it is necessary. The safeguards include that:

- an emergency situation must have been declared under the Public Safety Preservation Act;
- the emergency commander is satisfied on reasonable grounds that: the emergency situation involves or may involve an explosive; or a person's life or safety is seriously endangered by an act of another person, for example, being held hostage; and the use of one or more of the powers is necessary to effectively deal with the emergency due to the scale or complexity of the situation;
- the area within which the powers can be exercised must be the smallest area necessary to effectively deal with the situation within the declared area for the emergency situation;
- the emergency commander, as soon as is reasonably practicable after giving the authorisation, must: notify an assistant commissioner of the authorisation; and note on the emergency certificate when the authorisation was given, the authorisation area for the exercise of powers, the powers that may be used and the circumstances necessitating the authorisation;
- the emergency commander must revoke the authorisation when satisfied that the powers are no longer necessary to effectively deal with the emergency.

The amendment also requires the tabling of a report on the exercise of the extraordinary emergency powers within six months after the emergency ending.

To facilitate rapid police response to critical incidents, the bill amends part 2, Emergency situation, of the Public Safety Preservation Act to enable senior sergeants, approved by the commissioner as having the necessary skills and experience, as officers who can declare an emergency situation. This will minimise the possibility of delays in the policing response due to the necessity to contact and brief a commissioned officer on the incident and have the commissioned officer declare the emergency situation and delegate the emergency commander's powers to the senior sergeant. Senior sergeants frequently undertake the police forward commander role at emergency incidents, having responsibility for the command, control and coordination of the response to, and resolution of, an incident. Senior sergeants, as part of their management development program, attend a two-week residential course on incident command, which includes emergency situation declarations and use of powers.

The bill further enhances the ability of police to respond rapidly to an emergency situation by clarifying that the area specified for the declaration of an emergency situation can be an area surrounding a moving activity; for example, a stated person travelling by foot or vehicle, or a stated vehicle or vessel.

The bill also proposes an amendment to the extraterritorial application of the Public Safety Preservation Act to ensure a declaration for a moving activity can be made prior to its arrival in Queensland. This amendment also ensures the declaration is not extinguished if the person, vehicle or vessel crosses over the border and then returns into Queensland.

To minimise significant risk to the life, health or safety of persons during a declared emergency, the bill will amend the Public Safety Preservation Act to enable a commissioned officer to authorise the use of surveillance devices. The authorisation to use a surveillance device will also enable the use of

an existing device to be used as a surveillance device. This will include doing anything necessary to enable the device to be used as a surveillance device. For example, during a hostage emergency in business premises, a commissioned officer will be able to authorise the use of existing security cameras within the premises as an optical surveillance device. Following the ending of the authorisation, a commissioned officer will be able to authorise the retrieval of the surveillance device, except in circumstances where covert entry into a building is necessary to retrieve the device. However, police will not need an authorisation to retrieve a surveillance device from premises if their presence on the premises is not an offence.

The ability to rapidly acquire and use relevant intelligence obtained from surveillance devices is critical for the effective management and resolution of emergencies in circumstances where there is a significant risk to the life or safety of persons. These surveillance device powers will incorporate a robust range of safeguards and require the tabling annually of a report on the use of the powers. Safeguards include: limiting the use of the surveillance device to during the operational period of the declared emergency; limiting the use of surveillance devices to within the declared area for the emergency situation, terrorist emergency or in a stated place for a chemical, biological and radiological emergency; requiring that the commissioned officer must reasonably suspect that the life, health or safety of any person, including police responding, may be seriously endangered and the use of the surveillance device would assist in reducing the risk; requiring the revocation of the authorisation when the commissioned officer is satisfied that the use of the device is no longer needed to help reduce the risk to life, health or safety; and requiring the commissioner to keep a register of authorisations recording the date and time the authorisation was given, the name of the authorising commissioned officer and the grounds on which the authorisation was made.

