

Ombudsman review of the *Terrorism (Police Powers) Act 2002*

The Ombudsman's second report on special police powers to address the threat of terrorism was tabled in parliament on Wednesday 24 August 2011.

The laws give police powers to apply for court orders to detain people without charge for up to two weeks to prevent a suspected imminent terrorist act or preserve evidence of terrorist acts which have occurred. The laws also give police and NSW Crime Commission officers powers to apply for a warrant to covertly search premises.

The powers of preventative detention have never been used, and the powers of cover search have not been used since the Ombudsman last reported in September 2008.

"Following my last report, Parliament introduced a range of amendments to the Act to clarify the responsibilities of officers holding people in preventative detention, including assisting detainees to gain access to Legal Aid if the Supreme Court deems such access is in the interests of justice and assisting young people and persons with impaired intellectual functioning to exercise their right to contact their parent or guardian while in detention," said the Ombudsman, Bruce Barbour. **"The NSW Police Force and other agencies with powers and responsibilities under the Act also responded positively to the recommendations of my first report, with all of the recommendations I made about procedural and operational matters being accepted in whole or in part. These results demonstrate the value of the Ombudsman's independent scrutiny of the police powers."**

This report reveals the concerns shared by NSW police officers and law enforcement agencies across the country about the preventative detention powers being difficult to implement and impractical.

The report considers whether the limited use of the powers and considerable delays in implementing changes recommended in the first report reflect upon the utility and necessity of the powers.

"The powers were introduced as part of a cross-jurisdictional response to terrorism within Australia. However their limited use may raise questions about their utility and necessity. A number of my recommendations aim to elicit important information to facilitate Parliament's consideration of the operational utility of the powers,

which in the case of preventative detention are due to expire in 2015,” said Mr Barbour.

The report also details the difficulties the Ombudsman experienced in obtaining information about the limited use of the covert search warrant powers.

“To properly fulfil the role Parliament has asked of me - to keep under scrutiny the exercise of powers conferred on police - I must consider the reasons for very limited use of the powers or failure to use the powers. To limit my office to reporting only when powers have been actioned would significantly reduce the utility of this review. It would mean that Parliament may not be provided with important information about whether the powers are effective, the level of preparedness or readiness to use the powers should the need arise, or whether there are difficulties with the way the powers have been constructed or construed that has limited or prevented their use by police,” said the Ombudsman