



NSW Ombudsman

Issues Paper:

*Law Enforcement
Legislation Amendment
(Public Safety) Act 2005*

December 2006

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Chapter 1. Introduction

1.1 Background

On 15 December 2005, in an emergency session of the NSW Parliament and in response to the Cronulla riot on Sunday 11 December 2005, new powers to assist police to prevent or defuse large-scale public disorder were introduced as amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). The Act gave police additional powers in target areas, including powers to:

- establish a roadblock or place a cordon
- stop and search persons or vehicles
- prevent persons or vehicles from entering or leaving
- seize vehicles, mobile phones and other communication devices
- demand that persons entering or within a target area disclose their identity
- close licensed premises and liquor outlets and establish emergency alcohol-free zones.

The amending Act, the *Law Enforcement Legislation Amendment (Public Safety) Act 2005* (the Act), inserts a new Part 6A into LEPRA.

1.2 Our role and the purpose of this paper

The NSW Ombudsman is required to scrutinise the exercise of powers conferred on police officers under Part 6A. As soon as practicable after 18 months of its commencement, the Ombudsman is to report to the Attorney General and Minister for Police on the exercise of these powers. Part 6A also has a sunset clause. In effect, Part 6A is repealed just after the second anniversary of the Cronulla riot, on 15 December 2007¹. In the parliamentary debate, the Police Minister stated: '*Given the extraordinary powers that we are giving the police, I think it is appropriate to have oversight by the Ombudsman and a sunset period.*'²

Our review of Part 6A will consider the situations where the new police powers have been used, why they were used, their effectiveness, and the impact of their use on the community and police. We will also consider the implementation of the powers by NSW Police and any difficulties that have emerged. At the end of the review, we will prepare a report to Parliament, setting out our findings and the recommendations we consider to be necessary or desirable.

This paper provides some background to the events that led to the introduction of the legislation; outlines the key legislative provisions; identifies issues for discussion; and requests submissions from interested members of the community. We would particularly welcome comments from those directly affected by these powers or who live in areas where the powers have been used. We are interested in your views about the impact of the powers on the community and the effectiveness of the powers.

We have identified what we consider to be the main issues concerning the powers conferred on the police, and invite you to respond to the questions we raise in this paper. Your comments on any other aspects of the legislation and its operation are also welcome.

Any submissions or correspondence relating to this review should be sent to:

Law Enforcement Legislation Amendment (Public Safety) Act 2005 Review

NSW Ombudsman
Level 24, 580 George St
Sydney NSW 2000

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review@ombo.nsw.gov.au (please include 'Public Disorder Powers' in the subject line)

We may use the material from your submissions in our final report. If you do not wish your comments to be attributed to you or your organisation, please advise us. We are happy to discuss any concerns you may have about confidentiality.

Inquiries about this review should be directed to Sharon Johnson on (02) 9286 1075 or our toll free number 1800 451 524.

SUBMISSIONS ARE DUE WEDNESDAY 31 JANUARY 2007

Endnotes

¹ s. 87O.

² The Hon. Carl Scully MP, NSWPD, Legislative Assembly 15 December 2005, p. 20626.

Chapter 2. Chronology of events

This section provides a brief synopsis of events that led to the introduction of the powers.

2.1 The Cronulla riot

The *Law Enforcement Legislation Amendment (Public Safety) Act 2005* (the Act) was enacted as a direct response to the riot that occurred in Cronulla, Sydney on 11 December 2005 and subsequent retaliation attacks in Sydney's southern and eastern beach suburbs.

The following chronology of events, compiled from media records, provides a background for the issues that were under consideration during the development of Part 6A.

Table 1. Chronology of events based on media reports³

Date	Events
Sunday, 4 December 2005	Four men including two lifeguards are assaulted at North Cronulla beach by men described as being of Middle Eastern appearance.
Wednesday, 7 December	SMS Text messages begin circulating urging 'Aussies' to take revenge on 'Lebs and wogs'. A man is arrested for assaulting a newspaper photographer in Cronulla. Police arrest a Bankstown man in connection with lifeguard assault on 4 December 2005.
Saturday, 10 December	The Premier voices intention to amend the <i>Crimes Act 1900</i> to make the penalty tougher for the offence of assaulting a lifeguard — up to 25 years.
Sunday, 11 December	Police conduct an operation at Cronulla Beach due to intelligence reports in the preceding week. An estimated 5,000 people gather in Cronulla. By late afternoon the crowd, including many affected by alcohol, turns on people perceived to be of Middle Eastern appearance. Approximately 30 people are injured during the rioting, including police and ambulance officers. In the late evening convoys of youths in cars attack people and property in Maroubra, Brighton-le-Sands and Cronulla in apparent retaliation for the Cronulla riot. One man is stabbed in the back in Woollooware, near Cronulla.
Monday, 12 December	Violence continues between rival groups in Cronulla and Maroubra. At Punchbowl Park a gathering of approximately 40 cars results in a convoy setting out after midnight for Cronulla and Maroubra. Alleged that between 100–200 Lebanese men smash cars, stab and bash people and threaten women with rape across Cronulla, Maroubra and Brighton-le-Sands. Lakemba crowd turns on a man of Caucasian appearance. Cars are smashed. Further SMS text messages begin to circulate calling for a showdown the following weekend.
Tuesday, 13 December	Police restrict inbound traffic on main roads entering Cronulla and check every car passing. Some cars are searched for weapons. Checkpoints operate at or are scheduled to operate at six locations.
Thursday, 15 December	Emergency session of Parliament passes the <i>Law Enforcement Legislation Amendment (Public Safety) Act 2005</i> . First use of the new powers with roadblocks established at three points leading into Sutherland Shire/Cronulla.

2.2 Law Enforcement Legislation Amendment (Public Safety) Bill 2005

On 15 December 2005, the NSW Government introduced the *Law Enforcement Legislation Amendment (Public Safety) Bill 2005* ('the Bill'). The Bill was debated and assented to by a large majority of parliamentarians and the Act commenced the same date. The first use of the powers was that evening.

The Premier stated that '*Ideally, these new laws will not need to be used often.*'⁴ The Police Minister also acknowledged possible community concerns about the granting of additional powers to police:

'These are onerous and what some would call draconian measures. They are emergency measures in emergency times. We do not lightly empower the police with significant powers of search, seizure and confiscation in the absence of very difficult circumstances. We have seen racist violence. We have seen mobs pursuing people for no reason other than that they do not look like we do.... This disgusts all of us. We have seen in response to the mob rule in Cronulla what can only be called the use of mobile assault vehicles, which descended on suburbs and caused havoc.

...I say to those members of the community who are concerned about the bill's impact on civil liberties that these are tough times and it is always difficult to strike the correct balance between civil liberties and the need to protect and reassure the community. I think we have got the balance right.'⁵

In the parliamentary debate, comments ranged from the powers not going far enough⁶ to the Bill being an 'ill-conceived and knee-jerk response.'⁷

Endnotes

³ This table is compiled from media reports. While we are satisfied that it reflects generally the events in question we do not warrant its accuracy.

⁴ The Hon. Mr Morris Iemma MP, NSWPD, Legislative Assembly 15 December 2005 p. 20621.

⁵ The Hon. Mr Carl Scully MP, NSWPD, Legislative Assembly 15 December 2005 p. 20625.

⁶ 'The Bill simply is not strong enough in almost all its provisions.' Mr Peter DeBham MP, NSWPD, Legislative Assembly, 15 December 2005, p. 20622.

⁷ Ms Lee Rhiannon MLC, NSWPD, Legislative Council, 15 December 2005, p. 20586.

Chapter 3. Implementation of the Act

The usual period of time between Parliament introducing new police powers and the first use of those powers can vary enormously. In some cases police have months or years to put systems and procedures in place, and to train and equip officers.

The speed with which police were required to prepare for the Part 6A powers was unprecedented. The legislation was passed on Thursday 15 December 2005, and first used just hours later to establish several roadblocks in the Sutherland area. By the morning of Saturday 17 December 2005, there were nine authorisations in place allowing use of the new powers in wide areas of Sydney, the Central Coast, Newcastle and Wollongong.

Case Study

Operation SETA (15 to 19 December 2006)

Operation Seta⁸ commenced on 6 December 2005 as the initial response by Miranda Local Area Command (LAC) (the command responsible for Cronulla) to rising community tensions following two incidents where lifesavers were assaulted by males of Middle Eastern appearance. This tension erupted into a riot at Cronulla on 11 December 2005 with subsequent retaliatory attacks in the following days. Part 6A powers were enacted on 15 December 2005 and were first used that evening in response to police reports that indicated public disorder offences including assaults with weapons and malicious damage to property, were occurring within Miranda LAC. Authorisations for target roads were granted from 9pm on 15 December 2005 to 4am on 16 December 2005. Roadblocks were set up on target roads in Sans Souci, Blakehurst and Woronora.

Further threats of racist violence led to authorisations being granted for target areas from 17 to 19 December 2005. The target area authorisations covered a large part of metropolitan Sydney as well as areas of Wollongong, Newcastle and the Central Coast, potentially affecting about 21% of the total population of NSW. Within Sydney, the areas covered were the Randwick, Waverley, Sutherland and Rockdale local government areas and areas bounded by Bankstown, Campsie and Flemington LACs. Emergency Alcohol Free Zones were also established. The operation used 1500 additional officers on Saturday and 2000 on Sunday (more than 10% of the total number of police in NSW).

Police established security checkpoints and roadblocks en route to a number of beachside suburbs, to intercept and prevent potential 'trouble-makers' from entering these areas. Large numbers of vehicles and people were stopped and searched. Numerous items were seized including: vehicles, mobile phones, drugs, alcohol, weapons (knives, swords, arrows, spears etc), gardening and sporting equipment (baseball bats, hockey sticks, golf clubs and a pool cue), tools such as hammers, chisels, scissors, box cutters and crowbars, a club-lock, and items considered inflammatory, such as offensive t-shirts and Australian flags.

