



Minister for Police and Community Safety

25 SEP 2012

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The Honourable 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

Dear Chair

I am writing regarding the current review of counter-terrorism laws under the auspices of the Council of Australian Governments (COAG) and the National Counter-Terrorism Committee.

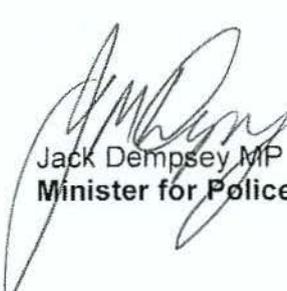
Please find attached the Queensland Police Service's submission to the COAG Review for the consideration of the COAG Review Committee. I trust the submission will be of assistance to the Committee in preparing its report and final recommendations.

I understand that public hearings are scheduled to be held in Brisbane on Tuesday 23 October 2012. The Queensland Police Service has nominated Detective Chief Superintendent Gayle Hogan, State Crime Operations Command to appear on its behalf at the Committee hearing.

I note that the Committee intends to publish submissions received on the COAG Review website. I advised that the Queensland Police Service has no objection to its submission being published.

Should you require any further assistance regarding this matter, my Office of the Commissioner, is available on telephone [redacted] or email: [redacted]

Yours sincerely


Jack Dempsey MP
Minister for Police and Community Safety

QPS SUBMISSION TO COAG REVIEW OF COUNTER-TERRORISM LAWS

INTRODUCTION

Relevant Queensland Legislation

1. The following Queensland legislation falls within the scope of the Council of Australian Governments' (COAG) Review of Counter-Terrorism Legislation (the COAG Review):
 - *Terrorism (Preventative Detention) Act 2005* (TPDA);
 - Chapter 19, Part 2 of the *Police Powers and Responsibilities Act 2000* (PPRA); and
 - Part 2A of the *Public Safety Preservation Act 1986* (PSPA).

Review History

2. At the time of passage of the TPDA, the Government undertook to conduct a review following introduction of similar legislation in all Australian jurisdictions. The review considered commitments made by the COAG on 27 September 2005 that each jurisdiction enact stop, search and question powers at transport hubs and places of mass gathering. The review was undertaken by the Department of the Premier and Cabinet, Department of Police and the Department of Justice and the Attorney-General.
3. No formal written report was prepared however, the review formed the basis for the *Terrorism Legislation Amendment Act 2007* that was subsequently passed and which amended the *Terrorism (Preventative Detention) Act 2005*, the *Police Powers and Responsibilities Act 2000*, the *Public Safety Preservation Act 1986* and the *Disaster Management Act 2003*.
4. An internal QPS review of Part 19, Chapter 2 of the PPRA was undertaken as part of a range of initiatives considered in the most recent five yearly review of the PPRA. The five yearly review did not identify any amendments to the PPRA that were necessary with respect to Part 19, Chapter 2. No formal report with respect to Part 19, Chapter 2 was prepared.
5. The Terrorist Emergency powers contained in Part 2A of the PSPA have not been formally reviewed since their commencement on 1 March 2008.

Current Status

6. The COAG review is timely from a Queensland perspective as:
 - the TPDA is set to expire on 16 December 2015 by way of a sunset clause contained in the Act (s 83); and
 - the Terrorist Emergency powers contained in Part 2A of the of the PSPA are required to be reviewed within 5 years of their commencement with a report required to be tabled in the Legislative Assembly 12 months following the review. The Part 2A provisions commenced on 1 March 2008 and therefore the review must be completed prior to 1 March 2013, with a report to be tabled by 1 March 2014.

7. The QPS is scheduled to undertake a formal review of both the TPDA and the Part 2A provisions in early 2013, as required under the Regulatory Assessment System (RAS) Guidelines for the 10 yearly review of departmental administered legislation.
8. In this context, the scheduled release of the COAG Review's recommendations in December 2012 are timely as they will inform the review's scheduled to be undertaken by the QPS in 2013.

USE OF QUEENSLAND LEGISLATION WITHIN THE SCOPE OF THE REVIEW

9. TPDA powers have never been employed in Queensland.
10. Similarly, the provisions in Part 2A of the PSPA have never been used.
11. The Special Events powers contained in Chapter 19 of the PPRA have been regularly exercised in the context of major events since 2000, including:
 - the Goodwill Games;
 - the Commonwealth Heads of Government (CHOGM) Meeting;
 - the Asia Pacific Economic Cooperation (APEC) Meeting;
 - the Rugby World Cup; and
 - Gold Coast Indy.

