PJCIS Inquiry into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016

A combined submission from:
NSW Council for Civil Liberties
Liberty Victoria
Queensland Council for Civil Liberties
South Australian Council for Civil Liberties
Australian Council for Civil Liberties

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Australian Council
for Civil Liberties

Joint CCLS Submission to PJCIS on the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016

1. The councils for civil liberties across Australia (New South Wales Council for Civil Liberties, Liberty Victoria, Queensland Council for Civil Liberties, South Australia Council for Civil Liberties and the Australian Council for Civil Liberties) – (the CCLs) - are grateful for the opportunity to make this submission to the inquiry by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 (the Bill).

2. The CCLs have collaborated on this submission because of the significance of the Bill's impact on fundamental rights and liberties and longstanding principles underpinning the rule of law in Australia should it become law. This is particularly so as we oppose this Bill although we are well aware that it is highly likely it will be passed by Parliament in its current or similar form. In this context it is useful to bring our collective expertise together both to test our respective views and to develop a robust articulation of them.

Context in relation to post-sentence preventative detention laws

3. The CCLs have engaged with the arguments around preventative justice issues since the 1990s including the legislative trend to impose detention and other constraints on persons without charge or conviction for any offence. These laws raise serious issues in relation to the right to freedom from arbitrary detention and long established common law understandings relating to the right to a fair trial and due process as well as the role of the judiciary in our justice system.

4. In the mid-1990s the NSW Government passed legislation to impose post sentence continuing detention on an individual offender who had been convicted of the manslaughter of his wife. He had written threatening letters to members of his wife's family. This law was challenged by the offender and struck down by the High Court. [1]

5. Queensland in 2003 legislated for a post-sentence regime targeted at a class of offenders – serious sex offenders. It provided for either a preventative detention or supervision order to be made if the Court was satisfied to a high degree of probability that the offender posed a 'serious danger to the community' and there was an 'unacceptable risk ' the offender will commit a serious sex offence when released.[2]

6. In 2004 there was a High Court challenge to this law. The High Court dismissed the challenge and upheld the validity of the law. While the judgement opened the door for similar legislation, it was not unanimous. Kirby J strongly dissented.

7. In his dissenting view Kirby J issued a prescient warning:

> *As framed, the Act is invalid. It sets a very bad example, which, unless stopped in its tracks, will expand to endanger freedoms protected by the Constitution.*[3]

8. The example was followed. As a recent article noted:

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[1] **Kable** v Director of Public Prosecutions (NSW) (1996) 189 CLR 51; 138 ALR 577; [1996] HCA 24
[2] Dangerous Prisoners (Sexual Offenders) Act 2003.
[3] *Fardon v Attorney General for the State of Queensland* (2004) 223 CLR 575 [126]

> *"Following the High Court decision, Victoria, Western Australia, NSW, the Northern Territory and South Australia each introduced serious sex offender post-sentence regimes. In 2013, NSW became the first Australian jurisdiction to extend its legislative scheme to high-risk, violent offenders. South Australia followed in 2015."*[4]

9. These laws constitute one disturbing dimension/thread in the overall deeply disturbing trend- particularly post 9/11- for the rapid proliferation of laws which breach fundamental liberties and rights. These are justified initially as exceptional laws for a specific purpose.. However once a precedent is set and/or the laws have been in place for some time, they become the norm and their application expanded. The CCLs regard this as a dangerous trend.[5]

10. In this instance the ambit has extended from serious sex offenders to violent offenders and terrorists. One cannot confidently assume these categories will not expand in the future nor that their application won't capture many offenders rather than the 'exceptional' few.

11. Nonetheless the current reality is that the High Court has validated the Queensland precedent, COAG has endorsed this CDO proposal as part of a nationally consistent counter-terrorism/ national security framework. This Bill appears to have bipartisan support within Parliament.

12. The High Court validation reflects the fact that Australia's constitution is largely silent on human rights and we do not have the alternative safeguards of a Bill or Charter of Human Rights. The protections theoretically afforded by our obligations under the ICCP are weak in practice and regularly flouted in our laws. As noted below in this submission, aspects of *The Statement of Compatibility with Human Rights* in relation to this Bill consist of little more than assertion – in the face of clear evidence to the contrary- that controversial provisions are compliant.

