



21 April, 2004

The Secretariat
Senate Legal & Constitutional Legislation Committee
Room S1.61, Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary,

Re: *Anti-Terrorism Bill 2004 (Cth)*

The Law Institute of Victoria ("LIV") provides the following submission in relation to the Anti-Terrorism Bill 2004 Cth ("**the Bill**").

The LIV is concerned about the potential impact the Bill will have upon children (defined as people under the age of 18 years). The LIV is concerned that the Bill will enable children under the age of 18 years to be detained for up to 24 hours.

In your Committee's Inquiry into the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters tabled in Parliament on 3 December 2002, your Committee considered the detention and questioning of children suspected of a terrorism offence and noted the special vulnerability of young people.

The LIV's concerns with the Bill include the following:

- The Bill provides for the amendment of the *Crimes Act 1914 (Cth)* ("the Crimes Act") so that a judicial officer may extend investigation periods for suspected terrorism offences through section 23DA up to a maximum of 20 hours. Presently under the *Crimes Act*, a child may be detained for only 2 hours – half the time of an adult. If the Bill is passed, a child will be able to be detained for 22 hours. With respect to the extension of investigation periods, the Bill makes no distinction between adults and children.
- The Bill (section 23CA(8)(m)) provides that the time it takes for an investigating official to obtain information relevant to the investigation from a place outside Australia, not exceeding the amount of the time zone difference, will be disregarded in calculating

the investigation period. This 'dead time' creates the possibility that children will be detained for a maximum of 24 hours.

- The Bill contravenes the *Convention on the Rights of the Child* ("CROC") to which Australia became a signatory in 1991 (see below).

This submission addresses concerns relating to the timeframe permissible for the detention and questioning of children, and the implication of the Bill for the rights of children.

The LIV suggests that the application of this Bill to children aged under 18 years raises very serious concerns regarding the protection of the rights of these children.

Detention and Questioning of Children

Investigation Period

The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* ("ASIO Terrorism Act") is one recent piece of legislation that considered powers to detain persons suspected of committing terrorism offences. Prior to this Act, the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991* (Cth) ("Crimes Amendment Act") contained powers to detain persons suspected of committing offences.

The *Crimes Amendment Act* introduced maximum times for the questioning of persons arrested for Commonwealth offences. It provided for adults to be questioned for a maximum of 4 hours and persons under 18 and Aboriginal and Torres Strait Islanders to be questioned for a maximum of 2 hours.

The *ASIO Terrorism Act* distinguishes between young people aged under 16 and young people aged between 16 and 18. Young people under 16 are not subject to the *ASIO Terrorism Act*, however persons over 16 can be questioned for 8 hours at a time or in some instances where extensions are granted, for 16 hours. The *ASIO Terrorism Act* provides that a person may not be detained for a continuous period of more than 168 hours.

The provisions of the *Crimes Amendment Act* recognise the fact that children are vulnerable and require special protection. After submissions were made to the Parliamentary Joint Committee on ASIO, ASIS and DSD from a wide variety of groups and organisations, the *ASIO Terrorism Act* was significantly amended in relation to the detention of children, further reflecting the vulnerability as well as the physical and mental immaturity of children and the need to afford them special protection.

The Bill allows investigating officials to seek an extension of time to detain and question children where the standard 2 hour period expires. The Bill allows extensions of time to a maximum of 20 hours. This power goes well beyond the provisions of the *Crimes Amendment Act* and in relation to children under the age of 16, the provisions of the *ASIO Amendment Act*.

The Bill also allows investigating officials to disregard time in a variety of circumstances, thereby creating the possibility that children will be detained for periods greater than the supposed maximum of 20 hours. The provision with respect to time zone differences contained in 23CA(8)(m) could mean a child is detained for a much longer period, particularly if the country from which that information is sought is one in which the time zone difference is great, such as, for example, the Cook Islands whose time difference is approximately 22 hours.

The LIV considers the detention powers granted by proposed subsections 23DA(7) and 23CA(8)(m) to be grossly unjust, extending far beyond powers already contained within both the *Crimes Amendment Act* and the *ASIO Terrorism Act*. These powers create the potential for abuse, especially in relation to the detention of children.

Implications for the Rights of the Child

Breaches of the Convention on the Rights of the Child

By allowing this Bill to pass as it currently stands, the Government risks breaching the CROC.

In particular, we draw your attention to article 37:

- Article 37 provides that no child should be deprived of his or her liberty arbitrarily. Any detention should be used only as a **measure of last resort** and for the **shortest appropriate period of time**. Further, any child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.

We also draw your attention to articles 3.1, 19.1 and 36:

- Article 3.1 provides that in all actions concerning children the **best interests of the child** shall be a primary consideration.
- Article 19.1 provides that the State must take all **appropriate measures to protect the child** from all forms of injury and abuse.
- Article 36 provides that the State shall **protect children against all forms of exploitation** prejudicial to any aspects of the child's welfare.

In light of Australia's commitments to CROC, and more specifically, the consideration already given by your Committee and the Parliament to the appropriateness of detaining children for extended periods of time, the LIV urges you to recommend that children are not subject to proposed subsections 23DA (7) and 23CA(8)(m) of the Bill.

Yours sincerely



Chris Dale

President

Law Institute of Victoria