

MINISTER FOR POLICE

John Watkins MP



S P E E C H

THE WAR ON TERRORISM AND THE RULE OF LAW: **The State Response to September 11th**

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- CHECK AGAINST DELIVERY -

It is appropriate that the topic that I was asked to address was the State response to September 11 because if a terrorist event were to occur in NSW - it would overwhelmingly be dealt with as a State matter.

Any preventative investigation would be carried out by our State police and the NSW Crime Commission in consultation with Federal authorities.

The emergency response would be coordinated and delivered by NSW agencies including Police, Fire Brigade, Emergency Services and Health.

The subsequent criminal investigation would be overwhelmingly be undertaken by detectives from the Counter Terrorism Co-ordination command and the State Crime Command specialist squads.

And the bulk of any charges would be due to violation of State legislation such as the Crimes Act.

The matter would be tried in NSW courts and the instigators would spend their sentences in NSW prisons.

It is because of this State focus that we have had to address the response to terrorism here in NSW, in our State jurisdiction, to consider what needs to be done and how far we can impact on the rights and freedoms citizens of this State have a right to enjoy.

These are complex and difficult issues for us as legislators, for all of us as a community.

This is a strange and difficult time in which to live.

If there was a time in living memory when here in NSW we faced comparable days of fear and uncertainty, it was during the darkest days of World War Two.

In 1942 Australia was under external threat and Australians were being killed in the battle for our security to our near north in South East Asia but also here in Sydney.

My mother tells me of the winter dark nights in May and June 1942 when shells from the submarines that launched the mini subs into Sydney Harbour whistled over her house in the Eastern suburbs.

Nineteen Australians were killed here in Sydney Harbour on the evening of May 31 as they slept on the HMAS Kuttabul.

But that was over 60 years ago, an event of history, and hard for us to fathom or understand or relate to the threat that we currently face.

Contemplation of the tragedy in Bali and the abhorrent act of September 11 brings to our every day consciousness in this overwhelmingly peaceful and safe place, the thought of sudden and bloody death, the complete disruption of our economy, the ache of unresolved grief.

All of us have been forced to face the shocking reality that an attack could happen here.

From that comes our responsibility to take action to guard against it.

We do live in unusual times.

At our airports, dogs sniff our bags and people virtually undress in public to pass through security gates.

We pass legislation through the NSW Parliament that excludes terrorist threats from inclusion in the CTP Green Slip insurance scheme.

A Council of Australian Governments working party is currently assessing how to limit and control the sale of everyday household items such as garden fertilizer, pool chlorine, petrol and even sugar that can be used to manufacture explosives.

In these times the ramblings of a disturbed old man in August almost led to the shutdown of the entire Sydney rail network and the deployment of hundreds of police between the city and Strathfield.

And in late October a pathetic young Moslem student Zaki Mellick found his five minutes of media fame when after a firearms conviction he championed the fundamentalist cause and co-operatively allowed himself to be filmed by a news program walking up stairs, praying at home, visiting the Mosque, leaving court.

All of this feeds into the current fraught environment where every moment of Willie Brigitte's life in Sydney is being turned over and dissected for media, political and security purposes.

It is a difficult time for all of us especially as we struggle to protect the freedoms that have made us such a tolerant and peaceful nation.

But, the events of the last 2 years have caused us to change our views about the safety of our nation.

That cannot be ignored or diminished.

Terrorist attacks including those in New York and Bali show a new preparedness amongst terrorist organisations to strike quite deliberately at civilians with the aim of causing mass casualties.

The Bali bombing in particular has brought terrorism to our doorstep.

We have no option but to respond to the reality of a possible terrorist attack here in New South Wales.

After September 11 and especially Bali, it was recognised that to combat the threat of terrorism the resources of NSW Government agencies had to be thoroughly coordinated and that the private sector had to be engaged because of the role it has to play in developing security plans for privately owned critical infrastructure.

In NSW the terrorist threat has resulted in three major initiatives.

The first was to create specific legislation pertaining to the threat of imminent terrorism, or in response to a terrorist incident, that empowers police officers to achieve a level of security commensurate with the current level of threat.

The second was a review of the existing policing security arrangements in New South Wales, which led to the establishment of the Counter Terrorist Coordination Command with the objective of coordinating the overall New South Wales response to terrorism.