    It is this context which has led the Australian Human Rights Commissioner to pose an increasingly legitimate question:

> *'What are the options for democracy when both major parties, in government and opposition, agree upon laws that explicitly violate fundamental freedoms under the common law and breach Australia's obligations under international treaties?'*[6]

Main provisions of the Bill

13. The Bill proposes to 'amend Part 5.3 of the Criminal Code to establish a regime for the continuing detention of high risk terrorist offenders who are found to pose an unacceptable risk to the community at the conclusion of their custodial sentence.'[7] The object is 'to ensure the safety of and protection of the community.[8]'

[4] Tamara Tulich and Jesse Blackburn: *'The Government still needs to demonstrate that indefinite detention for terrorists is necessary*' The Conversation 14/12/2015

[5] Most comprehensively documented in Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Report 129) March 2016

[6] Keynote Address By Professor Gillian Triggs President Of The AHRC To The NSWCCL Annual Dinner July 2015

[7] Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 Explanatory Memorandum, par 1,p2 (HRTO Bill Ex Mem 2016)

[8] 105A.1

14. A continuing detention order (CDO) can be made for a person who has been convicted of certain terrorist offences against the Criminal Code and is either serving a sentence of imprisonment for the offence or is subject to a continuing or interim detention order. [9]

15. The Bill is modelled on existing laws enabling continuing preventative detention of high risk sex offenders and/or violence offenders[10] in all Australian states and the Northern Territory - with the exceptions of Tasmania and the ACT.

16. The Attorney-General (A-G) will be able to apply to the Supreme Court of a State or Territory for a continuing detention order (CDO) to commit an eligible terrorist offender to continuing detention in a prison for a period of up to three years.[11] There is no limit to the number of consecutive CDOs that can be sought for the offender.[12] Thus it is possible for the provision to lead to indefinite further detention of an offender without further charge or conviction.

17. The Court can make a CDO if it:

> *"is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence if the offender is released into the community*" and
>
> "*is satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk'*[13].

Civil evidence and procedure rules apply for CDO proceedings. [14]

CCLs position

Fundamental right to liberty

18. The CCLs agree that the stated object of the Bill – 'to ensure the safety and protection of the community'- is one of Government's highest priorities. It is clear that the current terrorist threat to the Australian community is real and considerable. Our Governments and their agencies need adequate and effective laws, powers and resources to protect the community from terrorist acts – with the important caveat that that they do not disproportionately breach the fundamental rights and liberties that underpin our democratic values.
    In our view this Bill falls within this caveat.

19. The CCLs oppose this Bill as an unjustified and serious encroachment on the fundamental right to liberty of the person and on the rule of law

20. Our central and principled objection is to the concept of continued -and potentially indefinite- detention (imprisonment) of a convicted offender on the completion of his or her Court imposed sentence without charge or conviction for a new offence.

[9] (105A.3)
[10] HRTO Bill Ex Mem 2016 para 5, p3
[11] (105A.5).
[12] (105A.7 (5) (6).
[13] 105A.7(1)(b)(c)
[14] 105A.13

21. This extreme penalty-deprivation of liberty potentially indefinitely- is to be imposed on the basis of an inherently unreliable risk assessment as to the likelihood of the offender committing a future serious terrorist offence. The CCLs reject this as a repugnant and dangerous proposal totally at odds with the core principles of our justice system.

22. Notwithstanding safeguard provisions in the Bill and the assurances in the Explanatory Memorandum[15], the CDO proposal clearly breaches the right to freedom from arbitrary detention and the right to liberty of the person in Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

23. By requiring the Court to impose mandatory detention on an offender if the application for a CDO is successful, the Bill distorts the core function of the judiciary/courts to protect citizens against arbitrary deprivation of rights and liberties by the State.

24. The CCLs hold to this principled objection notwithstanding the growing numbers of laws in this country which breach these freedoms. We do not accept - as is implied in the Explanatory memorandum[16]- that the existence of legal precedents is of itself justification for legislation which is disproportionate and unjustified.