Police advised that there were no charges relating to specific offences under Part 6A. However, there were over 300 charges as a result of the use of the powers relating to custody of offensive implements, traffic infringements and drug possession. The authorisations expired after 48 hours and no further authorisations were sought, as it appeared that the unrest precipitated by the Cronulla riots had subsided.

3.1 NSW Police preparations for using the powers

Two factors characterised the initial police preparations for using the new powers.

Firstly, there was an urgent need to create new command structures to coordinate and manage major policing operations in the broad areas identified as being at risk of further unrest, and to task and train all staff involved in these operations. This required the creation and dissemination of new procedures, training materials and guidelines to clarify officers' respective roles and the ambit of their new powers.

Secondly, there were the enormous logistical challenges associated with amassing the staff, vehicles and other resources needed for these operations at short notice. There were 1500 officers deployed for these operations on 17 December 2005, and 2000 the following day. Leave was cancelled and officers brought in from other commands, including country areas.

The timeframe allowed for police to develop and implement these operations was extremely short. Even after the initial uses of the powers, there were ongoing pressures for NSW Police to be ready for further uses of the powers at very short notice. As the policing operations moved to a more sustainable footing, 792 officers were seconded to Operation Seta for the rest of December and most of January.

NSW Police produced a variety of documents regarding Part 6A powers, including:

- Public Order Management Handbook — Part 6A Law Enforcement (Powers and Responsibilities)
- Public Disorder Powers published in *Policing Issues & Practice Journal*, April 2006
- Six Minute Intensive Training papers:
 - Part 6A LEPRA Overview
 - Vehicle/Persons in an Authorised Area
 - SMS Messages
 - Special Powers in Respect of Liquor
 - Disclosure of Identity.

3.2. Other recorded uses of Part 6A

In addition to the use of the powers during Operation Seta, police have used the powers on two other occasions:

- 2 January 2006: to prevent further unrest following public disorder in Dubbo on 1 January 2006; and
- 19 March 2006: to prevent what police perceived to be a threatened public disorder within Miranda LAC.

Case Study

Dubbo Incident (1 to 2 January 2006)

In recent years, the Gordon Estate in West Dubbo has experienced recurring problems of vandalism, arson and social disorder. The estate has a predominantly Aboriginal population. In the early hours of New Years Day 2006 there was a disturbance involving up to 200 people in the estate following the arrest of a young Aboriginal man. Bricks, bottles and tiles were thrown at police. A police car and a stolen car were both torched. One police officer was seriously injured and other officers had to withdraw for their own safety. Police set up a command post outside the estate. Tensions lasted until morning.

Additional police were called in from other areas. The Orana LAC commander believed further violence was likely the following night. This belief was based on the level of violence the night before; the recent history of escalating violence; and intelligence that people from other areas were likely to travel to the estate to cause trouble. The commander contacted the Western Region commander in Dubbo and the Police Operations Centre in Sydney requesting permission to use the Part 6A powers, providing documentation to support the request. An authorisation, effective from 7pm on 1 January 2006 until 7pm on 3 January 2006 was granted, covering most of Dubbo.

Police then visited licensed premises near the Gordon Estate. The licensees apparently agreed not to sell any takeaway alcohol. On this basis, police did not need to use Part 6A powers to close any licensed premises. Police decided not to declare any area an Emergency Alcohol Free Zone.

Roadblocks were set up on all the roads leading to the estate. Any person wishing to enter had to provide identification to prove they resided there. During the course of the night, 22 vehicles were searched. One vehicle and a large carving knife found in the vehicle were seized. The vehicle was later returned and the knife confiscated. Police state that no person was prevented from leaving the estate.

There was no disorder while the Part 6A powers were in force. At about 4.30am on 2 January 2006 (approximately 10 hours later), after consulting with emergency services personnel, the commander decided the powers were no longer required and the roadblocks were removed.

There were no charges relating to specific offences under Part 6A. However, following the above vehicle search and seizure, an occupant of the vehicle was issued with an infringement notice for possession of a knife in a public place without a reasonable excuse. There were numerous charges resulting from the initial incident including riot, affray, violent disorder and assault.

Case Study

19 March 2006

At 10.15pm on Sunday 19 March 2006 approximately 200 motor vehicles and large groups of car enthusiasts were congregating in an outdoor car park area near the foreshore at Brighton-le-Sands, within St George LAC. As police were preparing to enter the car park to check for vehicle defects, dozens of cars departed en masse, many containing three to four males of Middle Eastern appearance. The car park exit required the vehicles to initially turn south towards Cronulla.

The Duty Officer at Miranda LAC formed the belief that the vehicles, given their number, the apparent ethnic make-up of the occupants and their general southerly bearing, were in progress towards the Cronulla area and there was a threat of a large-scale public disorder in which those persons intended to participate. In these circumstances the Duty Officer invoked the provisions of section 87N and, by 10.39pm, had established a roadblock to check southbound traffic on Taren Point Road, the most direct southerly route from Brighton-le-Sands to Cronulla.

While the roadblock was in place approximately 100 vehicles passed through and one vehicle was stopped. The roadblock was removed at 11.01pm when it became apparent that the vehicles that had earlier exited the Brighton-le-Sands car park had dispersed and were not bound for Cronulla. So far as can be determined, none passed through the roadblock.

There were no further reports of large gatherings of persons or vehicles that evening in either Miranda LAC or St George LAC.

3.3. Your views and experiences

We are particularly interested in obtaining the views of people who had direct experience of these initial police uses of the Part 6A powers. For example, if

- you were stopped at a roadblock
- you were searched
- your vehicle was searched
- your vehicle was searched and seized
- your mobile phone was examined
- your mobile phone was examined and seized
- any other item you owned was seized
- you were a resident or visiting a resident or business of a lockdown area
- you run a business in a lockdown area.

Comments about your experiences and views on how these powers affected you would be greatly valued. We would also welcome the views of police officers involved in these operations.

We would particularly like to hear how effective you believe these powers were in controlling or preventing a public disorder.

Questions for consideration — Personal impact of the new laws

1. How were you affected by the use of the powers? Please describe your experiences.
2. From your experiences how did the police use of these powers help control or prevent large-scale public disorders?
3. What changes could help improve police effectiveness while minimising any disruption or potential problems?

Endnotes

⁸ For the purposes of this issues paper the term Operation Seta is used to refer to the period 15 to 19 December 2005 when Part 6A powers were first used by NSW Police. Operation Seta formally ran from 6 December 2005 to 28 January 2006.

Chapter 4. Legislative context of Part 6A powers

Although Part 6A of LEPPRA contains new powers to deal with public disorder, the powers exist within a wider framework of legislative provisions that deal with riot and affray. Also, Part 6A is subject to some other LEPPRA provisions and safeguards, including section 201. Section 201 of LEPPRA provides that police must supply their details, give reasons for exercising the power and give warnings for failing or refusing to comply with directions.

The three main public order offences in NSW that deal with threatened or actual violence by large groups of people to persons or property are:

- Riot — section 93B of the Crimes Act
- Affray — section 93C of the Crimes Act
- Violent disorder — section 11A of the *Summary Offences Act 1988*.

All three relate to offences committed in both private and public places or persons in authorised public assemblies. Part 6A public disorder powers (other than those relating to licensed premises) can only be exercised in a public place, including schools and roads.

4.1. Defining ‘Public Disorder’

In order to invoke any of the Part 6A powers, relevant police officers must have reasonable grounds for believing that there is a large-scale public disorder occurring or threat of a large-scale disorder occurring in the near future.

Public disorder is defined in Part 6A as ‘a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different location.’⁹

The Government stated that it did not intend this legislation to be used in respect of peaceful protests, union demonstrations and other similar legitimate assemblies.¹⁰

In reviewing the Bill that introduced Part 6A into LEPPRA, the Legislative Review Committee¹¹ argued that it trespassed on a number of fundamental rights and liberties recognised under common law and international law, such as the right to peaceful assembly and the right to silence. Whether such trespasses were justified depended, in the committee’s view, on the existence of the threat of a public disorder, the extent of the threat, and the effectiveness of the provisions in Part 6A in addressing the threat.

This issue was raised during parliamentary debate on the new powers:

‘How can we be sure that these laws will not, even within two years before the sunset clause take effect, be used to quell legitimate civil disobedience, such as large rallies in the city on industrial relations issues? ... Will these laws allow the police to lock down the entire city of Sydney? We must ensure that police do not have access to emergency powers for everyday events, for example, protestors converging on Lucas Heights.’¹²

NSW Police produced guidelines for officers who are considering the appropriateness of seeking or granting an authorisation. The guide states:

The second reading speech makes it clear that ‘public disorder’ is not intended to include peaceful protests. It is restricted to riots or similar situations. The mere fact that there are a lot of people at an event, such as a football match, where there may be fights between opposing fans, would not be sufficient to amount to a large-scale public disorder.

Note that under the definition, there does not have to be a single site of the disorder — a number of incidents at different locations can be considered together to decide whether a ‘large scale public disorder’ is threatened or is occurring.

There is no definition of ‘large scale’ so the ordinary meaning of that phrase applies.’¹³

Questions for consideration — Public disorder

4. What are your views on the adequacy of the definition of ‘public disorder’ for the purposes of Part 6A?
5. What are your views on whether Part 6A sufficiently reflects the stated intention that it not be used in respect of peaceful assembly? Do you believe any changes are required?

Endnotes

⁹ s87A(1).

¹⁰ The Hon. Morris Iemma MP, NSWPD, Legislative Assembly 15 December 2005, p. 20620.

¹¹ Legislative Review Digest, No 1 of 2006, 27 February 2006, p. 10.

¹² Ms Lee Rhiannon, MLC, NSWPD, Legislative Council 15 December 2005, p. 20587.

