

Subject: Inquiry Submission JCIS on PDOs and related matters
Date: Tuesday, 31 October 2017 2:56:16 AM

COMMONWEALTH PARLIAMENT
Parliamentary Joint Committee on Intelligence
and Security
Committee Secretary
PO Box 6021
Parliament House
Canberra ACT 2600

**Review of police stop, search and seizure
powers, the control order regime and the
preventative detention order regime**

Dear Committee Secretary

This Public Submission is made in relation to the Committee's Terms of Reference under paragraph 29(1)(bb) of the Intelligence Services Act 2001, whereby the Committee is required to review, by 7 March 2018, the operation, effectiveness and implications of:

- Division 3A of Part IAA of the Crimes Act

- 1914 and any other provision of that Act as far as it relates to that Division
- Divisions 104 and 105 of the Criminal Code and any other provision of the Criminal Code Act 1995 as far as it relates to those Divisions.

Thank you for the opportunity to make this submission to this review of the operation, effectiveness and implications of provisions under Division 3A of Part IAA of the Crimes Act 1914 (Cth), and Divisions 104 and 105 of the Criminal Code Act 1995 (Cth) (Criminal Code).

As well as broad and specific First Nations, Indigenous, Aboriginal Islander perspectives this Public Submissioner supports and re-emphasises some comments made in the '**Dr Jessie Blackbourn, Professor Andrew Lynch, Dr Nicola McGarrity, Dr Tamara Tulich and Professor George Williams AO** (Centre for Socio-Legal Studies, University of Oxford; Gilbert + Tobin Centre of Public Law, Faculty of Law, University of New South Wales; and

University of Western Australia Law School) ,
the 'OxNSWAUGT' Submission.

Our Community of Waverley, Bondi, has recently more closely dealt with the issue of dealing with anti-terrorism measures in the after effects of a NSW Land and Environment Court Decision in which a mixed development application featuring a proposed Synagogue and the developer's terrorism consultant's report sparked wide Public debate and comment on matters of racial profiling prejudice and Community liberty. This related debate raised the sensitivities of balancing Community protection with individual freedoms.

This Submissioner supports the repeal of Division 104 of the Criminal Code Act 1995 (Cth) (Criminal Code), as reasoned towards at page 17 of the OxNSWAUGT Submission.

Whenever the Commonwealth Parliament is deliberating now in a postMabo terra nullius voided legal and geographic landscape , this Submissioner asks that any Parliamentary Inquiry consider a broad First Nations Social

Justice approach to the inquiry's Terms of Reference, and wide legal interpretation of Aboriginal Islander Community notions of unceded Sovereignty , coupled with how advocacy, activism and dissenting, grassroots democracy, nonviolent protest for positions taken to reconcile these notions needs to be protected under the various relevant social, political and Indigenous United Nations Declarations as part of the guarantees of Australia as an International Citizen in a global civil society.

In terms of mainstream international terrorism responses comparisons it is concerning that the OxNSWAUGT Submission refers to Australia's unique infamy:

" The power to detain individuals incommunicado on the basis that they are reasonably suspected of involvement in terrorism is extraordinary and does not exist in any comparable nation.

[(6) See Svetlana Tyulkina and George Williams, 'Combatting Terrorism in Australia through Preventative Detention Orders' in Tamara Tulich, Simon Bronitt, Rebecca

Ananian-Welsh and Sarah Murray (eds)
Regulating Preventive Justice: Principles,
Policy and Paradox (Routledge, 2017) 143-5.]

This Submissioner supports the description of "unjustified" as applied by the OxNSWAUGT Submission (pages 3, 4) to Division 105's perceived infringements on 'freedom: of movement, association, from arbitrary detention, of client legal privilege'.

Submissioner support exists for the Independent National Security Monitor's description of Division 105 and the preventative detention order, PDO, powers as 'at odds with our normal approach to even the most reprehensible crimes', and the COAG Review's view 'that such powers 'might be thought to be unacceptable in a liberal democracy'.

The Submissioner is in agreement with the recommendation that the preventative detention order regime be repealed, and Appreciates the OxNSWAUGT Human Rights and Police operational analysis forming this position as mentioning various Police Submissions about the impracticality and

unlikelihood of using the Division 104/105 PDO regimes in favour of the availability of 'more suitable detention powers'.

In relation to submissions to this Inquiry about 'crude racial profiling' and 'suspect communities' (OxNSWAUGT page 5), this Submissioner asks the Inquiry to consider the work done by NSW Parliament, Upper House, Member of the Legislative Council, Mr David Shoebridge MP's Aboriginal Justice portfolio in highlighting the NSW Ombudsman Reports that are a comparable analysis of 'stop, search and seize' and 'summary offence' type related NSW Police Service powers, which were analysed as misdirectionally effectively racially profiling Aboriginal Male Youth.

The Committee is asked by this Submissioner that as part of its Inquiry/Report the Committee consider the Public Submissions and further analysis which may result from Public comment on :

The Victorian Government's Expert Panel on Terrorism and Violent Extremism Prevention Response Powers second report;

and,

The Independent National Security Legislation Monitor, Dr James Renwick SC, report on Divisions 104 and 105 of the Criminal Code to the Prime Minister (by 7 September 2017, then tabled in the House of Representatives within 15 sitting days, that is, by the end of November 2017).

Thank You,

Yours in balancing anti-terrorism and
Community Liberty,

CR dominicWYKanak
boondiboondi Bondi Ward ,
Deputy Mayor , Waverley Council
ps: the views expressed are not those of
Waverley Council/lors , but are based on
Community sentiments, feedback, other
Inquiry Submissions and Personal experience

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