EFFECTIVENESS OF LEGISLATION WITHIN THE SCOPE OF THE COAG REVIEW

TPDA

12. Previous 'desk top' exercises and operations have considered the provisions of the TPDA both in Queensland and similar legislation in other jurisdictions.

Questioning During Detention

13. Persons detained under a PDO in Queensland can only be questioned in relation to non-investigative matters. These include questions about the person's identity, questions directed at ensuring their wellbeing and questions required to be asked with a view to compliance with the order. In order to question a person about the offence or alternatively, obtain intelligence about the involvement or potential location of other person/s for the purposes of detention and thereby support the disruption and prevention of the planned attack, the detained person is required to be released from detention before any questioning can take place.
14. One exercise involving the QPS had a main suspect who planned an imminent attack using an IED at a major event. The first report was provided to police on a Saturday with intelligence suggesting that an attack was to be executed the next day. A number of supporting actors were located and detained within the first 12 hours. However, the primary actor identified who was to actually carry out the attack, remained outstanding.
15. The ability to quickly question the supporting actors on a voluntary basis to obtain information about the location of the primary actor, on multiple occasions over a short period, may have taken up valuable time. This increased the complexity of the operation by the need for police to go through a process of un-detaining, questioning and re-detaining, each time police needed to speak to one or more of the supporting actors. This could have been the difference between locating the offender in time to prevent and disrupt an imminent attack, and the attack taking place.

Disclosure by detainees of their detention

16. Related to the issue of detention, the exercise also considered whether one of the supporting actors that had been detained should be allowed to contact another party, such as a parent or employer. There was concern that the contact may result in the primary actor becoming aware of his accomplice's detention, and therefore, police knew that an attack was being planned. This was likely to lead to the primary actor taking avoidance action, making it much more difficult for police to locate and detain the primary actor or bringing forward the attack.
17. The TPDA in Queensland restricts detainee communications to specific individuals for the limited purpose of allowing detainees to advise that they are safe but not contactable during the period of the order. Whilst non contact orders can be obtained from an issuing authority to prevent a detainee from communicating, such an order is left to the discretion of the authority and needs to be justified. Depending on the circumstances and the intelligence at hand, there is a risk that the authority may refuse to issue such an order, or issue an order which is limited in nature. This may lead to information being provided indirectly to the primary actor about the police investigation, resulting in the primary actor adopting evasive activities.

14 Day Limitation

19. The TPDA requires that a terrorist act must be imminent, and in any event, be expected to occur at some time within the next 14 days before a PDO can be issued. This requirement may limit the ability to use the TPDA as a tool to respond to terrorism in a preventative manner. In one operation that the QPS is aware of, whilst the intelligence obtained was sufficient to confirm that an attack was in the planning stages, it was not specific enough to predict accurately, the actual timeframe and specific date upon which the attack was to occur. As a result, the ability to obtain a preventative detention order was not available for use, notwithstanding the credible intelligence provided.

Sunset Clause

21. A sunset clause expires the TPDA on 16 December 2015. While the TPDA has never been utilised, it remains a valuable tool available to the QPS in the event of an imminent terrorist incident/risk. With a number of high profile public events being hosted by Queensland in the near future, in particular G20 and the Commonwealth Games, the QPS considers that it would be of benefit to extend the operation of the TPDA to ensure it's powers are available, should they be required.
22. The QPS recognises that the continued operation of the TPDA beyond 2015 is however, a matter for the Queensland Government to consider and make a final determination. In this regard, the QPS intends to engage the Queensland Government on this issue during the upcoming review of the TPDA, as its expiry draws near.

Chapter 19

23. The Chapter 19, Division 2 'special event' powers in the PPRA have been utilised regularly since their enactment. The QPS has not to date, identified any deficiencies with respect to their effective operation. Whilst the test to establish a case to utilise the powers is high, this reflects an appropriate balance between the nature of the powers available to police officers and the justifiable need to limit the use of the powers to 'special occasions' rather than being available for use in 'day to day' policing operations.