¹³ Public Order Management Handbook, Legal Services NSW Police.

Chapter 5. Special powers to prevent or control public disorders

Division 3 of Part 6A details the special powers introduced to prevent or control public disorder in a public place. These include powers to:

- place a cordon or establish a roadblock
- stop and search a vehicle
- stop and search a person
- require a person to disclose his or her identity
- seize and detain items.

The Premier referred¹⁴ to these powers as 'lockdown powers', and they are considered to be central to the legislation. The aim is to 'enable police to declare an area on the basis that a large-scale public disorder is occurring or threatens to occur and then employ roadblocks and stop-and-search powers in or around that area. The disorder need not be constituted by one big incident, but can be constituted by several small incidents in different locations. This gives police freedom to nip a developing situation in the bud.'¹⁵

While a number of these powers already existed before the introduction of Part 6A, the enactment of the new powers has significantly reduced some of the threshold requirements for police to exercise powers in a situation where a large-scale public disorder is occurring or threatening to occur.

5.1. Authorisations to use special powers

The grounds for authorisations are provided for under section 87D:

An authorisation for the exercise in a public place of the special powers conferred by this Division may be given in accordance with this Division if the police officer giving the authorisation:

- has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and*
- is satisfied that the exercise of those powers is reasonably necessary to prevent or control the disorder.*

If both of these tests are satisfied, an authorisation may be given to cover a particular target area or road.

The authorisation defines the area within or roads where the powers can be used (the 'target area'). Except in certain emergency circumstances outlined in section 87N (see page 19 of this paper for further discussion of this section), only the Police Commissioner, a Deputy Commissioner or an Assistant Commissioner can give the authorisation.¹⁶ During the parliamentary debate, the Police Minister stated: 'As to the more draconian measures, authority will be given to officers of the rank of assistant commissioner and above. That means that about 12 officers from 14,700 will be authorised to put these measures in place'.¹⁷ He indicated that this limitation on the number of officers who can give an authorisation was to ensure that the public order powers would be used appropriately. In addition, a further application to extend an authorisation beyond 48 hours must be approved by the Supreme Court. These provisions are intended to provide an important safeguard against the inappropriate use of Part 6A powers.

Other legislation conferring particularly intrusive police powers also includes certain safeguards. For instance, the *Terrorism (Police Powers) Act 2002* (Terrorism Act) confers special powers to prevent and investigate terrorist acts such as the power to cordon areas; search persons, vehicles and premises; seize and detain things; and obtain a person's details. Section 9(1) of the Terrorism Act states that to exercise these powers an authorisation may only be given by the Commissioner of Police or by a Deputy Commissioner of Police and must also have the concurrence of the Police Minister. Only the Supreme Court can authorise the use of preventative detention orders and covert search warrants under Part 2A and Part 3 of the Terrorism Act.

Questions for consideration — Special powers authorisation

6. Should police officers be charged with the final decision to authorise the use of the powers in Division 3 of Part 6A? If not, who else should authorise these powers?

7. If police officers are the appropriate people to authorise the use of these powers, is the present limitation to officers of the rank of Assistant Commissioner or above appropriate?
8. Are the grounds for giving an authorisation for the exercise of special powers, as set out in section 87D, appropriate? If not, in what respect should they be altered?

5.1.1. Defining a ‘public place’

The public disorder powers under Part 6A can only be used in a public place,¹⁸ including schools and roads.¹⁹ NSW Police has raised an issue regarding the definition of ‘public place’. In many riot scenarios crowds will not necessarily be selective in terms of where they gather or participate in a public disorder. In order for police to cover all contingencies in containing a public disorder situation, it may be necessary for police to go onto private property. In Cronulla, for example, police found that crowds gathered in the unfenced front yards of apartment blocks. Much of the alcohol consumed before the riot involved groups of drinkers at these locations. While police already have some powers to enter private property in a disorder situation, the question has been raised as to whether Part 6A needs to be amended.

Existing powers include those under section 9 of LEPPRA granting police the power to enter premises (private or public) to prevent or stop a breach of the peace²⁰. The offences relating to public order (riot, affray and violent disorder) may be committed in private as well as in public places and police can enter premises to effect an arrest. Extending the definition of public place under Part 6A to include private property would be a substantial expansion of powers provided to police, particularly given that many of the Part 6A powers can be exercised in relation to an individual without requiring evidence of wrongdoing by that person.

Question for consideration — Use of powers on private property

9. Should the special powers provided for in Part 6A be restricted to use in public places only, or should there be some limited amendment to allow police to exercise the public disorder powers on private property or certain parts of private property? If so, what safeguards should apply?
10. Are existing police powers enabling entry to private premises on the basis of disorder offences sufficient?

5.1.2. Determining the scope of the authorisation

Section 87E of Part 6A provides:

- (1) *An authorisation may authorise the exercise of the special powers conferred by this Division in a public place:*
 - (a) *for the purpose of preventing or controlling a public disorder in a particular area described in the authorisation, or*
 - (b) *for the purpose of preventing persons travelling by a road specified in the authorisation to an area to create or participate in a public disorder (whether or not the area is also subject to an authorisation under paragraph (a)).*
- (2) *The area or road is referred to in this Division as the target of the authorisation.*

Although section 87E indicates that the purpose of an authorisation for a target area is to prevent a public disorder in that area, Part 6A does not limit the size of a target area. Of the 10 authorisations for the powers to be used in target areas, the areas have generally been defined widely, extending to include entire local government areas or the areas covered by one or more local area commands. Target areas have ranged from a single authorisation covering the Bankstown, Flemington and Campsie local area commands (with a combined population of 410,000 residents) through to a few streets adjacent to Terrigal Beach (population 6,600) where geography and limited road access enabled a more targeted use. Police have argued that the current definition gives them flexibility in establishing roadblocks and using the powers within the target areas, to deal with situations such as where a crowd moves or where a convoy of cars takes an alternate route.

However, a large target area also means that more people will be subject to and likely to be affected by the use of the powers. Section 87A(3) extends the area of an authorisation so that a person or vehicle in an area that is the target

of an authorisation includes a person or a vehicle that is about to enter or that has recently left a target area. This provision permits police, for example, to search vehicles before they enter a target area.

A working group established by the Ministry of Police²¹ (Ministry Working Group) identified a further issue in respect of section 87E, namely, whether the public disorder powers can be used in an area that is outside a target area, where there is no threat of a public disorder, but where people are congregating prior to moving to another area to create or participate in a public disorder.

For example, if a group of people are congregating in one park in a suburb but intending to travel to another suburb to participate in a public disorder, would the powers be available to police? There appears to be some uncertainty as whether police could make the place of congregation a target area when it is not the location of the anticipated disorder or threat. However, section 87N may operate in this situation (see page 19 for further discussion of section 87N).

This issue was also raised in the parliamentary debate, where the view was expressed that the effectiveness of section 87E *'will be limited by police having powers to search cars only within the locked-down area, instead of at the point of assembly, which is far more sensible, practical and effective option. It means they can search only after the cars have assembled and arrived at the point where the occupants intend to commit the crime.'*²²

5.1.3. Form of the authorisation

Section 87F states that an authorisation may be given either by instrument in writing or orally (if given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so). The authorisation must describe the public disorder to which it applies, describe the areas or specify the road targeted, and specify the time it ceases to have effect.

However, there is no requirement that the authorisation include a statement of reasons as to the grounds upon which the senior police officer is satisfied that the exercise of these powers is reasonably necessary to prevent or control the disorder.

5.1.4. Duration and revocation of authorisations

An authorisation to create a target area or road should not exceed the period that the police officer giving the authorisation considers reasonably necessary for the purpose for which it is given but in any event cannot exceed a total of 48 hours.²³ If the public disorder is not under control or resolved within the 48 hours allowed, an application must be made to the Supreme Court seeking approval for further authorisation.²⁴

During the parliamentary debate there were concerns raised²⁵ that 48 hours was not long enough for an authorisation to run and that police would not only end up in court arguing for an extension of the authorisation but may also have to argue about the need for the authorisation. To date, there have been no such applications to the Supreme Court.

Section 87G(4) provides that the Commissioner of Police or a Deputy or Assistant Commissioner may revoke an authorisation at any time, and must revoke it if directed to do so by order of the Supreme Court. Revocations have generally not been used in relation to the public disorder powers. The only recorded use to date was on the evening of 15 December 2005 as outlined below. In practice, authorisations have otherwise simply lapsed without revocation, even where, as in the case of Dubbo, police decided after 10 hours that the risk of public disorder had so significantly reduced that roadblocks were removed and police stopped using the powers.

Revocation of an authorisation was used on the night of 15 December 2005. NSW Police gave authorisations for three target roads and roadblocks were placed on these roads. However, police realised one of the roadblocks was in the wrong place and had to obtain authorisation for a different target road to allow roadblocks to be placed in a more appropriate location. After this first use of the powers, police authorised target areas rather than target roads to allow greater flexibility.

At present, if NSW Police wants to continue an authorisation or apply for a further authorisation that would take the total period of authorisation beyond the 48 hour period, it must apply to the Supreme Court. However, after the expiry of an authorisation, it is open to NSW Police to grant a new authorisation within a very short time period with no such application. This occurred early in Operation Seta. Authorisations granted for target roads in the Sutherland area ended at 4am on 16 December 2005. At 7.15am the following day, NSW Police granted an authorisation for a target area covering the whole of Sutherland Shire, giving police the option of re-establishing roadblocks and cordons on some of the target roads for a further 48 hours.

