



Civil Liberties Australia Inc. A04043  
Box 7438 Fisher ACT 2611  
Email: [secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

Mr Michael Sukkar MP, Chair  
Parliamentary Joint Committee on Intelligence and Security  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Delivered by email: [pjcis@aph.gov.au](mailto:pjcis@aph.gov.au)

Dear Chair and Committee Members

Thank you for your invitation to provide a submission addressing the *Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016* introduced in the Senate on 15 September 2016.

**Civil Liberties Australia (CLA) does not support the Bill** that would establish a scheme for the continuing detention of high-risk terrorist offenders at the conclusion of their custodial sentences.

CLA believes that continuing to detain a person beyond the sentence duly imposed by a court breaches fundamental human rights. The Committee should be under no illusion: detaining a person after the conclusion of their custodial sentence represents a new punishment without any new offence being committed or any new conviction being recorded. It means suppression of a person's rights as a citizen, which is the antithesis of traditional Australian liberal values espoused as far back as Alfred Deakin.

To imprison a person who has committed no crime on the basis solely of opinion on possible future behaviour constitutes arbitrary imprisonment. Such measures therefore contravene universally accepted (including by Australia) standards of human rights as set out in the International Covenant on Civil and Political Rights.

More to the point, such treatment should be anathema to our system of justice and our long-standing traditions of the rule of law. We are staggered that the Explanatory Memorandum accompanying the Bill lightly dismisses these fundamental issues through appeals to "public safety". It is the hallmark of tyrannical regimes to cite "public safety" in order to lock people away who have committed no crimes.

Detaining a person on the basis of an assessment of future offending is inherently problematic, a view that has been widely supported in most systems of justice around the world and has been expressed by both the United Nations and Australia's High Court.

Predicting the future conduct of anyone is a notoriously difficult task. Psychiatry is not an exact science and the opinions of psychiatrists can, at best, be considered an educated guess. This should not need saying. Were it not the case, Australia could well implement laws to detain people based on predictions of all sorts of undesirable future behaviour.

Furthermore, the opinions of psychiatrists are just that – opinions. They are based on little or no hard factual evidence that is capable of being rigorously tested in a court of law. Thus a scheme such as the one contained in this Bill requiring a person to defend themselves against a charge of possible future behaviour denies that person any possibility of a fair process.

CLA is conscious of the risk that terrorism poses to the safety of the Australian community. However, we believe that existing solutions, either within the criminal justice or mental systems, are adequate to manage these risks.

We are not convinced by the statement in the Explanatory Memorandum that existing measures, such as preventative detention orders or control orders, “are considered insufficient to address the assessed risk of a terrorist act occurring”. Neither the Explanatory Memorandum nor the Attorney-General’s second reading speech presents any evidence for this assertion. We are left wondering whether the authors of the Explanatory Memorandum consider passage of this Bill would “address the assessed risk” once and for all or whether further and even more draconian measures would follow soon after.

We are amazed that a Bill like this could be presented to Parliament by the same Attorney-General who, in 2013, asked the Australian Law Reform Commission (ALRC) to review Commonwealth legislation to identify provisions that “unreasonably encroach upon traditional rights, freedoms and privileges”.

In commissioning that review, Senator George Brandis said, “For too long we have seen freedoms of the individual diminish and become devalued. The Coalition Government will strive to protect and restore them. Freedoms are some of the most fundamental of all human rights. They underpin the principles of democracy and we cannot take them for granted.”

In keeping with this statement of the Attorney-General in 2013, which CLA strongly supports, and in keeping with liberal principles stated by Deakin more than a century ago in 1912, which CLA strongly supports, we believe the Committee should recommend against the passage of this Bill.

Yours truly

Dr Kristine Klugman OAM  
President

10 October 2016

Lead author: Rajan Venkataraman; associate author: Bill Rowlings