25. The CCLs note the precedent setting decision of the High Court in 2004 [17] upholding the the Queensland Sex Offenders Act and appreciate the current implications of that decision. We also note the dissenting view of Kirby J in that case. The CCLs agree with his central arguments:

> *Even with the procedures and criteria adopted, the Act ultimately deprives people such as the appellant of personal liberty, a most fundamental human right, on a prediction of dangerousness, based largely on the opinions of psychiatrists which can only be, at best, an educated or informed "guess'. The Act does so in circumstances, and with consequences, that represent a departure from past and present notions of the judicial function in Australia.*
>
> *The categories of exception to deprivations of liberty treated as non-punitive may not be closed; but they remain exceptions. They are, and should continue to be, few, fully justifiable for reasons of history or reasons of principle developed by analogy with the historical derogations from the norm. Deprivation of liberty should continue to be seen for what it is. For the person so deprived, it will usually be the worst punishment that our legal system now inflicts. In Australia, punishment, as such, is reserved to the judiciary in a case following an established breach of the law. For that the offender "can be punished [but] for nothing else".*
>
> *Effectively, what is attempted involves the second court in reviewing, and increasing, the punishment previously imposed by the first court for precisely the same past conduct. Alternatively, it involves the second court in superimposing additional punishment on the basis that the original maximum punishment provided by law, as imposed, has later proved inadequate and that a new foundation for additional punishment, in effect retrospective, may be discovered in order to increase it. Retrospective application of new criminal offences and of additional punishment is offensive to the fundamental tenets of our law. It is also contrary to the obligations assumed by Australia under the ICCPR. It is contrary to truth and transparency in sentencing. It is destructive of the human capacity for redemption. It debases the judiciary that is required to play a part in it.* [18]

[15] HRTO Bill Ex Mem 2016 paras 31-38, pp7-8
[16] HRTO Bill Ex Mem 2016 p3
[17] Fardon v Attorney General for the State of Queensland (2004) 223 CLR 275 (Fardon 2004)
[18] Fardon 2004 par 125ff.

26. Kirby J's dissenting views are consistent with those of other High Court judges[19] demonstrating there are legitimate, substantive grounds for maintaining opposition in principle to this Bill

Necessity

27. The Bill incorporates a prohibition on the making of a CDO unless the Court '*is satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk*'[20]. A note cites a control order as an example of a less restrictive measure.

28. This is a very important requirement. If this Bill becomes law, it would be reasonable to expect that most, if not all, offenders who were deemed likely to re-offend and thus pose an unacceptable risk to the community, could be safely managed with the powers (including intensive surveillance and detention) and constraints already available under existing control and detention orders legislation and the very extensive suite of counter-terrorism and national security laws enacted in Australia since 9/11. If the Bill becomes law it will be a critical safeguard against excessive imposition of CDOs.

29. However, in the CCLs' view this proposition holds for the totality of the Bill and the proposed CDO regime.

30. The proposed CDO regime is not necessary for the safety and protection of the community from possible future offences from high risk terrorist offenders. Australia's counter terrorism and national security laws provide intelligence and security organisations and police with extensive powers of surveillance and allow questioning and detention and imposition of very strong control orders without the need to charge persons with an offence.

31. Beyond these powers, the existing range of terrorist offences is extensive- probably the most extensive in any liberal democracy. Terrorist offences encompass not just the doing of a terrorist act, but financing or planning a terrorist act, collecting or making documents or materials connected with a terrorist act, possessing 'a thing' connected with a terrorist act, advocating terrorism and providing or receiving training connected with a terrorist act.

32. It is difficult to see how a high risk terrorist offender assessed as very likely to commit a future serious terrorist offence on return to the community could not be managed and if appropriate charged within the ambit of these very extensive laws. Clearly such an offender would be subject to intensive surveillance on release.

33. Arguably the most reliable indicator of likelihood to re-offend is the statement of the intention to do so by the offender. The community will – as argued by the NSW Sentencing Council[21] – rightly expect who make it clear they will reoffend. For better or worse, existing counter-terrorism laws would enable the charging and, if proven, conviction and imprisonment of an offender who indicated an intention of re-offending in relation to serious Part 5.3 offences.

[19] E.g. Witham v Holloway (1995) 183 CLR 525 at 534, Brennan, Deane, Toohey and Gaudron JJ held "Punishment is punishment, whether it is imposed in vindication or for remedial or coercive purposes".
[20] 105A.7(1)(c)
[21] NSW Sentencing Council: High-Risk Violent Offenders: Sentencing and Post-Custody Management Options Report May 2012. p6.