Questions for consideration — Scope and time period of special powers authorisations

11. What are your comments as to the police practice to date of authorising whole local government areas and police commands as target areas for authorisations?
12. In relation to determining the target area or road the subject of the authorisations, what factors should be considered in balancing the public interest in police being able to exercise the special powers effectively to prevent or control public disorders, as against the public interest in minimising the number of people not involved in the disorder disrupted or affected by the use of the powers?
13. Does Part 6A provide police with sufficient flexibility to deal with actions of persons preparing and congregating in one place to participate in a public disorder elsewhere? If not, in what respects should it be amended?
14. What are your views on the total period of individual authorisations not exceeding 48 hours? Do you think this should be increased or decreased?
15. What are your views as to the requirement for approval by the Supreme Court for extending the period of the authorisation? Is this an appropriate safeguard on the use of the Division 3, Part 6A powers? Should there be some limit on the period of time within which a further authorisation can be granted by police without judicial scrutiny?
16. Should senior police be required to set out the grounds for their satisfaction that the execution of special powers is warranted in the instrument giving the authorisation?
17. Should senior police be required to regularly consider, during the period of the authorisation, whether the use of the powers is still reasonably necessary or whether the authorisation should be revoked?

5.2. Power to obtain disclosure of identity and penalties for non-disclosure

Section 87L(1) of Part 6A provides that:

- (1) *A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:*
- (a) *the person is in an area that is the target of an authorisation (whether or not in or on a vehicle), or*
 - (b) *the person is in or on a vehicle on a road that is the target of an authorisation,*
- and the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder.*

Police already have the power in certain circumstances to require a person to disclose his or her identity. For example, an officer exercising their functions under road safety legislation provides a power to require disclosure of identity.²⁶

LEPRA also provides police with the power to require a person to disclose their identity, as well as specific powers to require disclosure of identification for drivers, passengers and owners of vehicles. There are a number of requirements before an officer can exercise these powers. For example, police can request that a person disclose their identity if police have reasonable grounds to suspect that the person may be able to assist in the investigation of an indictable offence.²⁷

Identity requests under Part 6A only require that the person is in the target area and that the officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder.

In considering section 87L the Legislative Review Committee were of the view that this section trespassed on the right to silence, an important rule of law and a basic human right. However, the committee stated that this right may be modified or abrogated when in the public interest.²⁸

Section 87L prescribes two offences under this section with penalties of up to \$5,500 or 12 months imprisonment or both. Section 87L(2) provides that: 'A person who is so requested to disclose his or her identity, must not, without reasonable excuse, fail or refuse to comply with the request.' Section 87L(3) provides that 'A person must not, without reasonable excuse, in response to any such request, give a name that is false in a material particular, or give an address other than the person's full and correct address.' Section 87L(4) allows an officer to request a person who is required to disclose their identity, to provide proof of identity. There is no penalty if a person fails to act on this request.

As previously stated, a police officer cannot request identification from a person unless he reasonably suspects that a person has been involved or is likely to be involved in a public disorder. In this respect, the disclosure powers differ from the Part 6A stop and search powers, which can be exercised simply because a person is in a target area or on a target road. In the parliamentary debate, Mr Andrew Tink stated *'If the situation is so dire that an area, through the authority of the Commissioner of Police or Deputy Commissioner, is declared to be a special zone, as far as I am concerned, anybody in that area should be required to reveal his or her identity.'*²⁹

In relation to section 87L(3) Mr Tink also raised the question of reasonable excuse for not providing identification. He stated he did not understand how a person could have a reasonable excuse for giving an identity that is 'false in a material particular'. He could see no possible excuse for a person giving a false name and was of the view that police patrolling a lockdown area should be able to ask a person who they are without any test.

We do not know how many people were asked to disclose their identity during Operation Seta. NSW Police has advised that there are no records other than those made in the notebooks of individual officers. Given the number of police involved during this time period, it would not be feasible to obtain this information.

From the information made available to us, it appears that people may have been asked for identification as a matter of course when stopped at roadblocks. In Dubbo, it appears the reason for requesting identification was to establish that a person lived in the Gordon Estate and therefore had a legitimate reason for visiting the area.

Questions for consideration — Disclosure of Identity

18. What are your views on the power provided to police to require a person in a target area to disclose their identity?
 - (i) Is it a necessary power?
 - (ii) If so, should police be able to exercise the power simply on the basis that the person is in a target area?
 - (iii) Is the present requirement of 'reasonable suspicion' appropriate?
19. In relation to the consequences of non-compliance
 - (i) Is it necessary for section 87L(3) to include an exception for reasonable excuse?
 - (ii) Should failure to comply with a request for proof of identity be an offence?

5.3. Power to place or establish cordon or roadblock

Prior to the enactment of Part 6A, Division 5 of LEPR³⁰ provided police with general powers to establish roadblocks. However, the general roadblock powers have been widened under Part 6A to focus on prevention and control of public disorders. Section 87I provides that a police officer may place a cordon around part or all of a target area or establish a roadblock on a target road or in a target area, in order to stop and search people or vehicles or to prevent people entering or leaving an area without the permission of a police officer.

Once a target area or target road has been authorised, there are no other thresholds police have to meet to establish the roadblock. However, a police officer must not refuse permission for a person to leave the area unless it is reasonably necessary to do so to avoid a risk to public safety or the safety of the person.³¹ There are no similar provisions for persons seeking permission to enter a target area, even if they are a resident.

Police advised us that they used roadblocks in at least two different ways during Operation Seta:

- Hard roadblock: police stop all vehicles and all occupants are checked.
- Soft roadblock: police restrict traffic flow to assess passing vehicles, and only stop those they believe may be involved or are going to be involved in a public disorder.

NSW Police have indicated that guidelines were not prepared to assist officers in determining whom they should stop and search at roadblocks. Senior police have indicated that this is a discretionary issue and that it is up to the intuition and judgement of the individual officers. On this issue, Deputy Commissioner Andrew Scipione stated:

*'This is very much a call for the officer on the ground, again, based on where they are and the intelligence that we're managing, what is [it] that we're seeing by way of behaviour and the way people are conducting themselves certainly give some indication as whether in fact we should look at them.'*³²

There were 81 roadblocks established during Operation Seta.³³ There is currently little data in relation to how these roadblocks and road closures affected the general public. Police did not make any records of people refused permission to enter or leave target areas. Initial analysis of police computer data from this period suggests that there were a substantial number of people stopped and searched at roadblocks. Additionally, the information suggests that people were generally compliant with the directions given by police.

Questions for consideration — Roadblocks and cordons

20. What is your view on the power provided to police to establish roadblocks and cordons?
- (i) Is it a necessary power?
 - (ii) Should guidance be provided to police about the exercise of powers of cordons and roadblocks, beyond that set out in section 87I(2) not to refuse permission for persons to leave an area?
 - (iii) Should there be specific provisions to safeguard the rights of residents in a target area?

5.4. Powers to stop and search vehicles and persons

Police had powers to stop and search vehicles and people prior to the provisions of Part 6A. For example, section 21 of LEPRa gives police the power to search people in circumstances where there are reasonable grounds to suspect a person has stolen goods, or is in possession of drugs or dangerous articles. Similarly, sections 36, 36A and 37 of LEPRa allow vehicles to be stopped and searched under certain specified circumstances.

Section 87J provides that a police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if the vehicle is in an area or on a road that is the target of an authorisation. A police officer may detain a person or a vehicle for so long as is reasonably necessary to conduct a search under this section. Section 87K(1) provides that a police officer may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person if the person is in an area or in or on a vehicle on a road that is the target of an authorisation.

Any search of a person conducted using these powers must be done in accordance with the general safeguards for searches that are intended to preserve the privacy and dignity of the person being searched.³⁴ For personal searches, Part 6A provisions only allow frisk and ordinary searches which may include requiring the person to remove outer clothing. Police must ask for the person's co-operation, and they must search as quickly as possible in the least invasive way possible, ensuring reasonable privacy. Police must not search and question at the same time. Where reasonably practicable, the search must be carried out by a police officer of the same sex as the person searched. Strip searches are not permitted. These searches must be conducted in a manner consistent with Part 4 of Division 4 of LEPRa.

Most significantly, Part 6A removes the threshold tests for police using stop and search powers. For almost any other search power, a police officer must have a reasonable suspicion of some criminal circumstance. However, once an authorisation for a target area or road is in place, police are permitted to stop and search any vehicle or person simply because they are in or on the target area or road. A police officer does not have to have a reasonable suspicion that a person or a vehicle is involved in or likely to be involved in a public disorder.

A number of speakers raised concerns during the parliamentary debates about this matter.³⁵ In response, the Government advised that it supported the sentiment and concern but did not support the proposed amendments as the '*...Government has taken a policy decision that the powers contained in proposed sections 87J and 87K are random powers not to be fettered by reasonable suspicion.*'³⁶ The Legislative Review Committee (the Committee) also raised concerns with section 87J and section 87K and noted that the exercise of these powers is a significant trespass on the personal right to privacy. Notwithstanding the circumstances of a public disorder, the Committee was concerned that people may be stopped and searched merely on the basis of their presence in an area, regardless of whether a police officer has any cause to suspect that they are, or were, involved in a disorder. According to the Committee, this went against the common law principle of the inviolability of a person's property being protected by the need for police to obtain an appropriate warrant from a judicial authority.³⁷

Questions for consideration — Searches

21. What is your view of the power provided to police to search vehicles and persons?
- (i) Is it a necessary power?
 - (ii) Should officers be required to form some reasonable suspicion — for example about involvement or likely involvement in a public disorder — before being permitted to exercise these powers?
 - (iii) Are the provisions relating generally to personal searches set out in Part 4, Division 4 LEPRa sufficient and/or appropriate conditions for searches under Part 6A?

5.5. Power to seize and detain motor vehicles, mobile phones and other communication devices

Section 87M(1)(a) provides that:

A police officer may, in connection with a search under this Division:

- (a) *seize and detain, for a period of not more than 7 days, a vehicle, mobile phone or other communication device if the seizure and detention of the vehicle, phone or device will assist in preventing or controlling a public disorder...*

While the section allows seizure of communication devices, there is little guidance as to what constitutes a communication device.

