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Ombudsman reviews key policing powers and responsibilities

The NSW Ombudsman's report reviewing certain functions under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) was tabled in Parliament today.

The Act, which commenced in 2005, incorporates many key policing functions, setting out both the powers and responsibilities of police when exercising those powers with the aim of making the laws simpler and more accessible to both police and the community.

Three areas of significant reform were singled out by Parliament for review namely, the powers and safeguards relating to personal searches on arrest and in custody, the powers in relation to crime scenes and the power to obtain documents held by financial institutions using a notice to produce.

The two year review found that while the objectives of these provisions under LEPRA are largely being met, there is scope for further clarity in the legislation and improvement in police practice.

The review found that officers vary in their understanding of, and compliance with, the personal search provisions, which could be clearer and more consistent. **"This legislation goes to the heart of operational policing. It is vital that it is clear, simple and practical to ensure that the powers and safeguards are applied effectively and fairly across the board"** said the Ombudsman, Bruce Barbour. Mr Barbour has recommended a number of legislative amendments which aim to simplify the personal search regime.

In relation to the establishment of crime scenes, the Ombudsman has recommended legislative amendments to clarify occupier's rights. **"The crime scene powers in the Act must be coupled with appropriate safeguards particularly for occupiers' of private premises"**, Mr Barbour said.

The Ombudsman has also recommended that the NSW Police Force encourage officers to use plain English wherever possible, improve record keeping practices to increase accountability and reduce duplication, and develop standard operating procedures for the exercise of crime scene and notice to produce functions to make sure that officers have clear and consistent guidance.

A snapshot of findings and recommendations is provided overleaf and full details are contained in the report including our findings from the survey of people facing charges in the NSW Local and Children's Court regarding personal searches (Appendix 1).

Copies of the Ombudsman's report are available at: www.ombo.nsw.gov.au.



Snapshot of findings and recommendations

The Ombudsman's review of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) focussed on personal searches on arrest and in custody, crime scenes, and notices to produce documents held by financial institutions. The following snapshot outlines the research findings and recommendations from the review conducted between December 2005 and November 2007.

Personal searches – Part 2 and Appendix 1

- The majority of searches (90%) were recorded as searches in custody.
- Police recorded most searches as ordinary (75%) or frisk (20%) searches, which are very similar in practice.
- A small proportion of searches (5%) were recorded as strip searches by police. This included 884 strip searches involving children, only 6% of which noted that a support person was present as required under the Act.
- Information obtained from the NSWPF and the survey of people facing court suggests that a typical frisk or ordinary search in the field involved a search in a public place by a uniformed officer of the same sex as the person who did not provide their details or a reason for the search. The survey also suggests that searches of this kind generally took less than 5 minutes and included a pat down of the person's arms, legs and pockets.
- The Ombudsman has recommended amendments to simplify and clarify the personal search provisions. These recommendations include: condensing the search types into two tiers that correspond with the search safeguards; clearly defining key terms such as 'lawful custody' and 'body cavity' for the purpose of personal searches; tightening the support requirements for a strip search involving a child or person with impaired intellectual functioning; and adjusting the requirements for strip searches to reflect differences in the safety, evidence, privacy and dignity considerations that police must attend to in custody and in the field.
- The Ombudsman has also recommended changes to police procedures to encourage police use of plain English in all dealings with the public and streamline and strengthen record keeping processes for strip searches to improve accountability and reduce duplication.

Crime scenes – Part 3

- Information provided by the NSWPF and Local Court suggests that a typical Crime Scene Warrant (CSW) application was made by fax after hours regarding a suspected assault, fire incident or deceased person and took an authorised officer less than an hour to consider.
- Most CSW applications (64%) were made outside court hours and most (92%) were granted. Of the small proportion of CSW applications refused, most were due to a lack of evidence that a serious indictable offence had occurred.
- The Ombudsman has recommended amendments to the crime scene provisions to protect the rights of occupiers and make CSWs more practical. These recommendations include: providing occupiers of private premises with a mechanism to challenge a CSW application; requiring police to obtain informed consent in writing when relying on consent to enter premises and exercise crime scene powers; and allowing police to nominate multiple premises under a CSW if an offence extends over a number of private premises.
- The Ombudsman has also recommended that police develop standard operating procedures for the conduct of crime scenes that include guidance for police regarding: when a crime scene warrant should be sought; when the *Coroner's Act 1980* applies; factors to consider when obtaining occupier's consent; the distinction between public and private premises; advice on exercising cultural and religious sensitivity to family members of deceased; and processes for dealing with damaged premises caused by the exercise of crime scene powers.

Notices to produce – Part 4

- Information provided by the NSWPF and Local Court suggests that a typical notice to produce application was made in person during court hours in relation to a fraud investigation.
- All applications for notices to produce were made during court hours and most (98%) were granted. Of the small proportion of notice applications that were refused, most were due to attempts to obtain documents from a non-financial institution such as a library or government department.
- The Ombudsman has recommended that police develop standard operating procedures for notices to produce that include guidance for police regarding: the definition of a document; timeframes for notices; the types of institutions to which a notice may be applied; and the details that should be included in an application.