TERRORISM (PREVENTATIVE DETENTION) AMENDMENT BILL 2019

Introduction and First Reading

Bill introduced, on motion by **Mrs M.H. Roberts (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MRS M.H. ROBERTS (Midland — Minister for Police) [12.20 pm]: I move —

That the bill be now read a second time.

In 2005, two pieces of legislation were introduced into this house in response to the growing threat of international terrorism. These laws, the Terrorism (Preventative Detention) Act, introduced by Dr Geoff Gallop, and the Terrorism (Extraordinary Powers) Act, which I introduced, were key achievements of the Gallop government and created the framework for police counterterrorism operations in Western Australia since that time. They were developed in the context of a nationally consistent response developed at a Council of Australian Governments meeting in 2005. This legislation improves and updates provisions of the Terrorism (Preventative Detention) Act, the aim of which is to enable a person to be taken into custody and detained for a short time in order to prevent a terrorist act from occurring or to preserve evidence concerning a recent terrorist act. Preventive detention powers are based on part 5.3 of the commonwealth Criminal Code Act 1995, which relies on referred legislative power from the states. As a result, preventive detention legislation across jurisdictions is similar and generally consistent.

The face and nature of international terrorism has changed since 2005. It is essential that we change with it. We face threats as much from the radical right as from radical Islam. We face threats as much, if not more, from armed lone wolves as from organised terror cells. Our duty is to keep our community safe and free. In order to do so we must continually examine and improve the laws that protect us. The legislation was reviewed in 2012 and 2016. Both of those reviews support the changes that we are introducing in this bill to update provisions of Western Australia's Terrorism (Preventative Detention) Act 2006 that came into effect on 22 September of that year. To date, the WA Police Force has not had to utilise the provisions of the act, but it is necessary to ensure that sufficient powers are available to police officers should they be required in the future.

I now turn to some of the details of the bill. This bill amends the basis on which a preventive detention order—PDO—can be applied for and made under section 9 of the act. The proposed amendment changes the threshold test from requiring that a terrorist act be imminent and expected to occur within 14 days, to that a terrorist act is capable of being carried out and could occur within the next 14 days. This amendment will ensure that the necessary powers are available to prevent terrorist threats in the current threat environment and brings WA into line with other jurisdictions. This amendment was made to the commonwealth Criminal Code in 2016. Other jurisdictions, including New South Wales, Victoria and Queensland, have amended their equivalent legislation to reflect these changes.

This bill also allows for a PDO to be made in circumstances in which the full name of the person is not able to be specified, but when that person's identity can be established. The bill amends section 13 of the act to provide that a PDO can be made when the issuing authority, that is, a Supreme Court judge acting in their private capacity or a retired Supreme Court judge, is satisfied that there is a description, or identifying information that is sufficient to identify the person. This identifying information can include a part name, alias, physical description or photograph of that person attached to the PDO. The issuing authority must be satisfied that the description is sufficient to identify the person. The need for this proposed amendment was recognised during a WA Police Force exercise scenario in 2010 when it identified that a PDO could not be issued to an individual if their full name was unknown and thus not specified in the order, even though alternative means of identification were available. Other jurisdictions, the commonwealth, Queensland, Victoria and Tasmania have introduced the capacity for a PDO to be made when the name of the person subject to the order is not able to be specified. Other consequential amendments are proposed to take into account that a PDO may not specify the name of the person.

The act requires that detainees are treated humanely and with respect. The bill expands the scope of authorised contact that a detainee is allowed to have. Specifically, it allows for a detainee to receive a visit from a religious or spiritual adviser who has been approved by the Commissioner of Police or by a senior police officer authorised by the Commissioner of Police. It is based upon a provision in operation in New South Wales and was recommended in previous statutory reviews of the Western Australian act. The only form of contact that a detainee is permitted to have with the religious or spiritual adviser is a visit. Police are required to provide reasonable assistance to arrange the visit. Whilst the detainee is being detained under the PDO, the approved religious or spiritual adviser will be prohibited from revealing any matters in relation to the PDO to any other person. Any revelation of details will be a crime and the penalty will be five years' imprisonment. This is consistent with other disclosure offences in the act.

Finally, this bill further clarifies the assistance to be offered to vulnerable persons, specifically persons under the age of 18 or incapable of managing their own affairs. The assistance relates to enabling these people to exercise their entitlement to have contact with persons that they are authorised to have contact with under the act. The bill also clarifies the situation whereby a person the detainee is able to have contact with is not acceptable to the police officer. In this circumstance, the police officer must explain the reasons that the person is unacceptable and give the detainee an opportunity to nominate another person. The disclosure of reasons is not required if it would also disclose criminal intelligence information. Additionally, the police officer must nominate another person with relevant experience who the detainee may have contact with. Any contact between a detainee and this person will also be monitored.

It is my hope, the hope of our government and the hope of all Western Australians that this legislation will never need to be used. We cannot, however, close our eyes to the realities of the world around us. Perth is almost equidistant between Christchurch and Colombo. Their experiences show that terror threats can come from the most unexpected places. We must be vigilant and as prepared as possible to protect Western Australians from the threat of terrorist acts. I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.