Police may only detain an item for a period of not more than seven days. However, on application by police, a local court can authorise police to keep these items seized under section 87M(1) for a further 14 days.³⁹ Currently, we are unaware of any such application.

Section 87M(1)(a) seems to permit the seizure of certain things that are within a target area without a need to establish that the thing was used or was intended to be used in an offence. The aim of this provision is to remove 'the tools that people may use to feed the unrest'.³⁹ The only threshold test to seizure and detention is that it will assist in preventing or controlling a public disorder.

Information provided by police suggests 14 vehicles were seized pursuant to this provision during Operation Seta. It is unclear in many of these instances what the reasons for seizure were. In a number of cases it appears the vehicle was seized following a search of the occupant's mobile phone, and that search revealed riot related text messages. There were also instances of vehicles seized following a vehicle search which had located items that police believed could be used in a public disorder situation.

News reporting that accompanied the Cronulla riots and the subsequent retaliation attacks strongly suggested that mobile phones were a key tool of 'rioters'. The reports suggest text messages not only inspired the crowd to rally at Cronulla on 11 December 2005, but also helped to coordinate the retaliation that evening and the following day. Advice from police is that many of the mobile phones that were searched and seized contained stored messages relating to the events. In the days following the Cronulla riot, many residents of the Sutherland Shire reportedly received several messages a day regarding these events. These messages were apparently often unsolicited. No other forms of communication devices were seized.

Part 6A provides for the creation of regulations to govern the detention and return of vehicles, mobile phones or other communication devices. The regulations currently only deal with vehicles. NSW Police has advised that all items seized were recorded either as exhibits or as miscellaneous property. In most instances, people were told how to collect their items. Some items were destroyed without objection from the owners.

Information from police indicates that most officers gave the correct advice to individuals regarding the return of their items. However, some of the advice provided was inaccurate. For example one person was informed that he would have to apply to the court for an order for the return of his mobile phone.⁴⁰ The legislation does not specify what powers courts may have to require the return of property before the specified period expires. The procedure relating to the return of property is also unclear.

During Parliamentary debates, concern was raised that the seven day time limit for the initial seizure of a motor vehicle may be insufficient, and that a longer period would prove a greater deterrent.⁴¹

A privacy matter as regards mobile phones arose in the aftermath of the use of the powers in December 2005, following police searching mobile phones for text messages. Ms Pauline Wright from the NSW Council for Civil Liberties is reported to have said: *'This searching text messages is like looking into your private mail. There are similar powers for computer hard drives and so on, but in our view searching text messages is an extraordinary intrusion. If you regard these text messages as letters, then you are having people search your private mail.'*⁴²

5.5.1. The power to seize and detain other things

Section 87M(1)(b) provides that:

A police officer may, in connection with a search under this Division:

- (b) *seize and detain all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a public disorder).*

For seizures of items other than vehicles, mobile phones and other communication devices, police have to rely on either section 87M(1)(b) or other specific powers provided outside of Part 6A. The test in section 87M(1)(b) is far more stringent than the test required by section 87M(1)(a).

During Operation Seta police seized a large number of items. The following information is drawn from an initial analysis of police records.⁴³ In many instances it is apparent that the items seized met the criteria in section 87M(1) or were covered by other legislation.⁴⁴ However, from the information provided by police there were some items seized without a clear legislative basis.

5.5.2. Seized pursuant to section 87M(1)(b) of Part 6A or under the provisions of other legislation:

- prohibited plant or prohibited drug, for example cannabis⁴⁵ and ecstasy⁴⁶.
- offensive implement (dangerous article/dangerous implement), for example knives,⁴⁷ arrows,⁴⁸ iron bar,⁴⁹ knuckle-duster,⁵⁰ spear,⁵¹ spear gun,⁵² swords.⁵³

5.5.3. Other items seized where legislative basis is less clear

- items that may be used to inflame a public disorder or violence such as an offensive t-shirt⁵⁴ and Australian flags.⁵⁵
- items deemed by police as either offensive implements or implements that could be used in a public disorder due to the nature of the 'current climate'. For example a golf club⁵⁶ despite evidence provided that the owner had just played golf; a baseball bat⁵⁷ that a driver claimed was his son's and he had forgotten was in the vehicle; a club-lock⁵⁸ where the owner did not have a key.
- items seized due to 'current climate' even though police considered the explanation provided plausible, for example a builder's pinch bar⁵⁹ held by a registered builder who could provide proof of his trade; a piece of chrome vacuum tubing⁶⁰ used to prop open a vehicle's faulty rear hatch; an axe handle⁶¹ despite police verifying that the person owned a wood chopping company.

It would appear some police took an expansive view of section 87M and seized any item that could have potentially been used as a weapon or could inflame a large-scale public disorder.

Questions for consideration — Seizures

22. What are your views on the power of the police to seize or detain motor vehicles?

- Is it necessary?
- Is the initial seven-day period of detention appropriate?
- Is the authority of the local court to extend the period for an additional 14 days sufficient or appropriate?
- Is the test — that seizure will assist in preventing or controlling a public disorder — appropriate or is some other test (for example, a reasonable suspicion or belief that the vehicle has been or is likely to be involved in a public disorder and seizure will assist in preventing or controlling the disorder) more appropriate?

23. What are your views on the power of police to seize mobile phones or other communication devices?

- Is it necessary?
- Is the initial seven-day period of detention appropriate?
- Is the authority of the local court to extend the period for an additional 14 days sufficient or appropriate?
- Should police be permitted to search through text messages or other SMS information in mobile phones?
- Is the test — that seizure will assist in preventing or controlling a public disorder — appropriate or is some other test (for example, a reasonable suspicion or belief that the vehicle has been or is likely to be involved in a public disorder and seizure will assist in preventing or controlling the disorder) more appropriate?
- Should the term 'other communication device' be defined in some manner, so as to provide better advice to police about what it encompasses?

24. Do police require additional powers, beyond those set out in section 87M, to seize items which may become weapons or other tools for rioters in a public disorder?

5.6. Power to disperse groups

The *Crimes Legislation Amendment (Gangs) Act 2006* (Gangs Act) was passed by Parliament on 19 September 2006 and is currently awaiting proclamation. The Gangs Act amends Part 6A of LEPR by including a power to disperse groups.⁶² Section 87MA gives further powers to police officers to prevent or control public disorders. This section will allow a police officer to give a direction to a group of people assembled within an area that is the target of authorisation to disperse immediately. It is an offence to refuse or fail to comply with such a direction without a reasonable excuse. The maximum penalty is \$5500.

Currently Part 14 of LEPR provides police with powers to give directions. The maximum penalty for failure to comply with a direction is \$220.

Question for consideration — Dispersing groups

25. What is your view of the new powers provided for in section 87MA?

5.7. Powers exercisable without authorisation

Section 87N provides for the exercise of Part 6A powers, including search, seizure and the requirement to disclose identity, by any police officer without authorisation, in certain circumstances.

Section 87N provides:

- (1) *This section applies where a police officer stops a vehicle on a road in accordance with a power conferred by or under this or any other Act, being a road that is not (or not in an area) the target of an authorisation under this Division.*
- (2) *The police officer may exercise the powers conferred under this Division in relation to the vehicle (and any person or thing in or on the vehicle) without such an authorisation if the officer:*
 - (a) *has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and*
 - (b) *suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder, and*
 - (c) *is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder, and*
 - (d) *is satisfied that the urgency of the circumstances require the powers to be exercised without an authorisation under this Division.*

Parliamentary debate indicates that section 87N is intended to provide police officers with immediate access to the Part 6A powers to respond to a looming or already occurring large-scale public disorder. For example, the Premier stated:

... [S]ection 87N... allows any police officer to stop a vehicle on a road without an authorisation being in force providing the officer has reasonable grounds to believe a large-scale public disorder is occurring or threatening to occur in the near future and that the use of the powers is reasonably necessary for preventing or controlling the disorder. Proposed section 87N is there as a back-up power for urgent circumstances. It is a prudent measure allowing front-line police to deal with a brewing riot while formal authorisation is sought.⁶³

This office is aware of one use of section 87N. This occurred, for a brief period, during the evening of Sunday 19 March 2006, some three months after the disturbances related to the Cronulla riot (see case study on page 7).

A number of practical issues have been identified in relation to Section 87N:

1. It can only be used in relation to a vehicle on a road or 'road related area'

The wording of section 87N (1) suggests that section 87N can only be used in relation to a vehicle on a road or in a road related area (which includes a car park). However, the section cannot be used in situations where vehicles are not involved — for instance on a train or in relation to a pedestrian. If the intention of Parliament is to allow police to deal with 'brewing riots', extending the section may assist operational police.

2. The test for invoking section 87N is complex.

The Ministry Working Group identified that section 87N(2) may be too difficult for police to interpret in the field. Before a police officer can use this power, there are four tests to satisfy (that is, clauses (a), (b), (c) and (d) of section 87N(2)). NSW Police suggested that, even if standard operating procedures or guidelines were developed to ensure that field officers have an increased operational understanding of the situations to which this section can be applied, this section would still be difficult to apply in exigent circumstances. However, the Ministry Working Group was advised that Parliament intended that the use of the emergency powers under section 87N be subject to a real and substantive test. If the provision was to be simplified, it must be done in a way that did not remove the obvious safeguards that Parliament intended.

3. There are few conditions governing use of the section 87N powers:

(a) *The powers can be exercised by any officer without authorisation by a senior officer.*

This can be contrasted with the general roadblock powers contained in Part 4 Division 5 of LEPRA which allows roadblocks to be set up by any officer without authorisation where operational circumstances require, but the authority of a senior police officer is required as soon as practicable for the continued use of the power.⁶⁴

It should be noted, however, that while there is no legislated notification requirement for section 87N, NSW Police have indicated there are strict procedures in place, requiring notification to the LAC Duty Officer and the Duty Operations Inspector (DOI) of any contemplated use of this provision.

