

10 February 2005

The Director,
Criminal Law Review Division,
NSW Attorney General's Department.

By email [Daniel Noll@agd.nsw.gov.au](mailto:Daniel.Noll@agd.nsw.gov.au)

Dear Sir/Madam,

Re: Review of Terrorism (Police Powers) Act 2002

This submission is made on behalf of the New South Wales Council for Civil Liberties.

The Terrorism (Police Powers) Bill was rushed through Parliament. This legislation was introduced into Parliament in a climate of fear and horror following the outrage in Bali and a national security alert. There was very little parliamentary opposition to critically scrutinize this legislation so as to suggest amendments or even oppose the bills.

The law allows police to search people and property without cause or specific warrant in the Orwellian named "target area" or to search for a person who is "the target of an authorisation". Target area is not limited in any way by size under the provisions of the legislation and although the government has said the use of these powers will only be in limited situations, any decision to activate the powers under the new law cannot be called into question or reviewed in any court of law, ensuring that the decision to use these powers remains effectively a political one.

Despite the impression created by the rush to pass these laws, no case has really been made about the need for extra power in the legislation apart from a general feeling that the Government should "do something" about terrorism. No examples have been given of police having difficulty getting search warrants under existing legislation in respect of suspected terrorism offences. The police already have substantial powers of arrest on reasonable suspicion in respect of any potential terrorist offences such as conspiracy to murder or attempts to plant explosive devices. Indeed, the powers have not been used since their introduction despite the continuing "war on terror".

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To make matters worse, authorisation under the law need not always be in writing leading to doubt both with the police and the public as to exactly what their rights will be. The law deals with this problem by taking away the rights of any member of the public to sue police acting pursuant to a purported authorisation, even if it turns out later that this authorisation did not in fact exist. Yet, the onus is upon citizens to prove they have a reasonable excuse if they are charged with breaking any of the myriad provisions of the act.

Strangely, although the provisions are said to be necessary to fight the present threat of terrorism, there is no sunset provision in the bill (only a ministerial review) so that these powers will remain on the statute books to be used by future governments in ways that may have never been foreseen by the drafters of the bill. In the 20th century, we have seen the use of extraordinary emergency police powers against striking power workers in Queensland and miners in the United Kingdom.

Although comparisons will be made with laws in the United States, Canada and the United Kingdom, but in all those countries there are now Bill of Rights provisions that will provide some review of their legislation in a more sober setting at a later date. Australia is now alone among its comparable democracies by not having a Bill of Rights structure. Without a sunset clause into this legislation, another generation may have to live with the consequences of laws passed in this period. The Council believes there is no need for this law and recommends that the Act be repealed.

If you wish us to elaborate further please do not hesitate to contact us.

Yours faithfully,

DAVID BERNIE

Vice President
New South Wales Council of Civil Liberties
