

[Act 1999 No 79]



New South Wales

## Law Enforcement (Controlled Operations) Amendment Bill 1999

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Law Enforcement (Controlled Operations) Act 1997* to provide for the following:

- (a) to enable the Australian Federal Police, the National Crime Authority and the Australian Customs Service to be prescribed as law enforcement agencies,
  - (b) to include officers or employees of the Australian Federal Police, the National Crime Authority, the Australian Customs Service and a police force of another State, a territory or another country as law enforcement officers for the purposes of the Principal Act,
  - (c) to enable an application for, and the granting of, an authority or a variation of authority to be made by telephone or other means,
  - (d) to enable a chief executive officer of an agency to delegate his or her functions under the Principal Act to certain other officers within the relevant agency,
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- (e) to make it clear that the Principal Act does not affect certain discretions, including administrative and judicial discretions,
- (f) to provide for a further review of the Principal Act as soon as possible after 1 March 2001,
- (g) to make other miscellaneous amendments to the Principal Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Law Enforcement (Controlled Operations) Act 1997* set out in Schedule 1.

## Schedule 1 Amendments

### Law enforcement agencies and law enforcement officers

Schedule 1 [4] amends the definitions of *law enforcement agency* and *law enforcement officer* in section 3 of the Principal Act to provide for the matters referred to in paragraphs (a) and (b) of the overview above. Schedule 1 [2] makes a consequential amendment to the definition of *chief executive officer* in section 3.

### Urgent applications and grants

Schedule 1 [6], [7], [9] and [10] amend sections 5, 8 and 10 of the Principal Act to provide for the matters referred to in paragraph (c) of the overview above.

Section 5 of the Principal Act currently provides that an application for an authority in relation to a proposed controlled operation is to be made in writing or by facsimile transmission of a written application (to be known as a *formal application*).

Schedule 1 [6] amends section 5 to enable an application for an authority to be made by any other available means, including in person or by telephone or 2-way radio (known as an *urgent application*). Schedule 1 [9] makes similar amendments to section 10 in relation to an application for a variation of an authority. Schedule 1 [6] and [9] also amend sections 5 and 10 to enable the regulations to provide for

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various matters, including the circumstances in which an urgent application may be made and the form that a formal application for an authority or a variation of an authority may take.

Sections 8 and 10 of the Principal Act currently provide that an authority, or a variation of authority, is to be granted in writing (to be known as a *formal authority* and a *formal variation of authority*). Schedule 1 [7] and [10] amend sections 8 and 10 to provide that an authority or a variation of an authority may also be granted by any other available means, including in person or by telephone or 2-way radio (known as an *urgent authority* and an *urgent variation of authority*). Such authorities cease to have effect 72 hours after being granted, unless it sooner ceases to have effect. Schedule 1 [8] makes a consequential amendment to section 9. Schedule 1 [7] and [10] also amend sections 8 and 10 to enable the regulations to provide for various matters, including the procedure for the granting of an urgent authority or urgent variation of authority and the form that a formal authority or formal variation of authority may take.

Schedule 1 [19] amends section 23 of the Principal Act to require the Ombudsman to include details of the numbers of urgent authorities and variation of authorities granted, as well as applications for authorities and variation of authorities that have been refused by the chief executive officer of the relevant agency, in the annual report of the Ombudsman.

### **Delegations**

Schedule 1 [23] amends the Principal Act in the manner referred to in paragraph (d) of the overview above. In particular, Schedule 1 [23] substitutes section 29 of the Principal Act so that the Commissioner of Police may delegate any of the Commissioner's functions under the Act, other than the power of delegation, to no more than 5 persons. Such a person must be of or above the position of Superintendent. The proposed amendment also provides that in the case of the chief executive officer of any other law enforcement agency, the chief executive officer may delegate such functions to no more than one person.

### **Act not to affect certain matters**

Schedule 1 [5] amends the Principal Act in the manner referred to in paragraph (e) of the overview above by inserting proposed section 3A in the Principal Act. Proposed section 3A provides that the Principal Act does not affect, and is never taken to have affected, the existence or exercise of certain discretions, including judicial and administrative discretions, in relation to legal proceedings.

### **Further review**

Schedule 1 [24] amends section 32 of the Act in the manner described in paragraph (f) of the overview above.

### **Miscellaneous amendments**

Schedule 1 [3] amends the definition of *controlled operation* in section 3 of the Principal Act to include activities that are reasonably necessary to facilitate the achievement of any existing purpose of a controlled operation.

Schedule 1 [9] amends section 10 of the Principal Act to enable any law enforcement officer, on behalf of the principal law enforcement officer for an authorised operation, to make an application for a variation of an authority. That amendment, together with the amendment to section 8 by Schedule 1 [7], also extends, from 3 months to 6 months, the maximum period for which an authority, and any subsequent variations, may be in place.

Schedule 1 [11] omits section 11 which enables an authority to be renewed. Schedule 1 [1], [14], [15], [17], [18] and [21] make consequential amendments.

Schedule 1 [12] inserts proposed section 13A in the Principal Act to provide that an authority or a variation of authority is not invalidated by any procedural defect unless it is a defect that affects the substance of the authority or variation in a material particular.

Schedule 1 [13] amends section 15 of the Principal Act by extending, from 28 days to 2 months, the period in which a final report regarding a controlled operation is to be submitted to the chief executive officer.

Schedule 1 [20] amends section 23 of the Principal Act to make it clear that the Ombudsman is not required to include in his or her annual report details of an authorised operation that was not completed as at 30 June in the year to which the report relates. Schedule 1 [16] makes a consequential amendment in relation to the inspection of records by the Ombudsman.

Schedule 1 [22] amends section 27 of the Principal Act to provide that an evidentiary certificate is conclusive evidence that a chief executive officer was satisfied as to the matters specified in the certificate.