Effectiveness

34. There is no persuasive evidence that the proposed continuing detention orders regime will achieve the object of ensuring the safety and protection of the community. In the scheme of things terrorist acts are likely to emanate from unknown persons.

35. Research suggests the likely outcome of this legislation might more accurately be described as providing false 'comfort' for the community on the basis of perception of increased safety and protection[22]

36. It is possible that continued detention beyond the prescribed sentence will have a counter-productive radicalising effect on the offender and on his or her community because of the perceived injustice of the process.

37. It is possible that the availability of continuing detention of an offender might provide an easier option for authorities than the provision of serious rehabilitation and de-radicalisation programs during the sentence period.

38. While the offenders participation in rehabilitation programs can be taken into account by the Court there is no requirement they be offered.

39. The CCLs note the strong concerns expressed by the Lebanese Muslim Association in their submission on this Bill, as to the likely counter-productive outcomes in relation to increased radicalisation and neglect of rehabilitation and de-radicalising programs if this Bill becomes law.[23]

Recommendation 1

The CCLs oppose this Bill because it is a serious and unjustified encroachment on the fundamental right to liberty of the person.

It is also contrary to longstanding principles underpinning the rule of law. It undermines and distorts the judicial functions in administering justice. It is unnecessary.

The Bill should be withdrawn.

Detailed comments on aspects of the Bill

40. The High Court has validated a similar Queensland law, COAG has endorsed this CDO proposal as part of a nationally consistent counter-terrorism/ national security framework and the Bill has bipartisan support within the Australian Parliament.

    The CCLs do not expect our recommendation to withdraw the Bill to be taken up by the PJCIS or the Parliament- at this time. We do however consider the validity of this Bill to be a live issue which will be subject to ongoing legal debate.

[22] Tulich
[23] The CCLS were provided access to a draft of the Lebanese Muslim Association submission to the PJCIS on this Bill. .

41. Contrary to arguments in the Explanatory Memorandum, the CCLs consider the Bill seriously and unjustifiably breaches the ICCPR in numbers of aspects.

42. The rest of this submission will focus on specific elements of the Bill and will offer suggestions for amendments which we consider will strengthen some of the safeguards.

Safeguards and ICCP obligations

43. As a general point, we acknowledge the Bill includes a number of important safeguard provisions both to protect the interests of the offender and to avoid the appearance or reality of arbitrary detention. Some of these are positive and effective. Others are flawed and can be improved. However, key safeguards provisions are unconvincing and appear to be technical manoeuvres to avoid unwarranted breach of our international Human Rights obligations.

44. These weaknesses in the safeguards are of major significance and bring into question the central claim of the Compatibility Statement that the provisions of the Bill comply with our international obligations under relevant articles of the ICCP[24].

Standard of proof

45. In deciding to make a CDO the Court must be 'satisfied to a high degree of probability' that the offender, if released into the community, would pose 'an unacceptable risk'. [25]

46. There has been a divergence of views as to the precise meaning of 'satisfied to a high degree of probability 'and 'unacceptable risk' in similar statutes. The former has been interpreted as implying *'*beyond more probably than not'.[26] That is akin to the criminal standard of 'beyond reasonable doubt'. It has also been interpreted as implying less than that: '*the risk may be less likely than not but still be an unacceptable risk.'*[27]

47. The Victorian Serious Sex Offenders legislation has an inserted definition clarifying the meaning as the lesser standard.[28] The failure to include this provision in the drafting of this Bill may or may not be intentional. It is certainly a positive.

48. Given the seriousness of the consequences for the offender if a CDO is made, the standard of proof should be as high as in a criminal court and the necessary degree of risk should be high. This is essential for fairness and justice. It is also a necessary safeguard against CDOs being sought and made for the many or even most offenders rather than for the exceptional high risk offender. This is a likely outcome in any risk averse context.

Recommendation 2

49. **Given that the imposition of a CDO will lead to the detention of a person for up to three years with no restriction on the number of sequential CDOs the standards of proof and level of risk**

[24] The Compatibility Statement recognizes that the Bill engages articles 9, 10, 14 and 17 of the ICCP. HRTO Bill Ex Mem 2016 para 29, p6
[25] 105A.7(1)(b)
[26] Cornwall v Attorney General *(NSW)* [2007] NSWCA 374, [21].
[27] New South Wales v Thomas [2011] NSWSC 118, [16].
[28] The Victorian Serious Sex Offenders (Detention and Supervision) Act 2009, S9 and S35.

should be amended to 'beyond reasonable doubt' and the 'unacceptable risk' should be clarified as meaning 'beyond more probably than not".

