

Ombudsman report

Review of police use of the Terrorism (Police Powers) Act 2002

The Ombudsman's office has completed its fourth review of the operation of the preventative detention and covert search warrant powers in Part 2A and Part 3 of the *Terrorism (Police Powers) Act 2002*. The review period was 1 January 2014 to 31 December 2016. The Attorney General tabled the Ombudsman's report on Tuesday 13 June 2017.

This is the Ombudsman's last review of the operation of this Act. The Ombudsman's oversight functions in relation to police are being transferred to the newly-established Law Enforcement Conduct Commission. This includes the review functions under the *Terrorism (Police Powers) Act 2002*.

During the review period, the Part 3 covert search warrant powers were not used.

In September 2014, the Part 2A preventative detention powers were used for the first and only time since the powers had been introduced in 2005. We monitored their use and had discussion with police at that time about some practical implementation issues. However, this report does not make any formal recommendations because of amendments made to the Act in 2016 that inserted Part 2AA (Investigative detention powers). Previous Ombudsman reports have documented strong concerns of police that the preventative detention powers under Part 2A were operationally ineffective. Those concerns were addressed with the introduction of Part 2AA, effectively making the preventative detention powers redundant.

'Since 2016 police have had new investigative detention powers under Part 2AA of the Terrorism (Police Powers) Act. These new expanded powers make the preventative detention powers in Part 2A redundant. Those preventative detention powers should therefore be allowed to expire in December 2018 in accordance with their sunset clause', said the Acting Ombudsman, Professor John McMillan.

The Acting Ombudsman has also reported his concerns about the lack of oversight of the new pre-investigation detention powers. **'In 2005, Parliament required the Ombudsman to scrutinise the use of the preventative detention and covert search warrant powers and report back every 3 years. This recognised the need for a robust system of independent oversight of the extraordinary powers that these are'**, said the Ombudsman. **'Police now have the power to**

detain a person as young as 14 years old for up to 4 days without a warrant, and question them. It is surprising there was no provision for independent civilian oversight of the use of a power of this nature. I recommend that the Minister consider giving the Law Enforcement Conduct Commission oversight over use of the investigative detention powers under Part 2AA. This will continue the proud tradition embedded in Ombudsman practice of ensuring public confidence in police is maintained by making sure police are acting in a fair and reasonable manner.'

Read the report on the NSW Ombudsman's website.

14 June 2017

TRIM ref: 2017/094624 (ADM/2016/686)