Additionally, in the last 12 months, the Government has established a Cabinet Standing Committee on Counter Terrorism chaired by the Premier and includes the Attorney General, Minister for Health, Minister for Emergency Services and myself.

This has established very clear lines of communication in the event that an incident should occur.

The third strategy was a financial commitment by the New South Wales Government.

In the last twelve months we have provided over \$34.7 million dollars in special additional funding towards the improvement of the counter terrorism capability.

This is spread across the Police, Health and Emergency Services areas.

We have purchased the world's best bomb disposal robots – which even carry cryogenic fittings to freeze explosive devices with liquid nitrogen.

And next month, Police and the Fire Brigade will take delivery of a new Counter-Terrorist helicopter – which will increase the speed at which we can deploy tactical units, HAZMAT teams, or health specialists.

Most relevant to our discussions today are the additional powers that have been granted to our law enforcement agencies to investigate and respond to terrorist threats and incidents.

This comes to the central question that fuels this debate and the reason we are gathered here.

How does an open, democratic, free society protect itself from real external threat whilst not destroying those things which guarantee its democracy and openness?

Freedom from intrusive surveillance, the right to bail on arrest, open and free trial, limited powers of police, the right to freedom of association and expression of beliefs.

Clearly it is incumbent on the NSW Government to ensure that any harm from a terrorist act is minimised and those responsible quickly apprehended and brought to justice.

The NSW Government is committed to do everything within its power to keep terrorists at bay and to prevent terrorist acts from being committed in this state.

With that in mind, the NSW Government acted in concert with the Commonwealth to establish a legal framework to respond to the terrorist threat.

The centrepiece of the NSW Government's legislative response is the recently enacted *Terrorism (Police Powers) Act 2002*.

That Act attempts to balance the need to be able to react effectively at short notice to a possible terrorist attack, or in the immediate aftermath of an attack with the desire to protect the important principals of individual freedom on which our society is founded.

Significantly, this Act enhances the NSW Police counter terrorism capability by granting police special powers when a terrorist act has occurred or is imminent.

The Commissioner and the Deputy Commissioners of Police can authorise the use of special powers under the legislation.

But concurrence of the Minister for Police is required.

An authorisation cannot be challenged in any legal proceedings on any ground in any court. The sole exception is an investigation under the Police Integrity Commission Act 1996.

As for what constitutes a terrorist act under the Act, NSW has adopted the Commonwealth definition so as to maximize co-operation between NSW Police and Commonwealth law enforcement and intelligence personnel.

A terrorist action under this definition is one that must, among other things:

- Be undertaken with the intention of advancing a political, religious or ideological cause
- Be undertaken with the intention of either:
 - Coercing or influencing by intimidation a government; or
 - Intimidating the public or a section of it, and involving serious injury or danger to people, serious harm to property, or serious interference with an electronic system.

It is important to note that the definition does not cover advocacy, protest or industrial action that is not intended to cause serious physical harm, to cause a person's death, endanger life, or create a serious risk to public health or safety.

The police powers under the Act recognise the range of situations that might confront police upon a terrorist act being committed or upon receiving information that a terrorist act is imminent.

The powers reflect the need in such circumstances for police to be able to act decisively in the public interest.

The powers permit police to take action to find a particular person (a target person) or to find a particular vehicle or class of vehicle (a target vehicle) or to prevent or respond to a terrorist act in a particular area (a target area).

In circumstances where an authorisation applies, police are able, without a warrant, to stop, search and detain people or vehicles. They have power to enter and search premises, and again without a warrant.

They can also require that a person disclose his or her identity. They must, however, have reasonable grounds for demanding disclosure of identity or for using the stop and search and detain powers.

These powers cover the most likely contingencies that apply, namely:

- The situation in which police receive warning that related to a person who may be about to commit a terrorist act, but the information does not say where the person is.
- Or the warning might suggest a particular vehicle is involved; or a general class of vehicle.
- Or the information may be that a particular area is the target, without telling police who will attack it or how it will be attacked.

The Act also amends the State Emergency and rescue Management Act 1989 to give additional powers to a police officer to quarantine a person who may have been exposed to chemical, biological or radiological contamination and direct that person to undergo decontamination procedures.

Police officers are also given power to remove a vehicle from a danger area and to prevent a person from interfering with objects in, or removing objects from, a danger area.

