

OUR REFERENCE
D.Noll 02 9285 8742 02 9285 2525 (fax)

DIRECTOR'S CHAMBERS



YOUR REFERENCE
12/12819

DATE

21 September 2012

COAG Counter-Terrorism Review Secretariat
Security Law Branch
3-5 National Circuit
BARTON ACT 2600

Dear Sir/Madam

COAG Review of counter-terrorism legislation

I refer to your invitation to make a submission to this review.

I understand that the Review examining several pieces of Commonwealth and State legislation under four heading:

- Control Orders
- Preventative Detention
- Police Powers
- Other Legislation (which includes the substantive terrorism offences under the *Criminal Code Act 1995*).

Control Order and Preventative Detention

The NSW Office of the Director of Public Prosecutions has no practical experience of the operation of Control orders or Preventative Detention and I am therefore not in a position to provide any helpful comments in relation to these areas.

Police Powers

In relation to Police powers, NSW was the first State to introduce emergency Police powers contained in the *Terrorism (Police Powers) Act 2002*. I note that the suite of measures included in this act have generally been replicated across most Australian jurisdictions.

Thankfully these powers have not been utilised to date.

NSW Police have numerous general policing powers under the *Law Enforcement (Powers and Responsibilities) Act 2002*. Officers use these powers every day and are familiar with the extent of the powers as well as the safeguards that accompany them.

In addition to general powers Police also have extensive emergency powers under the *State Emergency and Rescue Management Act 1989*. Some of the powers under this Act are quite

extraordinary including the power to direct persons and agencies on the ground, to enter premises and property without warrant and to use reasonable force (to name a few).

I am of the view that emergency powers are appropriate where they are accompanied by corresponding safeguards. I am also of the view that they should, as far as possible, be based on existing emergency powers and only extend those powers to a degree that is considered reasonable in the circumstances.

Other Legislation

My Office has no practical experience in the Prosecution of the substantive terrorism offences under the *Criminal Code Act 1995*.

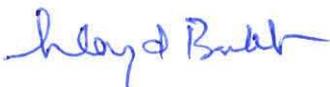
It does, however, have extensive experience in the prosecution of State offences that criminalise virtually all of the physical acts and mental intentions that would be included in a "Terrorist Act", namely the injury and unlawfully killing of persons; the destruction and damage of property, and the intention or agreement to carry out such offences.

I appreciate however that terrorism is a national issue and as such national laws are appropriate to ensure a uniform and consistent response to these offences.

I also understand that the nature of terrorist offences may tend to call for offences of an inchoate nature.

I am anxious, however, that terrorist offences and prosecutions aren't so radically different from the form and prosecution of regular offences so as to lead to a perception that long held safeguards that are key features of the rule of law have been expediently abandoned.

Yours faithfully



Lloyd Babb SC
Director of Public Prosecutions