Reliability of risk assessment

50. The argument for the validity of the proposed CDO regime relies on a strongly implied assumption that structured and other risk assessment procedures can predict with a high degree of reliability whether a previously convicted offender is highly likely to reoffend in the future. The CCLs are not aware of robust evidence to support this argument but there are many informed statements to the contrary.
51. Predictions of future offending by an individual can never be other than inherently problematic whether derived from structured risk assessment tools or other expert opinion. The Human Rights Committee of the United Nations has expressed its views on this in the context of similar Australian legislation:

> *"The concept of feared or predicted dangerousness to the community applicable in the case of past offenders in inherently problematic. It is essentially based on opinion as distinct from factual evidence, even if that evidence consists of the opinion of psychiatric experts. But psychiatry is not an exact science"* [29]

52. The move to utilise more structured risk assessment tools to improve reliability of the overall assessment process has not been demonstrated to bring greater surety to predictions of future behaviour.

> *"There remains an issue with all the predictive tools in that they have not yet been validated. They were developed, in part, to overcome the perceived and actual weaknesses of an unguided clinical assessment and have been embraced by professionals, psychiatrists and psychologists, as an improvement on an unguided assessment. Nevertheless, it would be an error to attribute a degree of scientific certainty to the tools simply because they deliver an arithmetical outcome. They remain unvalidated. Years will have to pass before a retrospective survey can determine whether and, to what extent, the predictive tools are reliable."*[30]

53. Until there is robust proof that prediction of risk of re-offending is reliable, it is clearly unwarranted to subject prior offenders to lengthy and unrestricted further detention.

Recommendation 3

54. **The PJCIS seek comprehensive advice on current expert viewsand data based research on the reliability of risk assessment tools and procedures to assure itself that they provide an appropriate basis on which to make a decision to impose ongoing imprisonment on an offender.**

Relevant expert

55. The Court may appoint a 'relevant expert who is 'competent to assess the risk of a terrorist offender committing a Part 5.3 offence.' The specified list of relevant experts is very open –

[29] HR Committee of UN UNCHR Human Rights Committee of the United Nations in Fardon v Australia (UNHRC, Communication No 1629/2007, 18 March 2010)
[30] McKechnie J in DPP (WA) v Comeagain [2008] WASC 235 at [20] (22 October 2008.

ended. It includes any kind of medical practitioners (with specific reference to psychiatrists and psychologists) and 'any other expert. [31]

56. There is no clarity as to the range and kind of 'other' expertise that is likely to provide a sound basis for a reliable assessment of the risk of an offender committing a Part 5.3 terrorist offence. It is difficult to think of any experts other than psychiatrists and psychologists likely to have a relevant body of knowledge and experience. Possibly a social worker or person involved in rehabilitation and de-radicalisation programs.

57. As it stands, the CCLs have a number of concerns.
This open-ended definition of ' competent' expert could exacerbate the inherent imprecision of the risk assessment process.

    The definition does not specify that the expert be independent. That could be a problem. Would it be acceptable if the experts are corrections, police or intelligence officers?

    There is no provision to allow offenders to have input into the selection of an expert or call their own expert.

    These matters should be addressed in the Bill and the Explanatory Memorandum.

Recommendation 4

58. **The PJCIS give further consideration to clarifying what kind of 'experts' beyond psychiatrists and psychologists are likely to have relevant expertise and experience to be 'competent to assess the risk of a terrorist offender committing a Part 5.3 offence'.**
Recommendation 5

    105A.2 should be amended to require the appointed expert to be independent.

    Recommendation 6

    105A.2 should be amended to allow the offender to have input into the selection of the expert(s) and/or to have the right to appoint his/her own expert.

    Access to information

59. The A-G or his delegate may apply to a Supreme Court for a CDO in relation to a person who has been convicted of certain terrorist offences against the Criminal Code and is either serving a sentence of imprisonment for the offence or is subject to a continuing or interim detention order. The application must include 'any report or other document that the applicant intends, at the time of applications, to rely on in relation to the application. 105A.5(3)

60. This is a very important safeguard. It should ensure that the offender has access to the information which will be considered by the Court in deciding whether to make a CDO and enable them to put a defence.