The latter is necessary to maintain the integrity of possible crime scene evidence, the importance of which was highlighted in the recent Bali bombing investigation.

Searches

Under the act, any search of a person must be conducted in accordance with the rules set out in Schedule 1 to the Act. The Schedule sets out when strip searches, ordinary searches and frisk searches are warranted.

Frisk searches and ordinary searches will generally be enough to determine if the person is carrying a bomb or a gun.

A strip search is much more intrusive and will only be permitted if the person is suspected of being a target person. A strip search is justified when there is information available that identifies a particular individual.

Regarding seizures, under an authorisation an officer is permitted to seize and detain any thing the officer suspects could be used or could have been used to commit a terrorist act.

Safeguards in relation to this legislation are essential.

It is important to note, the new powers given to police are not intended for general use but are confined to very limited circumstances and are balanced by appropriate accountability provisions.

The new powers may only be triggered

- where the Commissioner of Police or a Deputy Commissioner is satisfied there are reasonable grounds for believing there is an imminent threat of a terrorist attack and the use of the new powers would substantially assist in preventing that act; or
- immediately after a terrorist act, where the Commissioner or a Deputy believe the powers would substantially assist in apprehending those responsible or protecting the public from the attack's impact.
- An authorisation must be approved or ratified by the Minister for Police.

In the circumstances where the Minister for Police is not available at the time, then ratification must occur within 48 hours or else the authorisation is terminated. The Minister for Police may also revoke authorisation at any time.

There are other safeguards as well;

- Authorisations do not last indefinitely. An authorisation to prevent a future terrorist act lasts for a maximum of 7 days, extendable with Ministerial agreement by another 7 days.

An authorisation after an attack lasts for a maximum of 24 hours, extendable with Ministerial agreement by another 24 hours.

- When an authorisation is in place, police officers are required to identify themselves and give the reason why they are exercising one of the stated powers as soon as it is reasonably practical before or after exercising the stated power under the Act. This "reasonably practical" test is an important one. If police are trying to manage hundreds of people after a terrorist incident, they may not be able to provide this information in every case.
- As soon as an authorisation has expired, the Commissioner must report to the Minister for Police and the Attorney General. This report has to set out the terms of the authorisation, the matters relied on to give it, the powers exercised and the result of the exercise.
- The Ombudsman has jurisdiction to oversight complaints about the inappropriate exercise of the powers under the Act.

AND

- It is a requirement that the Act be reviewed annually.

In addition to all of the above, the decisions of senior police are reviewable by the Police Integrity Commission.

Summary

Protecting NSW residents and resources and upholding the state's reputation as a safe destination to visit and conduct business is the Government's highest priority. These outcomes are not alone secured by the legislation described.

However, the significant police powers that can now be invoked in circumstances of high risk are sensible and warranted.

They have caused widespread debate and force us to face that difficult issue of how to maintain a civil society, a libertarian view of the world when faced with the potential of violent attacks on innocent civilians motivated by overwhelming hatred.

How do we maintain faith in our institutions, the rule of law and the right to a fair trial when faced with such a threat?

I am comforted by our history as a society that respects the rule of law and the freedoms that we have inherited.

The extraordinary powers that were imposed in those threatening days of 1942 when my mother and

her family hid under the dining room table were removed when the threat had passed.

The National Emergency Act 1941 and the Police Reservists Act of the same year both had termination clauses that deemed that they operate only for the duration of the war and " for a period of six months thereafter and no longer."

We hope and I believe that the powers discussed today, State and Federal will no longer be required at some stage in the future.

The other factor that comforts is the faith that we share in the resilience and flexibility of our legal system.

The criminal law has changed throughout history in response to changing times and circumstances of the community it serves.

The threat of terrorism is not a sign that the established order, the rule of law, doesn't work. Our legal system has responded creatively, after consideration and debate and it may have to change again before this threat has passed.

I remain hopeful about its efficacy and its continuing ability to balance the rights of citizens against the need to protect our society from the terrorist threat.

Martin Luther King, that most perceptive man of peace, spoke of his times, when his society was threatened by obscene injustice, social violence and a deep questioning of the legal system.

Despite all of that he was able to declare that "despite the hovering clouds of despair" it was necessary to "walk on in the days ahead with an audacious faith in the future."

He counselled us then and it remains relevant today, that we need to realize that "the arc of the moral universe is long, but it bends towards justice."