NSWCCL

NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INC

149 ST JOHNS ROAD GLEBE NSW 2037 AUSTRALIA • PHONE (61 2) 9660 7582 • FAX (61 2) 9566 4162

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The Secretariat,
Senate Legal & Constitutional References Committee
Room S1.61
Parliament House
CANBERRA A.C.T.

By Fax (02) 6277 5794

Dear Sir/Madam,

Re: Inquiry into Provisions of the *Anti-Terrorism Bill* 2004

This submission is made on behalf of the New South Wales Council for Civil Liberties in respect to the *Anti-Terrorism Bill 2004* and the changes proposed by that legislation. The Council is concerned about various provisions of this bill and the general thrust of the legislation. Having regard to the very strict time restraints that have been imposed in relation to making submissions on this bill, we make the following general points and would be happy to elaborate further.

In general, we note statements have previously been made by both the Prime Minister and Ministers of the Government following other legislative changes that have been made since the September 11 attacks and the attacks in Bali stating that there were adequate provisions in place to deal with the threats of terrorism and we are concerned that further legislative changes are now brought forth which seems to extend the power of the Government against the liberty of the individual without a case being made out clearly for the need for extra power.

The Council is in general concerned about any extension of the power to detain people as proposed by this bill. We are also concerned that it would appear that certain provisions of the bill which is the proposed section 102.5 to the *Criminal Code Act* 1995 appears to reverse the onus on an individual charge with a very serious offence. The Council sees no case for a need for a reversal of onus in an offence of this type and indeed given the serious consequences and severe penalty that flows from a conviction, the usual requirement for the prosecution to prove its case in respect of this matter should still be applied.

We are concerned with several aspects of the proposed amendments to the *Proceeds of Crime Act* 2002. No case has been made out for the need for these provisions and the provisions seem to run counter basic principles. For instance, the Prime Minister has already stated that it would be wrong to make the terrorism offences retrospective in respect of prosecutions but these provisions effectively attempt to do this in respect of the proceeds of crimes provision.

Also of particular concern is the broad definition of foreign indictable offence. It is easy to see that the application of these provisions could for instance affect somebody like Nelson Mandela in the past or nowadays individuals or groups who may be fighting for the independence of Tibet against the dictatorial Government in Communist China.

Of further considerable concern is the provision to give specific recognition to one particular country's executive orders as if they were legislation. This is a particularly dangerous precedent even more so having regard to the very questionable constitutionality of the specific provisions which has been referred to. It should be remembered that these are not laws that have been passed by the Congress of the United States or has the United States Supreme Court reviewed them.

Overall the Council remains concerned that the whole legislative processes dealing with terrorism legislation in Australia, unlike any other common law democracy, is not supervised by the overarching requirements of a Bill of Rights. Therefore, it is a matter of particular concern in Australia when extra legislation is produced to take away citizens' rights, great care is needed to examine that there is a need for this legislation and that the affect is not to permanently remove freedoms that Australians have always enjoyed.

We apologise for the shortness of this submission but given the time constraints with the intervening Easter break during the period from which the legislation has become available and the period in which to make submissions, we have not had the opportunity to give more detailed submissions. If you wish us to elaborate further please do not hesitate to contact us.

Yours faithfully,

DAVID BERNIE

Vice President
New South Wales Council of Civil Liberties