61. However the specified exceptions to this access[32] are very broad and seriously weaken this safeguard. The offender will not have access to a wide range of intelligence related material. These are likely to be a significant source of information underpinning the A-G's application.

[31] (105A.2)
[32] 105A.5(5)

62. As it stands the Bill does not ensure an offender will have a fair trial in opposing the application. Given the consequence of a successful application is ongoing imprisonment- this is unacceptable. In our view it is a clear unjustified breach of the ICCP.

Recommendation 7

63. **Section 105A.5(4)(5) relating to the offenders access to information included in the CDO should be amended to ensure the offender has access to all information necessary to challenge the case being made against him/her in the interest of procedural fairness**

Detention – protective and punitive

64. The Compatibility Statement resorts to the much contested notion underpinning recent similar legislation that the imposed further detention does not engage Article 14(7) of the ICCP [33]:
This right is not engaged by the Bill as the continued detention of a terrorist offender under the scheme does not constitute additional punishment for their prior offending – the continued detention is protective rather than punitive or retributive. [34]

65. The CCLs have not accepted this notion as credible in relation to any of the continuing detention regimes. It is a fiction to assert that ongoing detention, most likely in the same prison as the offender has served his sentence in, is not a continuing punishment. (This does not mean it cannot be protective also). We reject this conceit in the Bill.

    Article 14(7) of the ICCP is certainly engaged and violated by this Bill.

Treatment of an offender under a CDO

66. The Bill specifies that:
    'terrorist offenders detained in a prison under a continuing detention order or interim detention order must be treated in a way that is appropriate to their status as persons who are not serving a sentence of imprisonment and must not be accommodated or detained in the same area or unit of a prison as persons serving sentences of imprisonment'. [35]

67. This is an appropriate safeguard and is consistent with ICCP obligations. This provision is no doubt inserted both for the protection of the offender and to avoid violating the relevant ICCP provision.

68. Given the pressures on prison systems across Australia it would be difficult see how this could actually be accommodated in any of them. This is clearly recognised in the drafting of the Bill by the inclusion of expansive exception clauses that make the provision all but meaningless in practice.[36]

69. The significance of this safeguard is heightened by the fact that it is practice to keep terrorist offenders under harsh conditions in prison. As the ongoing detention under a CDO is for those who pose a particularly high risk to the community , it is reasonable to presume such persons will be kept under conditions at least as harsh.

[33] Article 14(7) provides that no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted in accordance with the law and penal procedure of the country
[34] HRTO Bill Ex Mem 2016 para 45, p9
[35] HRTO Bill Ex Mem 2016 para 47, P10
[36] 105A.4

70. The CCLs consider it is almost a certainty that the conditions of detention of CDO detainees will inconsistent with the ICCP and with the rights and liberties of a person who is being detained on a presumption of dangerousness.

Recommendation 8

The PJCIS give further consideration to options for accommodation for CDO detainees more consistent with their status as persons detained beyond their sentenced period.

Successive CDOs

71. While a CDO is limited to a maximum period of three years detention, there is no limit as to the number of consecutive CDOs that can be made for an offender. There is an explicit provision clarifying that the Court may make successive continuing orders. [37] This means that the period of detention that can result within the CDO regime is potentially indefinite.

The CCLs consider this to be unreasonable and excessive.

Recommendation 9

72. **The provision relating to successive CDOs be amended to include a limit on the number that can be made against an individual.**

Concluding comments

73. The CCLs do not endorse this Bill. If it is to proceed we urge the PJCIS to recommend significant amendments to improve the Bill's consistency with fundamental rights and to improve safeguards for CDO detainees.

74. We hope this submission assists the Committee in its review process. We welcome the opportunity to provide further input at the public hearing on the 14th October.

75. This submission was coordinated written on behalf of the joint CCLs by Dr Lesley Lynch (Vice President NSWCCL) with significant input from Michael Stanton (lLberty Victoria), Nicholas Cowdery and Malcolm Ramage(NSWCCL) and Michael Cope (President Queensland CCL) and with general from the Executives of the individual CCLs.

Yours sincerely
Therese Cochrane

Secretary
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13/10/16

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[37] 105A.7(4)(5)(6)