

**TERRORISM (EXTRAORDINARY POWERS) AMENDMENT BILL 2015**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [2.22 pm]: I move —

That the bill be now read a second time.

This bill amends the Terrorism (Extraordinary Powers) Act 2005 to provide for the extension of essential police powers required to protect the community in the event of a terrorist attack. Since June last year, the terrorist threat has become more real, more present and more local. The rise of the Islamic State of Iraq and the Levant has brought the terror threat closer to home. Islamic State, as the self-styled caliphate prefers to be known, has driven thousands from their homes in Iraq and Syria, and has urged individuals around the world to undertake violent acts in their immediate vicinity in the name of the caliphate.

Responding to a heightened threat environment, the former director general of the Australian Security Intelligence Organisation, David Irvine, raised Australia's terror threat level from medium to high—meaning a terrorist attack is likely—on 12 September 2014. Six days later, a large-scale counterterrorism raid across suburbs in Sydney and Brisbane reportedly foiled a plot to commit violent acts in Australia and, potentially, the beheading of a member of the public. Then on 23 September, only five days later, two police officers were attacked outside a Melbourne police station by terror suspect Numan Haider. Haider used a small knife to attack an Australian Federal Police officer and a Victorian police officer. When searched later, he was found to be carrying a larger knife and what appeared to be an Islamic State flag. Thankfully, the two officers survived; Haider did not.

Although it is true that we have not yet had to use these powers in Western Australia, we cannot afford to be complacent. The need for these powers is continuing, as the terrorism threat, unfortunately, has intensified rather than abated. This bill is about enabling our police to adequately respond to, prevent and investigate terrorist acts that may pose a threat to the people of Western Australia. The bill also contains a number of amendments that will rectify issues raised during statutory reviews of the act tabled in July 2008, January 2012 and January 2015. Most importantly, this bill extends the expiry date of the legislation. The act is due to expire on the tenth anniversary of royal assent—that is, 19 December 2015. This bill will extend the expiry date by a further 10 years, to 19 December 2025. The gravity of these powers demands regular review of the operation and effectiveness of the act, and reconsideration of the legislation. This bill retains the sunset clause and extends the legislation for a further period of 10 years. Reviews of the act will continue to be conducted three-yearly, in accordance with section 34(1)(b).

As ISIL's tentacles have reached into Australian society, inducing young Australians to leave their homes and commit violent offences, the Australian government has sought to strengthen federal legislation to enable authorities to better deal with the increased threat level. An example of this is the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014—the so-called foreign fighters act. The foreign fighters act introduced a new offence of advocating terrorism. This offence and a second offence of membership of a terrorist organisation are introduced in this bill as two new grounds for authorising an application for a covert search warrant. The inclusion of these particular offences as grounds for obtaining a covert search warrant will assist WA Police in gaining access to premises, which in turn may lead to the early apprehension of offenders planning a terrorist attack. These two offences are in addition to the original ground for an application, which is —

that a terrorist act has been, is being, or is about to be, committed, whether in or outside this State; ...

If the Commissioner of Police has reasonable grounds to suspect a person has committed one of these offences, the commissioner may authorise a police officer to apply for a warrant.

The bill also addresses an inconsistency between the commissioner's level of suspicion or belief and that of the issuing judge. It amends sections 7(2), 23(2) and 24(3)(d) of the Terrorism (Extraordinary Powers) Act 2005, to make clear exactly what each party must suspect and/or believe when applying for or issuing a commissioner's warrant or a covert search warrant.

A similar anomaly is addressed by the introduction of a "target vehicle" definition with respect to covert search warrants. Currently, although vehicles can be searched under a commissioner's warrant, there is no provision for vehicles to be searched under a covert search warrant. The terrorist attack on Mumbai in 2008 was largely effected by sea, making it clear that vehicles such as boats and ocean-going vessels, usually not kept at the "target place", may become relevant to terrorism investigations. The definition of "place" in section 3 does not include vehicles, so a definition of "target vehicle" is introduced in part 3 to allow for the search of vehicles under a covert search warrant.

Access to computer equipment and devices is also currently restricted to a search of the “target place”. The bill introduces a definition of “data” and extends the power of search to include the search of a “target vehicle” and, with it, the power to access and operate any device or equipment in the target place or target vehicle that holds, records or processes data. The executing officer is authorised to exercise existing powers to copy and seize records or data, as set out in section 148 of the Criminal Investigation Act 2006.

To facilitate the search of computer equipment and devices, a new section is inserted empowering the executing officer to order a person, or an employee of that person, to provide any information or assistance that is reasonably required to enable the officer to seize a record or data or otherwise exercise a power under a covert search warrant. The bill makes it clear that access to data under a covert search warrant is subject to any limitations imposed by the commonwealth Telecommunications (Interception and Access) Act 1979 and the Telecommunications (Interception and Access) Western Australia Act 1996.

The bill also makes provision for an officer other than the authorised applicant to report back to the judge about the execution of a covert search warrant. This amendment makes allowance for circumstances in which the authorised applicant may have died or is otherwise unavailable, and complements the existing provision for a report to be made to the Chief Justice in the absence of the issuing judge. Allowance is also made for an interim report and an application for an extension of time.

An amendment to section 17 makes allowance for the commissioner to appoint as special officers sworn employees of New Zealand Police and/or law enforcement officers of other foreign jurisdictions that may be prescribed in regulations. Such assistance may be required in the event of a terrorist attack in which specialist counterterrorism skills and expertise are needed.

Finally, a new subsection is inserted in section 20 to clarify what is already the case. This provision has been inserted to avoid further litigation on a matter that has already been decided in the High Court of Australia in *Kirk v Industrial Court (NSW)* [2010] HCA 1. Parliamentary Counsel advises that, without the amendment, section 20(1) is partially invalid and could be misleading to the reader. In closing, this bill gives police the required tools to deal effectively with a terrorist event. It will enable police to act earlier and better protect the community in the event of a terrorist attack.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3559.]

Debate adjourned, pursuant to standing orders.