The bill will also amend the Police Powers and Responsibilities Act to enable a commissioned officer to authorise the installation and use of a tracking device to assist in taking persons into lawful custody in high-risk or tactically dangerous situations. Persons are considered high risk due to their propensity for violence, threats made, carriage of weapons, or their level of criminality. These high-risk persons may be sought for arrest in relation to current investigations, be the subject of a return to prison warrant, mental health order or be the subject of a preventative detention order. Due to the significant risk they pose, it is necessary for these persons to be apprehended at a location which minimises the risk to the public, family members, associates, police and the offender. This also reduces the risk of a hostage or siege incident occurring. It also minimises the person's ability to arm themselves with a weapon, limiting the risk of an incident rapidly escalating into a violent confrontation necessitating police to respond with the use of lethal force.

The tracking device authorisation powers also incorporate a robust range of safeguards and require the tabling annually of a report on the use of the powers. Safeguards include: requiring the authorising commissioned officer to be satisfied on reasonable grounds that taking the person into custody poses a serious risk to any person and the use of the tracking device will help in taking the person into custody at a time or location that minimises the risk; limiting the authorisation period for the use of a tracking device to 48 hours; restricts the authorisation permitting entry of dwelling to install or retrieve the tracking device; requiring the commissioned officer to consider the grounds afresh to extend the tracking device authorisation; limiting any extension to a period of 48 hours; requiring the commissioned officer to make a written record stating the date and time of the authorisation or extension and the grounds for giving such authorisation or extension.

The bill also amends the surveillance device powers contained in the Police Powers and Responsibilities Act to clarify that a surveillance device warrant, emergency authorisation or tracking device authorisation can authorise the use of an existing device within the target premises or in possession of the target person, as a surveillance device. This includes the covert manipulation of the existing device either physically or remotely, including through the remote installation of software, to enable the existing features of the device to be used as a surveillance device.

The bill also makes a number of amendments to the surveillance device powers contained in the Police Powers and Responsibilities Act to enhance operational effectiveness. The bill proposes amendments to remove the prohibition restricting the communication to ASIO, or the use of the information by ASIO, gained under an emergency authorisation for the use of a surveillance device until such time as a judge has postapproved the emergency authorisation.

Counterterrorism responses are built upon partnerships between state police services and Commonwealth agencies, including ASIO. This amendment removes impediments to working collaboratively with partner agencies to prevent or resolve acts of terrorism.

The bill further amends the Police Powers and Responsibilities Act surveillance device powers to provide separate definitions for 'premises' and 'vehicles' to enable a vehicle to be treated the same as an object or class of object is currently treated by not requiring an address to be specified. These

amendments will allow entry onto any premises where the vehicle is reasonably believed to be or is likely to be. This takes into account the mobility of a vehicle and removes the inefficiency associated with warrants becoming invalidated due to a vehicle changing location. Furthermore, the amendments will enable the removal of a vehicle from a public place or premises to provide for a safe and secure working environment where police can carry out the installation, maintenance or retrieval of the surveillance device.

The bill amends the Terrorism (Preventative Detention) Act to address legislation impacting on rapid response. The bill replaces the imminence test for the issue of a preventive detention order with a threshold test that focuses on the capability of a person to commit a terrorist act and could occur within the next 14 days. The imminence test imposed impractical constraints on police by requiring that the terrorist act would occur in the next 14 days. Police may be aware of individuals who intend to commit a terrorist act and who possess the necessary ability to carry out the attack, but who have no clear time frame as to when the act is intended to be undertaken.

The amendment replicates recent amendments made to the Commonwealth preventive detention scheme in 2016 and captures the essence of the original imminence test by having both a preparedness component and a temporal component. The preparedness component is that the terrorist act is capable of being carried out. The temporal component is that it could occur within 14 days. The amendment ensures operational utility between the Commonwealth and Queensland's preventative detention scheme.

