

Ombudsman report

Review of police use of the Restricted Premises Act

The Ombudsman's office has completed a review of the operation of amendments made to the Restricted Premises Act in 2013. The Minister for Justice and Police tabled the Ombudsman's report on Friday 4 November 2016.

'These amendments introduced new offence provisions and powers to search for firearms on declared premises without a warrant. They were intended to strengthen police powers to disrupt the activities of outlaw motorcycle gangs (OMCG) and to detect firearms', said the Acting Ombudsman, Professor John McMillan.

The review was required by Parliament, and covered the operation of the new laws over a two year period from November 2013 to October 2015, including the way police used the search powers.

'Overall, we were not able to conclude that the amendments have enhanced police's ability to disrupt OMCGs or to detect firearms', said the Ombudsman. **'As police did not obtain any restricted premises declarations during the period, they did not use the Restricted Premises Act to conduct any searches of restricted premises without warrant. Nor did police lay charges for any of the new offences.'**

'Although police did obtain warrants under the new provisions of the Restricted Premises Act to search seven suspected OMCG clubhouses in the review period, those searches could all have been done under the old provisions', said the Ombudsman.

Each of those seven searches appears to have led to the clubhouse closing down. **'While those operations can in some ways be seen as successful, we have some reservations about the way they were executed'**, said Professor McMillan. **'In six searches, police stripped the clubhouse and seized items such as furniture, clothing and memorabilia, sound and lighting systems. Police also dismantled bars and stages to remove them from the premises.'**

'It is doubtful whether those search warrants – which authorise police to search for weapons, explosives, drugs, alcohol and related devices – also entitle police to seize furniture or dismantle and remove fixtures and fittings', said the Ombudsman. **'We have recommended that the Commissioner of Police take steps to ensure that police lawfully use the seizure powers.'**

The review identified the need for amendments to the Act to clarify police powers relating to managing people found on the premises during the execution of a search warrant. **'The Restricted Premises Act does not authorise police to take steps that are reasonably required to promote the safety of the officers conducting searches under that Act, or of the other people present'**, said Professor McMillan. **'We recommend that police be provided with specific powers to enable them to lawfully and reasonably manage the risks associated with potentially dangerous operations such as these.'**

Adopting our recommendations will facilitate reasonable and effective use of the scheme, and thus ensure public confidence in police. We also recommend that a further independent review be conducted of the search powers and offence provisions, should they be used in the future.

[Read the report](#) on the NSW Ombudsman's website.