

TERRORISM (EXTRAORDINARY POWERS) AMENDMENT BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [9.56 pm]: I move —

That the bill be now read a second time.

For our government, the security and safety of Western Australians is paramount. Since the September 11 terrorist attacks the world has changed, and so too has our approach to terrorism. Ongoing vigilance is the new norm, and something we need to shoulder together. In 2005, Michelle Roberts, MLA, as the then Minister for Police, introduced the Terrorism (Extraordinary Powers) Bill 2005, following the 2002 Bali bombings, which killed more than 200 people, and the 2005 London Underground terrorist incidents in which more than 50 people were killed and hundreds more injured. More than a decade has passed since that legislation was enacted. The powers provided have, fortunately, never had to be used in Western Australia. However, further attacks and thwarted attempts overseas and closer to home, including in Melbourne and Sydney, reinforce the need to ensure that our counterterrorism laws are as strong as possible and that they provide our law enforcement agencies with the tools that they need to protect us. Last year the Premier attended a special meeting of the Council of Australian Governments that considered the increasing incidence of terrorist activity and counterterrorism measures in Australia. COAG acknowledged that the terrorist threat in Australia remains elevated, and agreed to strengthen our approach to countering the evolving terrorist threat to help make Australians safer. We must plan for the future. Although I know we all hope that the powers provided in these amendments will never need to be called upon, it is essential that our police have these provisions in reserve in case they are ever needed to protect us.

These amendments arise from the New South Wales State Coroner's investigation into the Lindt cafe siege. The coroner recommended that the special powers available to police responding to terrorist incidents should include a more clearly defined right to use force, including lethal force. In line with this recommendation, the New South Wales government amended its Terrorism (Police Powers) Act 2002, and Western Australia's amendments are informed by the approach taken in New South Wales.

In Western Australia, the use of force by police is governed by section 16 of the Criminal Investigation Act 2006 and chapter XXVI of the Criminal Code. Broadly, under the Criminal Code, police officers responding to a terrorist situation currently have the defence of defence of another or self-defence. This bill amends the Terrorism (Extraordinary Powers) Act 2005 to provide Western Australian police with clarified authority, greater certainty and protection from criminal liability if they are required to use force, including lethal force, when responding to a terrorist or suspected terrorist act.

Under the bill, in the event of a terrorist incident, the Commissioner of Police—or, if the commissioner is unavailable, a deputy commissioner—will make a declaration. A declaration is made only when the incident is reasonably suspected to be a terrorist incident. The declaration enlivens special provisions for certain police actions taken during the course of the incident. Specifically, this bill provides additional protection for Western Australian police when required to use pre-emptive lethal force in a terrorist or suspected terrorist incident. Importantly, it would be our highly trained, specialist police officers, attached to units such as the tactical response group, who would access to these powers if required.

I now turn to some of the details of the bill. The bill inserts part 2A in the act to make provision for police use of force, including lethal force, following a declaration by the Commissioner of Police. Before the commissioner can make a declaration, the commissioner must be satisfied that there are reasonable grounds to suspect the incident is a terrorist attack and that the incident requires a planned and coordinated police action to either defend a person threatened by the incident or prevent or end the unlawful detention of a person or persons. When making a declaration, the commissioner may choose to specify a location at which police officers are responding to an incident, or may name a particular person or vehicle. The ability to specify a person or vehicle deals with situations in which the incident is not contained within one location. The advent of mobile terrorists on foot or in a vehicle means the location of a terrorist incident may change rapidly, or in an event such as the terrorist attacks on Mumbai in 2008, there may be multiple locations and multiple offenders. The commissioner must notify the police officer in charge of the incident response and the minister of the declaration. Although the declaration can be made orally in urgent circumstances, the declaration must be put in writing as soon as practicable after it is made, and in any event within six hours. The commissioner may revoke the declaration at any time and must revoke the declaration once no further police response is required. A revocation can also be made orally in urgent circumstances, but, like a declaration, must be put in writing as soon as practicable, and in any event within six

hours. The commissioner must notify the officer in charge of the incident response and that officer must notify the other police officers of the revocation.

Proposed section 21F sets out police action authorised under a declaration. Each officer who authorises, directs or uses lethal force must personally believe, on reasonable grounds, that the action they take is necessary to defend a person threatened by the incident, prevent a person from being detained, or end the detention of any person. A police officer responding to a declared incident in accordance with an action authorised under a declaration will be provided with protection from criminal liability. Existing protection from civil liability in the Police Act 1892 also applies. When a declaration is revoked, the protection provided to police officers applies until the officer becomes aware of the revocation.

Clause 6 amends section 31 of the act. Section 31 provides a general power of delegation for the commissioner's powers under the act. This amendment ensures that the commissioner will not be able to delegate powers to perform functions under new part 2A, except as provided for by new section 21H.

Finally, clause 7 inserts new sections 31A, 31B and 31C. These sections replace the commissioner's existing power to appoint special officers, as part 2, division 4 of the act will be deleted by clause 4 of this bill. These proposed sections reinstate, in the same terms, the commissioner's existing power to appoint special officers from other jurisdictions if necessary. Special officers' functions are restricted to the terms of their appointment, and a special officer would have the same protection afforded to police officers performing functions under these use-of-force provisions. The protection afforded to special officers if an appointment by the commissioner is found to be invalid applies until the officer becomes aware of the invalidity.

The bill will not limit the powers of police officers under any other written law or the common law to deal with a terrorist incident, regardless of whether or not it has been declared under this legislation. It will provide police officers who would be called upon to protect us in a terrorist or suspected terrorist event with the certainty and protection that if they use force, including lethal force, that they believe on reasonable grounds is necessary, they will be protected from criminal liability.

Terrorist attacks around the world and interstate are powerful reminders that we in Western Australia cannot afford to be complacent. This bill aims to ensure that Western Australian counterterrorism legislation keeps pace with the evolving terrorist threat.

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 1363.]

Debate adjourned, pursuant to standing orders.

House adjourned at 10.05 pm
