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The Hon Anthony Whealy QC
Chair, COAG Review of Counter-Terrorism Legislation
COAG Counter-Terrorism Review Secretariat
Security Law Branch
3-5 National Circuit
Barton ACT 2600

24 SEP 2012

Dear Mr Whealy

Thank you for your letter of 24 August 2012 to the Director General of the Department of Premier and Cabinet inviting the NSW Government to make a submission to the Council of Australian Governments' Review of counter-terrorism legislation (the Review).

Please find enclosed the NSW Government submission to the Review. As requested, an electronic copy will also be emailed to CTReviewSubmissions@ag.gov.au.

I look forward to receiving the outcomes of the Review.

Yours sincerely

Barry O'Farrell MP
Premier

Encl.

NSW Government submission to the Council of Australian Governments (COAG) review of counter-terrorism legislation

The NSW Government passed the *Terrorism (Police Powers) Act 2002* (the TPPA) in December 2002. The TPPA confers special powers on police officers to prevent the occurrence of a terrorist attack, and to respond to a terrorist attack if one occurs. The central policy objective of the TPPA is to protect the community from terrorism by ensuring law enforcement agencies are appropriately equipped to carry out these prevention and response responsibilities. Examples of special powers include the power to obtain disclosure of identity, the power to search persons or vehicles, and the power to enter and search premises.

When exercised before the occurrence of a terrorist act, the scheme provides the NSW Police Force (and recognised law enforcement officers from Commonwealth, State and Territory police) with extraordinary powers that aim to assist in preventing the occurrence of a terrorist act.

Appropriate safeguards ensure these powers are only used as necessary. For example, special powers to prevent terrorist acts can only be authorised by the Commissioner or Deputy Commissioner of Police and only if he/she is satisfied there are reasonable grounds for believing there is a threat of a terrorist act occurring in the near future, and the exercise of special powers will substantially assist in preventing the terrorist act.

The special powers only apply for a maximum of seven days, after which an extension for a further seven days can be sought, providing the same criteria for the initial authorisation are met. Safeguards such as these ensure the powers under the TPPA are utilised for its intended policy objective of preventing the occurrence of a terrorist act.

When exercised after a terrorist act occurs, the scheme provides the NSW Police Force (and recognised law enforcement officers from Commonwealth, State and Territory police) with extraordinary powers that aim to assist in the apprehension of the perpetrators of the terrorist act and to prevent further terrorist acts from occurring.

Once again, appropriate safeguards are in place to ensure these powers are only used as necessary. Special powers can only be authorised by the Commissioner or Deputy Commissioner of Police and only if he/she is satisfied there are reasonable grounds for believing a terrorist act has been committed, and the exercise of special powers will substantially assist in apprehending the persons responsible for committing the terrorist act.

The special powers only apply for a maximum of 24 hours, after which an extension for a further 24 hours can be sought, providing the same criteria for the initial authorisation are met. These safeguards ensure the powers under the TPPA are used for its intended policy objective of responding effectively to terrorism.

The threat of a terrorist attack remains an ongoing concern for the NSW Government. To ensure the powers conferred under the TPPA remain appropriate and proportionate to this threat, the TPPA is reviewed on a regular basis. The NSW Department of Attorney General and Justice is currently undertaking a review of the TPPA, and also completed statutory reviews in 2006, 2007 and 2010. The reviews called for public submissions and the final reports were tabled in Parliament and are publicly available at the following links:

**NSW Government submission to the Council of Australian Governments
(COAG) review of counter-terrorism legislation**

<https://www.parliament.nsw.gov.au/prod/la/latabdoc.nsf/0/B65A0E871CEF99E7CA2573930016631B>

<http://www.parliament.nsw.gov.au/Prod/la/LATabDoc.nsf/0/93892745072bfec6ca257790002c4e92?OpenDocument&ExpandSection=-1>

http://www.lpclrd.lawlink.nsw.gov.au/agdbasev7wr/lpclrd/documents/pdf/tppa_review_final_online_version.pdf

The three reviews completed to date found the policy objectives of the TPPA remained valid, and each recommended minor amendments to give greater effect to the policy intent of the legislation.

For example, the 2010 review resulted in the repeal of the requirement to destroy covert search records, to ensure effective oversight of these powers is maintained. The reviews also noted the special powers conferred by the TPPA had been used infrequently and only in exceptional circumstances. While some submissions argued the infrequency of use indicates the powers are not necessary, the powers are intended for extraordinary circumstances and the reviews found they have been effective in the circumstances in which they were used.

In summary, the three reviews to date have found the TPPA strikes an effective balance between providing special powers to protect the community from terrorism, and the necessary tests and safeguards to ensure these powers are only used in exceptional and appropriate circumstances. The NSW Government strongly believes the TPPA is working effectively and according to its policy objective. It continues to meet tests of necessity, effectiveness and proportionality.