



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

**Submission to the Senate Legal and Constitutional Affairs Committee
Inquiry into the Anti-Terrorism Bill (No 2) 2005**

Executive Summary

1. The *Anti-Terrorism Bill (No 2) 2005* introduces laws which will strike at the heart of some fundamental human rights that Australians have come to value as part of life in a democratic society. The Bill proposes laws which will allow for executive rather than judicial detention based not on evidence but on suspicion. The Bill allows for control orders to be placed on people not because they have been convicted of any offence but on the basis of suspicion that a person has trained with a terrorist organisation or that the control order will assist in prevention of a terrorist act. The Bill introduces retrospective criminal offences and new sedition laws the breadth of which will damage the freedom of expression upon which any true democracy relies.
2. The Bill breaches a number of international human rights standards codified in the *International Covenant on Civil and Political Rights* and long honoured in Australian common law. The Bill abrogates a number of well understood rights including the right to a fair trial, the right to liberty, the freedom of association and movement, the right to family life and the rights of children at international law.
3. There has been little opportunity to properly and rigorously assess the proposed laws and their ramifications for human rights because,
 - the Bill has been kept from the public until its introduction in to the House of Representatives some 10 days ago;
 - the government has not released detailed reasons for the proposed laws; and
 - the haste with which this Committee (and indirectly the public) must consider this complex Bill.

Retrospectivity

4. The Bill proposes to make those offences amended in the *Anti-Terrorism Act 2005* retrospective in their operation back to the commencement of the provisions which were thereby amended. Retrospective criminal laws are abhorrent to human rights law and, before now, to Australian legislators.

Control Orders

5. Control orders are proposed as a way to effectively convert suspicion by the police (or security agencies) that a person will be involved in terrorism into a coercive tool previously unknown in Australia. Control orders are not based on evidence that a person has committed an offence but rather on a suspicion that they will. It is a power unknown with respect to even those who have been convicted of murder in Australia.
6. The manner with which the control orders are imposed breach in a fundamental way the right to a fair trial. Control orders are obtained on an *ex parte* basis subject to confirmation at an undisclosed date when there is no good reason for making the procedure *ex parte*. Despite the outcome of a control order being similar to conviction for a criminal offence the standard of proof is merely the civil standard. Also a fair trial is further delayed because the person is not supplied with evidence behind the original order.

Preventative Detention

7. Preventative detention orders allow for executive detention without merits review by a court. The orders are made by the police or an issuing authority who is not a court. These orders are fundamentally different to current arrest powers because the person concerned is not charged and is not taken before a court. They represent a major expansion of police powers. It is contrary to both a person's right to liberty and right to a fair trial. No provision is made for the person to properly challenge in court the basis upon which he or she has been detained.
8. Once detained the person is presumed, by the terms of the legislation, to attempt to compromise the investigation or national security. Communication with family members, lawyers and the media is severely curtailed in breach of the rights to a fair trial, the right to family life and freedom of expression. These restrictions are even more extraordinary when one considers the people concerned are not suspected of having committed any criminal offence. Indeed the power of detention is available to preserve evidence of a terrorist act.

Sedition

9. The proposed sedition laws will be, like the existing sedition laws, extremely contentious because they are aimed at criminalising expression of opinion. The proposed provisions of s.80.2, typified by s.80.2(7) and (8), are so widely drafted that many journalists, artists, cartoonists and others working in similar areas are concerned that their work may be caught by such laws. It is this legitimate concern rather than actual prosecution which may reek havoc with the ICCPR freedom of expression. The defence proposed is far too narrowly drawn to protect reportage or legitimate dissent in other than the narrow categories set out in the defence of good faith.