(b) *There is no maximum time frame specified for use of section 87N*

In the general LEPRA roadblock powers, a roadblock can only be in place for a maximum of six hours before a further authorisation is required.⁶⁵ While the Premier made it clear during the second reading speech that section 87N was intended to enable an interim response while an authorisation was sought for declaration of a target road or area⁶⁶, the legislation does not specify any maximum period for use of section 87N.

(c) *There is no requirement to document decision making*

The legislation does not require police to document use of section 87N. This can be contrasted with the other Part 6A powers where an authorisation or the establishment of an emergency alcohol free zone (EAFZ) has to be put in writing, as is the case with the general roadblock powers in LEPRA.⁶⁷

Questions for consideration — Use of special powers without authorisation

26. What is your view of the power for a police officer to exercise Part 6A functions without authorisation:

- (i) Is it necessary?
- (ii) Is the nature of the powers appropriate, including where these powers might be exercised?
- (iii) Is the test for using the powers appropriate? If not, what other test might be appropriate?
- (iv) Should there be some additional conditions on the use of the powers?

Endnotes

¹⁴ The Hon. Morris Iemma MP, NSWPD, Legislative Assembly, 15 December 2005, p. 20620.

¹⁵ *ibid* p. 20620.

¹⁶ s. 87F(1).

¹⁷ The Hon. Mr Carl Scully, NSWPD, Legislative Assembly 15 December 2005 p. 20625.

¹⁸ s. 87E(1).

¹⁹ s. 87A(1) defines public place to include a school, contrast with Section 3 of LEPRA where public place is defined to specifically exclude schools.

²⁰ s. 9 and s. 10 LEPRA.

²¹ As Part 6A was developed and gazetted in a short time a working group established by the Ministry of Police to ensure the operation of the legislative was effective and to discuss possible issues of concern. The Working Group membership comprised NSW Police, Ministry of Police, Police Association of NSW, the Attorney General's Department and The Cabinet Office. The Ombudsman's Office attended as an observer.

²² The Hon. Duncan Gay, MLC, NSWPD, Legislative Council, 15 December 2005 p. 20584.

²³ s. 87G(2).

²⁴ s. 87G(3).

- ²⁵ Mr Andrew Tink MP NSWPD, Legislative Assembly 15 December 2005 p. 20625.
- ²⁶ s. 171(1) *Road Transport (General) Act 2005*.
- ²⁷ s. 11 LEPRA.
- ²⁸ Legislative Review Digest, No 1 of 2006, 27 February 2006, p. 11.
- ²⁹ Mr Andrew Tink, MP NSWPD, Legislative Assembly 15 December 2005 p. 20625.
- ³⁰ See s. 37 to s. 41.
- ³¹ s. 87I(2).
- ³² 'Sydney tourism industry braces for popularity drop', 19 December 2005 www.abc.net.au/worldtoday/content/2005/s1534031.html— accessed 4 September 2006.
- ³³ Information provided by NSW Police 14 June 2006.
- ³⁴ See s. 32 LEPRA.
- ³⁵ For example The Hon. Peter Breen MLC, NSWPD, Legislative Council, 15 December 2005 p. 20607 — in committee.
- ³⁶ The Hon. John Della Bosca MLC, NSWPD, Legislative Council, 15 December 2005, p. 20608.
- ³⁷ Legislative Review Digest, No 1 of 2006, 27 February 2006, p. 13.
- ³⁸ Under s. 87M(2) the local court must be satisfied that the continued detention of the item will assist in preventing or controlling a public disorder. LEPRA also allowed an officer to seize or detain an item found during person or vehicle searches under s 21 and s. 36 of LEPRA if: the article is dangerous or the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence.
- ³⁹ The Hon. Mr Carl Scully MP, NSWPD, Legislative Assembly 15 December 2005 p. 20625.
- ⁴⁰ E25958949.
- ⁴¹ The Hon Duncan Gray MLC, NSWPD, Legislative Council 15 December 2005 p. 20585.
- ⁴² 'Anxiety mounts over scope of laws', SMH 20 December 2005 (www.smh.com.au/news/national/anxiety-mounts-over-scope-of-laws) — accessed 20 December 2005.
- ⁴³ Further analysis of COPS Events and Court Decisions will be undertaken for the final report.
- ⁴⁴ See for example s. 21 and s. 26 LEPRA and s. 11 *Summary Offences Act 1988*.
- ⁴⁵ E50125301, E25632864, E25384537.
- ⁴⁶ E26430953.
- ⁴⁷ E5013140, E27762383.
- ⁴⁸ E25871826.
- ⁴⁹ E25585336.
- ⁵⁰ E25581256.
- ⁵¹ E25871826.
- ⁵² E26440253.
- ⁵³ E25635361, E25579572, E26044040.
- ⁵⁴ E27006755.
- ⁵⁵ E25947305, E25958949, E25424070.
- ⁵⁶ E25573023.
- ⁵⁷ E25973604.
- ⁵⁸ E26050440.
- ⁵⁹ E25607814.
- ⁶⁰ E83955938.
- ⁶¹ E25950305.
- ⁶² The amendment does not apply to section 87N.
- ⁶³ Premier Morris lemma, NSWPD, Legislative Assembly 15 December 2005, p. 20621, p. 20620.
- ⁶⁴ At s 37(3).
- ⁶⁵ s. 40.
- ⁶⁶ The Hon. Mr Morris lemma MP, NSWPD, Legislative Assembly 15 December 2005 p. 20621.
- ⁶⁷ s. 41 of LEPRA also sets out the information that must be contained in an authorisation including the time and date they were used, the basis for the roadblocks (including the roadblock power police are relying on), the area covered by the authorisation, the vehicle or class or vehicles covered by the authorisation and the period of the authorisation (if less than six hours).

Chapter 6. Liquor restrictions

Police and media reports suggest persons involved in the Cronulla riot consumed large quantities of alcohol and this has been credited as a significant contributor to the racial violence on 11 December 2005.

Part 6A allows police to prohibit the sale and supply of liquor and to establish emergency alcohol free zones. An officer of the rank of Superintendent or above can authorise the closure of any licensed premises or prohibit the sale or supply of liquor on any licensed premises and establish an emergency alcohol free zone (EAFZ) not exceeding 48 hours.

6.1. When a prohibition or EAFZ may be authorised

To issue an emergency prohibition on the sale or supply of liquor, or to establish an EAFZ, the Superintendent must:

- have reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity, or the threat of one occurring in the near future; and
- be satisfied that the closure or prohibition/establishment of an EAFZ will assist in preventing or controlling a public disorder.⁶⁸

An authorisation in relation to a prohibition to sell or supply liquor may be given orally, but must be confirmed in writing as soon as reasonably practicable. An EAFZ must be established by instrument in writing. While in practice the liquor restriction provisions have been used in conjunction with an authorisation for a target area, there is nothing in Part 6A that prevents them being used outside of a target area.

6.1.1. Duration of authorisations and revocations

The period that a prohibition authorisation or the period for which an EAFZ may be established in an area must not exceed the period that the police officer considers reasonably necessary for the purpose for which it is established. In any case, it must not exceed 48 hours. The period may be extended by a further authorisation (in the case of a prohibition) or instrument (in the case of an EAFZ), but only if the total period does not exceed 48 hours.⁶⁹

An authorisation may be revoked if the officer is satisfied it is no longer necessary.⁷⁰ Currently, the officer must be of the rank of Inspector or above for revocation of an authorisation and of the rank of Superintendent or above for revocation of an EAFZ. The *Police Powers Legislation Amendment Bill 2006*, passed by Parliament on 16 November 2006⁷¹, changes the rank of the officer authorised officer to revoke an emergency prohibition on sale or supply of liquor from Inspector to Superintendent.⁷²

The legislation does not specifically address a potential situation where a public disorder continues beyond the 48-hour period covered by an authorisation relating to or the establishment of an EAFZ. There may be sound operational reasons why NSW Police would want to keep licensed premises closed or to keep the EAFZs.

We note there is no prohibition on police granting a new authorisation or establishing a new EAFZ covering the same premises or area to commence very shortly after the expiration of the previous authorisation. Provided that an officer of the rank of superintendent or above reasonably believes there is a large-scale public disorder or the imminent threat of such disorder, there is no limit on the number of times these liquor powers can be used in a particular area.

However, continued forced closure of licensed premises could lead to significant financial loss for these businesses. There is no mechanism in place in the legislation for any body (judicial or otherwise) to scrutinise police use of the liquor powers and independently weigh up the competing public interests between maintaining public order and allowing lawful businesses to operate. This is of particular significance given the much larger number of officers able to invoke the liquor powers than the other public disorder powers.⁷³

6.2. Emergency prohibition on sale or supply of liquor

On available information, it appears that NSW Police have not used section 87B to close down any licensed premises or restrict their alcohol sales. However, there have been voluntary closures of licensed premises. For example, NSW Police has advised that in Dubbo on 1 January 2006, police approached licensed premises and spoke with licensees near the Gordon Estate, who agreed to close or restrict sales of alcohol. This is similar to police actions in Cronulla and Wollongong in December 2005. It also appears that in some cases police would very likely have ordered closure of licensed premises if the licensees did not agree to close or stop selling alcohol. Section 87B(6) provides penalties for non-compliance with this section.

Questions for consideration — Emergency liquor prohibitions

27. What are your views on the power provided to police to authorise closure of any licensed premises, or prohibit the sale or supply of liquor on any licensed premises?
- (i) Is it a necessary power?
 - (ii) Are the grounds for authorising a prohibition, as set out in section 87B(1) appropriate? If not, what other test should be included?
 - (iii) Are present decision makers for authorisations and revocations appropriate?
 - (iv) Should Part 6A provide a mechanism for extending a prohibition beyond 48 hours? If so, what should that mechanism be?
 - (v) Should there be any limit on the number of authorisations police are able to issue or in a particular area within a certain time frame?
 - (vi) Should police be required to consider, at regular intervals during the period of authorisation, whether the authorisation remains necessary or whether it should be revoked?

