

## DRAFT SECOND READING SPEECH

HON. M.T. (RENE) HIDDING MP

### *Terrorism Legislation (Miscellaneous Amendments) Bill 2015*

*\*check Hansard for delivery\**

I move - that the Bill now be read for the second time.

Madam Speaker, the purpose of this Bill is to amend the *Terrorism (Preventative Detention) Act 2005* and the *Police Powers (Public Safety Act) 2005*.

The need to amend both Acts has arisen due to a number of matters including:

- COAG's agreed response to the recommendations from the *Review of Australia's counter-terrorism legislation*;
- the 2<sup>nd</sup> Annual Report of the Independent National Security Legislation Monitor published in 2012;
- national security issues being caused by Australians travelling to Syria and Iraq to engage in hostile activity; and
- lessons from recent counter-terrorism operations by Australia's security agencies.

Collectively, these matters have required a number of amendments to the *Commonwealth Criminal Code Act 1995* (the Code). The amendments to the Code that are most relevant to Tasmanian legislation are those relating to preventative detention orders (PDOs).

By way of background, in 2005 all jurisdictions agreed to introduce a state based preventative detention regime. As a result, Tasmania introduced the *Terrorism (Preventative Detention) Act 2005*. The Act provides for an authorised person to seek the detention of a person for up to 14 days in order to prevent an imminent terrorist act occurring or preserve evidence of, or relating to, a recent terrorist act. The introduction of the regime on a national basis was to ensure that there was consistency in relation to the powers available to our security agencies and there were no vulnerabilities in the ability of any jurisdiction to protect its community against terrorist acts.

Up until recently, PDOs have been used sparingly. This recognises that they are intended to be an extraordinary measure used in very serious circumstances. However, in the last 12

months, four PDOs have been issued - three in New South Wales and one in Victoria. The PDO issued in Victoria for an 18 year old man was followed shortly after by his arrest for planning a terrorist act against ANZAC day commemorations to be held in Melbourne.

Both the COAG and Independent National Security Legislation Monitor reviews considered the role of PDO's in the context of the national security environment that existed in Australia in 2012. At that time, the threat of terrorism, while significant, was different to that which existed when COAG agreed its response to recommendations of the reviews in 2014.

On the basis of the prevailing threat environment and on the advice of our national security agencies, COAG agreed that PDO's should be retained as their ongoing availability would ensure that law enforcement agencies had a legal basis on which to take action to prevent a terrorist attack, or to preserve evidence in the immediate aftermath of a terrorist act, where an arrest or a prosecution is not considered to be open, but a person nonetheless presents a credible risk to public safety.

COAG agreed that some procedural and technical amendments to the issuing criteria and issuing process needed to be made to make them more operationally useful.

The Bill delivers on this COAG agreement by:

- imposing a subjective and objective test for applying for and issuing a PDO;
- providing that both the applicant and the senior police officer or Supreme Court must be satisfied that it is 'reasonably necessary', as opposed to 'necessary', to detain the person to preserve evidence relating to a terrorist act;
- enabling authorised police officers to apply for PDOs orally or electronically in urgent circumstances;
- enabling an application for a PDO to be made in respect of a person whose full name is not known, provided the subject of the order is otherwise identified, for example, by the use of a physical description;
- enabling a PDO to be issued in respect of a person whose full name is not known, provided the subject of the order is otherwise identified;

- enabling applications for prohibited contact orders in relation to a person for whom a PDO is being sought or is already in force to be made orally or electronically in urgent circumstances; and
- extending the current sunset clause until 31 December 2025.

Each of these measures has accompanying amendments to ensure that they are used appropriately. These include:

- requiring that a verbal application for a PDO given by the applicant must be verified or given on oath or affirmation, unless the senior police officer or Supreme Court is satisfied that it is not practical to administer an oath or affirmation;
- providing that an PDO or prohibited contact order for a person subject to a PDO must not be made unless the Supreme Court or senior police officer is satisfied that it is necessary because of urgent circumstances, to apply for the order verbally or electronically; and
- ensuring there is an audio or audio visual recording of the application or that a written record of the application is made as soon as practicable after the order is made, including any information given in support of it.

The amendments to the *Police Powers (Public Safety) Act 2005* involve extending the current sunset clause to 31 December 2025 and amending the current definition of 'terrorist act' so that it remains consistent with the Code.

The amendment Bill has been provided to stakeholders including the Tasmanian Bar, Acting Director of Public Prosecutions, Law Society of Tasmania, Tasmanian Women Lawyers, Community Legal Centres, Legal Aid Commission of Tasmania, Commissioner for Children and Civil Liberties Australia.

Australia faces a serious and ongoing terrorist threat. The current situation in Iraq and Syria poses an increasing threat to the security of all Australians both here and overseas. It would be naïve to think that Tasmania is immune to these threats. The reality is that we are not.

The amendment Bill provides a sensible and practical approach to dealing with the ongoing threat of terrorism that is consistent with agreements of COAG.

I commend the Bill to the House.