The bill also amends the Terrorism (Preventative Detention) Act to reduce the threshold for entry into the premises from 'believes on reasonable grounds' to 'suspects on reasonable grounds', that the person, the subject of the preventative detention order, is on the premises. Additionally, the bill removes the restrictions on entry of a dwelling between 9 pm and 6 am to take the person into custody under the preventative detention order. These amendments remove unnecessary restrictions which limit the ability of police to rapidly respond and take a person into custody under a preventative detention order.

The bill also amends both the Public Safety Preservation Act and the Police Powers and Responsibilities Act to provide police with the power to destroy explosives where they are found. The amendment to the Public Safety Preservation Act provides that during a declared emergency situation the police emergency commander has the power to destroy an explosive located in the area specified for the emergency situation.

As a safeguard to this destruction power, the bill requires the emergency commander to obtain the prior approval of an assistant commissioner if the destruction is likely to cause structural damage to a premises. Where it is not reasonably practicable for police to obtain that prior approval, police must inform an assistant commissioner, as soon as reasonably practicable, of the exercise of the power.

The bill also amends the Police Powers and Responsibilities Act to enable a prescribed police officer, in circumstances where an emergency has not been declared under the Public Safety Preservation Act, with a power to destroy an explosive where it is found or move it to another location for destruction. In such instances the police officer must be satisfied that it is not reasonably practicable or may not be safe to take the explosive to a police property point or police station. If reasonably practicable, the police officer must photograph the explosive before it is destroyed. These amendments clarify existing police practices to destroy explosives in the field and are a proportionate response to the current security environment allowing police officers to proactively manage and quickly respond to explosive incidents.

Lastly, the bill will also repeal the Queensland Police Welfare Club Act 1970. This act arose out of the need to administer the Queensland Police Welfare Club. This club was deregistered as an association in 1998 and was wound up by receivers in 2004-05. Retaining this act is simply not justifiable for a number of reasons. Obviously, there seems to be little point in retaining an act to regulate a club that no longer exists. Additionally, this act allows the police minister to interfere with the running of a police social club. This is not an appropriate ministerial function nor a desirable use of ministerial time.

Finally, this act has become redundant. It was designed to overcome a specific problem that arose in another era and will never occur again. Retaining this act is inefficient and unnecessary. The repeal of this act is the only sensible approach this parliament may adopt.

There are currently 20 registered clubs and associations formed by police officers ranging from sporting associations to social clubs. This government recognises the benefits, both direct and indirect, for police officers in participating in these types of clubs and supports these officers joining these clubs and associations to pursue their individual interests. If, in the future, the Queensland Police Welfare Club was to be re-established, it would also receive similar support. However, just like existing police clubs, it may do so in accordance with the Associations Incorporation Act 1981.

I note this week the Victorian government has announced they will follow New South Wales and introduce a suite of counterterrorism laws including preventative detention for 14-year-olds. The Queensland government agreed at COAG to explore a nationally consistent preventative detention scheme and will look closely at the operation of the laws in New South Wales and Victoria.

In closing, as everyone in this House would be aware, the New South Wales State Coroner's findings in relation to the coronial inquest into the Lindt Café siege were delivered on 24 May. The Palaszczuk government did not speculate about the possible coroner's recommendations in the development of this bill nor was the government prepared to delay progressing this important legislation until the coroner's findings were delivered and his recommendations carefully assessed.

I reiterate that the safety of our community is paramount to this government. That is why we are progressing this bill now. This government will, of course, carefully consider the New South Wales coroner's recommendations to determine if any further changes to Queensland legislation may need to be made in the future. I commend the bill to the House.

First Reading

Hon. MT RYAN (Morayfield—ALP) (Minister for Police, Fire and Emergency Services and Minister for Corrective Services) (5.46 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Ms Linard): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

Portfolio Committee, Reporting Date

Hon. MT RYAN (Morayfield—ALP) (Minister for Police, Fire and Emergency Services and Minister for Corrective Services) (5.47 pm), by leave, without notice: I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Counter-Terrorism and Other Legislation Amendment Bill by 11 August 2017.

Question put—That the motion be agreed to.

Motion agreed to.