6.3. Emergency alcohol-free zones

During the parliamentary debate, the Minister for Police, commented that the behaviour of persons involved during the Cronulla riot was certainly exacerbated by intoxication and stated:

*'The bill will also enable police to declare emergency alcohol free zones. Once warned, if people possess alcohol in that area they will face a hefty fine. These measures will minimise the risk that alcohol will aggravate riotous ... behaviour.'*⁷⁴

Section 87C(3) currently provides that a person or groups of people in possession of liquor in the EAFZ must be warned that it is an offence to drink liquor in the zone and that any liquor in the possession of the person or persons may be confiscated unless it is removed from the zone or 'put away'. Under section 87C(4), if a person has been warned and commences to drink, fails to stop drinking or resumes drinking in the EAFZ, that person may be guilty of an offence. Section 87C(6) allows police to seize alcohol and its container in an EAFZ if a person is committing or has just committed an offence under this section. Section 87C(7) also allows a police officer to seize alcohol and its container in the immediate possession of a person who has received a warning in an EAFZ and does not remove the liquor from the zone or put the liquor away. The police officer also needs to be satisfied that the seizure of the liquor will assist in preventing or controlling the public disorder. Any liquor seized is forfeited to the State.⁷⁵

Following concerns raised by NSW Police about the difficulty of confiscating liquor under section 87C, NSW Parliament passed legislation amending the section by removing the option for people to put liquor away.⁷⁶ Section 87C(7) now allows a police officer to seize alcohol and its container in the immediate possession of a person who has received a warning in an EAFZ and does not remove the liquor from the zone where the police officer is satisfied that the seizure of the liquor will assist in preventing or controlling the public disorder. The warning provided under section 87C(3) has been similarly amended. As at the time of writing, the new provisions have been passed but not yet assented to.

We are aware that NSW Police established at least four EAFZs during Operation Seta, in areas of Bondi, Coogee, Maroubra, and Newcastle. From the information NSW Police has provided, it appears police did not charge any person with any offence under section 87C during Operation Seta. While there were alcohol seizures during the period of Operation Seta, the information provided to us indicates that only one of these seizures was within an EAFZ.

A potential issue is the requirement for police officers to issue warnings to persons in possession of alcohol in EAFZs. This may be impractical given the circumstances where these powers are intended to be used. It is not always possible in public disorder situations for officers to warn people to stop drinking or ask them to remove their alcohol. Mr Andrew Tink⁷⁷ stated:

'I am concerned that police must specifically warn individuals or groups of individuals before deeming them to have committed an offence by drinking in a particular place. ... There must be some way that a general warning can be given for a particular area once, and once only, so that thereafter the police can deal with anyone who is drinking in the vicinity. Otherwise it will become a justiciable issue and lawyers will be able to argue about whether a particular individual found drinking in a restricted zone was given a warning. We should be able to avoid that problem. The concept of a general warning should be introduced after which the police will have absolute power to deal with anybody who is found drinking in a particular area.'

NSW Police has also made the suggestion that there should be a prohibition on alcohol being brought into an EAFZ. Attempting to confiscate alcohol from individuals in an unruly crowd may worsen the situation and possibly incite the crowd further. Police held these concerns during the public disorder in Dubbo. The liquor restriction powers under section 87B and section 87C were not used for this reason.

Questions for consideration — Emergency alcohol free zones

28. What are your views on the power provided to police to establish EAFZs?

- (i) Is it a necessary power?
- (ii) Are the grounds for authorising an EAFZ as set out in section 87C(1) appropriate? If not, what other test should be included?
- (iii) Are present decision makers for authorisations and revocations appropriate?
- (iv) Should Part 6A provide a mechanism for extending an EAFZ beyond 48 hours? If so, what should that mechanism be?
- (v) Should there be any limit on the number of EAFZs police are able to establish in a particular area within a certain time frame?
- (vi) Should police be required to consider, at regular intervals during the period of an EAFZ, whether the EAFZ remains necessary or whether it should be revoked?
- (vii) Are the powers adequate? In particular, would it be appropriate to give police the additional power to prohibit alcohol entering an EAFZ?
- (viii) Are the present powers of confiscation sufficient? In particular, is the existing scheme requiring a warning before an offence is committed or before alcohol can be confiscated effective and appropriate? If not, in what respect should changes be made?

Endnotes

⁶⁸ s. 87B(1) for emergency prohibition on liquor sales or supplies and ss. 87C(1) for EAFZ.

⁶⁹ s. 87B(2) and ss. 87C(2) the period of the authorisation must not exceed 48 hours and may be extended.

⁷⁰ s. 87B(5) and s. 87C(9).

⁷¹ At the time of writing this paper, the new provisions had been passed but not yet assented to.

⁷² Schedule 1 [12].

⁷³ With the exception of s. 87N.

⁷⁴ The Hon. Carl Scully MP, NSWPD, Legislative Assembly 15 December 2005, p. 20624.

⁷⁵ s. 87C(7).

⁷⁶ Schedule 1 [13] and [14] of *Police Powers Legislation Amendment Bill 2006*, passed on 16 November 2006.

⁷⁷ Mr Andrew Tink MP, NSWPD, Legislative Council, 15 December 2005, p. 20624.

Chapter 7. Other issues

7.1. Notification to the public regarding the use of the Part 6A powers

Part 6A does not provide for any requirement to notify the general public of the use of public disorder powers.

NSW Police provided media releases to notify the public of the authorisations for Operation Seta. A NSW Police media release on 16 December 2005 advised motorists that electronic variable messaging signs would be used around the metropolitan areas of Sydney, Illawarra and Newcastle to display information concerning the whereabouts of police operations over that weekend and to advise motorists to avoid travel to these areas. Police have also advised that they informed the public while they were conducting patrols in the target areas.

In Dubbo, it does not appear that there was the same level of notification to the public. The powers were used with very little notice.

This raises the issue of how the public should be notified of authorisations under Part 6A if these are approved in a short period of time and quickly put into operation. One commander we spoke to has stated that he was prepared to use RTA style flashing light signage to notify the public of an authorisation or the use of emergency alcohol powers. This approach may be effective in some areas, although persons in a target areas may not be aware of an authorisation.

Questions for consideration — Keeping the community informed

29. What notification should be given to the community, especially those within or affected by a target area or an EAFZ, of the invocation of the Part 6A powers?
30. What are your views as to how any notification can most effectively be provided for?

7.2. Economic impact of the public disorder powers

After the Cronulla riots, the retaliation attacks and the use of the public disorder powers, there were a number of reports on the impact on small businesses and tourism in target areas long after the authorisations had ceased.

Many businesses reported a significant downturn in trade. One report stated that beachside businesses had reported a slump in earnings of about 75 per cent in the weeks following the unrest.⁷⁸ A week after the use of the public disorder powers, the Mayor of Sutherland Shire called for financial assistance from the Government to support local businesses that had suffered a serious downturn in trade.⁷⁹ The mayor claimed this was an unprecedented situation for Australia and there were no programs in place to protect the economic interests of local businesses in times of serious unrest. In response, the NSW Government announced plans to encourage visitors to return to areas affected by the lockdown powers. The Government also indicated that it would establish a helpline for small businesses and offering them workshops.⁸⁰

At the time, the tourism industry was also concerned that the situation was likely to have an impact on jobs and the number of tourists visiting Sydney. Tourism groups were worried that the racial conflict would deter overseas visitors and take a toll on the country's tourism industry. One source indicated⁸¹ there had already been employees in the tourism and hospitality industries in Cronulla laid off. Another said many businesses were being affected during their busiest time of the year and that *'If the violence continues there is the potential it could even force some businesses to close down and significantly damage our reputation as a tourist destination among both domestic and international visitors.'*⁸²

Question for consideration — Business impacts

31. Are you aware of any direct economic impact on target area businesses as a consequence of the use of the Part 6A powers? If, so, please provide details.

Endnotes

- ⁷⁸ 'Man charged over Sydney Messages', BBC News 22 December 2005, <http://new.bbc.co.uk/1/hi/world/asia-pacific/4551356.stm> — accessed 22 December 2005.
- ⁷⁹ Statement by Councillor Kevin Schrieber, Mayor of Sutherland Shire re Operation Seta, 16 December 2005, <http://www.sutherland.nsw.gov.au/ssc/home.nsf> — accessed 28 March 2006.
- ⁸⁰ A statement from Mayor of Sutherland Shire, Councillor Kevin Schrieber: Meeting with Premier positive, 19 December 2005, <http://www.sutherland.nsw.gov.au/ssc/home.nsf> — accessed 28 March 2006.
- ⁸¹ Chris Brown, Head of the Tourism and Transport Forum, Tourism braces for job losses if trouble persists, smh.com.au, 19 December 2005 — accessed 4 September 2006.
- ⁸² Margy Osmond, Chief Executive, State Chamber of Commerce, Tourism braces for job losses if trouble persists, smh.com.au, 19 December 2005 — accessed 4 September 2006.

Chapter 8. How effective are the Part 6A powers?

The Part 6A powers are exceptional powers to deal with exceptional circumstances. They can be used to 'lock down' a street, a suburb or even a much broader area where there is large-scale public disorder or the threat of such disorder.

The Part 6A powers were introduced with very short notice, allowing little time for consideration by members of Parliament and discussion within the wider community. Some of the issues canvassed by this paper reflect the practical and legal concerns raised at the time of introduction of the Part 6A powers, while other issues have arisen subsequent to their use by police and are informed by practical concerns.

However, the powers have only seen limited use. As such it is difficult to assess with confidence the strengths and weaknesses of Part 6A as a tool for helping police deal with or prevent public disorders. Similarly, any flaws in the safeguards can be difficult to gauge because of the limited use of the powers.

Questions for consideration — Effectiveness of public disorder powers

32. At the time these powers were introduced, concerns were raised that they were unnecessary as police already had extensive powers to respond to riots. What are your views on the adequacy of police powers to deal with disorder situations prior to the enactment of the Part 6A powers?
33. What are your views on the effectiveness of the public disorder powers? Do you think that they achieve their aims?
34. What is your view as to whether Part 6A strikes the correct balance between civil liberties, and the need to protect and reassure the community at the time of large scale public disorder or the imminent threat of such disorder?

Chapter 9. Future directions

A number of issues will continue to arise in respect of the powers and their ongoing scrutiny, should the Government decide to legislate to retain Part 6A rather than allow it to expire on 15 December 2007.

The Government has indicated our review will be considered when it determines whether the Part 6A powers should continue at all, or in a different form.⁸³ We invite comment on matters that arise including:

- Should the powers in Part 6A be extended?
- Should there be additional offences?
- Should there be ongoing external oversight and monitoring by the Ombudsman or some other agency or committee?
- Should there be a requirement for public or government reporting such as annual reporting on use of powers to Parliament and reporting to the Police Minister and/or to the Attorney General on each use of the powers?
- Should there be regular appraisal of the necessity of these powers?

Questions for consideration — Future arrangements

35. What are your views on the future of the Part 6A powers?

Endnotes

⁸³ Premier Morris lemma, NSWPD, Legislative Assembly 15 December 2005, p. 20621.

Chapter 10. List of questions

Personal impact of the new laws

1. How were you affected by the use of the powers? Please describe your experiences.
2. From your experiences how did the police use of these powers help control or prevent large-scale public disorders?
3. What changes could help improve police effectiveness while minimising any disruption or potential problems?

Public disorder

4. What are your views on the adequacy of the definition of 'public disorder' for the purposes of Part 6A?
5. What are your views on whether Part 6A sufficiently reflects the stated intention that it not be used in respect of peaceful assembly? Do you believe any changes are required?

Special powers authorisation

6. Should police officers be charged with the final decision to authorise the use of the powers in Division 3 of Part 6A? If not, who else should authorise these powers?
7. If police officers are the appropriate people to authorise the use of these powers, is the present limitation to officers of the rank of Assistant Commissioner or above appropriate?
8. Are the grounds for giving an authorisation for the exercise of special powers, as set out in section 87D, appropriate? If not, in what respect should they be altered?

Use of powers on private property

9. Should the special powers provided for in Part 6A be restricted to use in public places only, or should there be some limited amendment to allow police to exercise the public disorder powers on private property or certain parts of private property? If so, what safeguards should apply?
10. Are existing police powers enabling entry to private premises on the basis of disorder offences sufficient?

Scope and time period of special powers authorisations

11. What are your comments as to the police practice to date of authorising whole local government areas and police commands as target areas for authorisations?
12. In relation to determining the target area or road the subject of the authorisations, what factors should be considered in balancing the public interest in police being able to exercise the special powers effectively to prevent or control public disorders, as against the public interest in minimising the number of people not involved in the disorder disrupted or affected by the use of the powers?
13. Does Part 6A provide police with sufficient flexibility to deal with actions of persons preparing and congregating in one place to participate in a public disorder elsewhere? If not, in what respects should it be amended?
14. What are your views on the total period of individual authorisations not exceeding 48 hours? Do you think this should be increased or decreased?
15. What are your views as to the requirement for approval by the Supreme Court for extending the period of the authorisation? Is this an appropriate safeguard on the use of the Division 3, Part 6A powers? Should there be some limit on the period of time within which a further authorisation can be granted by police without judicial scrutiny?

Scope and time period of special powers authorisations (cont'd)

16. Should senior police be required to set out the grounds for their satisfaction that the execution of special powers is warranted in the instrument giving the authorisation?
17. Should senior police be required to regularly consider, during the period of the authorisation, whether the use of the powers is still reasonably necessary or whether the authorisation should be revoked?

Disclosure of Identity

18. What are your views on the power provided to police to require a person in a target area to disclose their identity?
- (i) Is it a necessary power?
 - (ii) If so, should police be able to exercise the power simply on the basis that the person is in a target area?
 - (iii) Is the present requirement of 'reasonable suspicion' appropriate?
19. In relation to the consequences of non-compliance
- (i) Is it necessary for section 87L(3) to include an exception for reasonable excuse?
 - (ii) Should failure to comply with a request for proof of identity be an offence?

Roadblocks and cordons

20. What is your view on the power provided to police to establish roadblocks and cordons?
- (i) Is it a necessary power?
 - (ii) Should guidance be provided to police about the exercise of powers of cordons and roadblocks, beyond that set out in section 87I(2) not to refuse permission for persons to leave an area?
 - (iii) Should there be specific provisions to safeguard the rights of residents in a target area?

Searches

21. What is your view of the power provided to police to search vehicles and persons?
- (i) Is it a necessary power?
 - (ii) Should officers be required to form some reasonable suspicion — for example about involvement or likely involvement in a public disorder — before being permitted to exercise these powers?
 - (iii) Are the provisions relating generally to personal searches set out in Part 4, Division 4 LEPR sufficient and/or appropriate conditions for searches under Part 6A?

Seizures

22. What are your views on the power of the police to seize or detain motor vehicles?
- (i) Is it necessary?
 - (ii) Is the initial seven-day period of detention appropriate?
 - (iii) Is the authority of the local court to extend the period for an additional 14 days sufficient or appropriate?
 - (iv) Is the test — that seizure will assist in preventing or controlling a public disorder — appropriate or is some other test (for example, a reasonable suspicion or belief that the vehicle has been or is likely to be involved in a public disorder and seizure will assist in preventing or controlling the disorder) more appropriate?
23. What are your views on the power of police to seize mobile phones or other communication devices?
- (i) Is it necessary?
 - (ii) Is the initial seven-day period of detention appropriate?
 - (iii) Is the authority of the local court to extend the period for an additional 14 days sufficient or appropriate?
 - (iv) Should police be permitted to search through text messages or other SMS information in mobile phones?

Seizures (cont'd)

- (v) Is the test — that seizure will assist in preventing or controlling a public disorder — appropriate or is some other test (for example, a reasonable suspicion or belief that the vehicle has been or is likely to be involved in a public disorder and seizure will assist in preventing or controlling the disorder) more appropriate?
- (vi) Should the term 'other communication device' be defined in some manner, so as to provide better advice to police about what it encompasses?

24. Do police require additional powers, beyond those set out in section 87M, to seize items which may become weapons or other tools for rioters in a public disorder?

Dispersing groups

25. What is your view of the new powers provided for in section 87MA?

Use of special powers without authorisation

26. What is your view of the power for a police officer to exercise Part 6A functions without authorisation:
- (i) Is it necessary?
 - (ii) Is the nature of the powers appropriate, including where these powers might be exercised?
 - (iii) Is the test for using the powers appropriate? If not, what other test might be appropriate?
 - (iv) Should there be some additional conditions on the use of these powers?

Emergency liquor prohibitions

27. What are your views on the power provided to police to authorise closure of any licensed premises, or prohibit the sale or supply of liquor on any licensed premises?
- (i) Is it a necessary power?
 - (ii) Are the grounds for authorising a prohibition, as set out in section 87B(1) appropriate? If not, what other test should be included?
 - (iii) Are present decision makers for authorisations and revocations appropriate?
 - (iv) Should Part 6A provide a mechanism for extending a prohibition beyond 48 hours? If so, what should that mechanism be?
 - (v) Should there be any limit on the number of authorisations police are able to issue or in a particular area within a certain time frame?
 - (vi) Should police be required to consider, at regular intervals during the period of authorisation, whether the authorisation remains necessary or whether it should be revoked?

Emergency alcohol free zones

28. What are your views on the power provided to police to establish EAFZs?
- (i) Is it a necessary power?
 - (ii) Are the grounds for authorising an EAFZ as set out in section 87C(1) appropriate? If not, what other test should be included?
 - (iii) Are present decision makers for authorisations and revocations appropriate?
 - (iv) Should Part 6A provide a mechanism for extending an EAFZ beyond 48 hours? If so, what should that mechanism be?
 - (v) Should there be any limit on the number of EAFZs police are able to establish in a particular area within a certain time frame?
 - (vi) Should police be required to consider, at regular intervals during the period of an EAFZ, whether the EAFZ remains necessary or whether it should be revoked?
 - (vii) Are the powers adequate? In particular, would it be appropriate to give police the additional power to prohibit alcohol entering an EAFZ?
 - (viii) Are the present powers of confiscation sufficient? In particular, is the existing scheme requiring a warning before an offence is committed or before alcohol can be confiscated effective and appropriate? If not, in what respect should changes be made?

Keeping the community informed

29. What notification should be given to the community, especially those within or affected by a target area or an EAFZ, of the invocation of the Part 6A powers?
30. What are your views as to how any notification can most effectively be provided for?

Business impacts


31. Are you aware of any direct economic impact on target area businesses as a consequence of the use of the Part 6A powers? If, so, please provide details.

Effectiveness of public disorder powers

32. At the time these powers were introduced, concerns were raised that they were unnecessary as police already had extensive powers to respond to riots. What are your views on the adequacy of police powers to deal with disorder situations prior to the enactment of the Part 6A powers?
33. What are your views on the effectiveness of the public disorder powers? Do you think that they achieve their aims?
34. What is your view as to whether Part 6A strikes the correct balance between civil liberties, and the need to protect and reassure the community at the time of large scale public disorder or the imminent threat of such disorder?

Questions for consideration — Future arrangements

35. What are your views on the future of the Part 6A powers?



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