



Tel: 61 2 9264 9595  
Fax: 61 2 9264 9594  
Email: [naclc@fcl.fl.asn.au](mailto:naclc@fcl.fl.asn.au)  
Mail: PO Box A2245 Sydney South NSW 1235 Australia

Committee Secretary  
Senate Legal and Constitutional Committee on the Anti-Terrorism Bill 2005 (Cth)  
Parliament House  
Canberra ACT 2600

9 November 2005

Dear Sir/Madam

NACLC thanks the Committee for the opportunity to contribute to the Committee's inquiry.

***About the National Association of Community Legal Centres (NACLC)***

The National Association of Community Legal Centres ("NACLC") is the peak body representing the eight state associations of community legal centres ("CLCs") and 207 CLCs nationally.

Community legal centres are located throughout Australia in metropolitan, outer-metropolitan, regional, rural and remote Australia. Community legal centres are experts in "Community Law" – the law that affects our daily lives. They provide services to approximately 350,000 clients per year. They are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed.

While there is much diversity amongst community legal centres, there is also much in common. One of those features is a commitment to justice for everyone. Each community legal centre pursues this end in ways particular and appropriate to the region in which it is located, and the community it serves.

Many community legal centres provide legal advice, casework and advocacy around legal and social justice issues. They also conduct community legal education and participate in law reform where laws and/or procedures that hinder justice are identified. As such, CLCs are well placed to provide informed submissions to this Inquiry.

NACLC and several member organisations have been following the development of counter-terrorism laws in Australia, particularly since 11 September 2001, and have made submissions to Senate and Joint Parliamentary Committee inquiries relating to law reform in this area.

## ***The Purpose of this Submission***

This submission addresses the areas of the *Anti-Terrorism Bill 2005 (Cth)* (“The Bill”) which impact most on human rights. Submissions made by NACLC’s member organisations, the Federation of Community Legal Centres (Victoria) and the Public Interest Advocacy Centre, provide an analysis of broader aspects of the Bill in more detail. This submission supplements the submissions made by NACLC member organisations.

## ***Process Concerns***

NACLC is troubled by the process by which this Bill has been developed and introduced to the Parliament. In particular, the absence of public debate and consultation is striking. The very brief period this Committee has to do its work is not acceptable.

## ***Human Rights Concerns***

In particular we are concerned that the Bill violates many of the fundamental rights contained in the International Convention on Civil and Political Rights (“ICCPR”), to which Australia is a party.

This treaty is binding on Australia and forms part of our human rights obligations.

The Government has also committed itself to human rights through its revised *National Action Plan on Human Rights*, released in December 2004. The Prime Minister’s foreword to the Plan notes:

We continue to strive to protect and promote human rights and to address disadvantage. The Government’s reform agenda is actively ensuring that each member of the Australia community has the opportunity to participate in the life of our community and to experience the benefits and accept the responsibilities that flow from such participation.

Despite the Government’s commitment to human rights and Australia’s international obligations, there are serious human rights concerns about the Bill.

The rights include:

- The guarantee to be free from Arbitrary Detention (Article 9)
- Right of take proceedings before a court to determine the lawfulness of detention (Article 9(4))
- Right to Privacy and Respect for Family Life (Article 17)
- Freedom of Expression (Article 19)
- Freedom of Movement (Article 20)
- Freedom of Religion (Article 18)
- Right to a fair and public hearing in the determination of one’s rights and obligations in a suit of law or in the determination of a criminal charge (Article 14).

We will not detail the ways in which the Bill violates these rights, as this is discussed in the submissions endorsed by NACLC.

Under the ICCPR, if fundamental rights are to be limited, the Government must demonstrate that the measures in the Bill are necessary, are proportionate to the threat and contain adequate safeguards to prevent abuse against any powers granted.<sup>1</sup> We will deal with each of the issues briefly as follows:

### **Necessity<sup>2</sup>**

NACLC is concerned that the government is legislating for new counter-terrorism measures, when it has not demonstrated how the existing counter-terrorism measures are inadequate. In particular, ASIO currently has unprecedented powers to compulsorily question and detain persons suspected of having information related to a terrorism offence.<sup>3</sup> Furthermore, when appearing before the Parliamentary Joint Committee on ASIO, ASIS and DSD, Dennis Richardson, the previous Director –General of ASIO, informed the Committee that he believed the existing powers equipped him to do his job.<sup>4</sup>

### **Disproportionate impact on Muslim communities**

As detailed above, NACLC is of the opinion that the Bill seriously interferes with fundamental human rights, the Federal Government's National Counter-Terrorism Alert Level has remained at 'medium' since 11 September 2001, and accordingly there is little justification for the interference.

In relation to people who are likely to be affected by the Bill, NACLC is concerned that the measures will be directed disproportionately at the Muslim sections of the Australian community. By excluding or placing under suspicion a class of people in the community, we will see an increase in religiously motivated discrimination and violence. This is of an even greater concern given the lack of adequate legislative protection against religious discrimination and vilification and at Federal, and at many state levels. The Government continues to insist that there is nothing discriminatory about the Bill on its face. That is not the proper question for consideration. Clearly, if the Bill was *prima facie* discriminatory, the Commonwealth would face significant legal and political difficulty. NACLC is concerned about the operation of the Bill in practice. Proscribed terrorist organisations in Australia are all Muslim, and the recent raids by Australian Federal Police together with state police agencies, in Melbourne and Sydney, focused on people connected with Islam.

### **Adequate Safeguards**

NACLC is concerned that the Bill does not contain adequate safeguards to protect against abuse of power by the executive. This is a problem in particular in Australia due to the fact that we have no Charter of Rights.

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<sup>1</sup> REFERENCE – HRC Genreal Comment No. 29?

<sup>2</sup> NACLC would like to reference the 'Laws for Insecurity- Report on the Federal Government's Proposed Counter-Terrorism Measures' dated 23 September 2005 as a source of information for this paragraph.

<sup>3</sup> Division 3, Part II, Australian Security Intelligence Organisation Act 1979.

<sup>4</sup> Commonwealth, Parliamentary Debates, Parliamentary Joint Committee on ASIO, ASIS and DSD, transcript of public hearings. Canberra, 19 May 2005.

We are further concerned that there is a lack of effective judicial oversight within the Bill.

For example, a 10 year sunset clause is too long a period of time given the extreme nature of the measures proposed, and it only applies to the Schedules of the Bill relating to control and preventative detention orders (schedule 4) and stop search and seizure powers (schedule 5).

The COAG review of the Bill is also inadequate, and should be carried out in a shorter time frame, through public consultation and by an independent reviewer who is required to make public the report of the review, unlike the proposed COAG process.

**Conclusion**

NACLC has serious concerns about the human rights implications of the Bill. We urge the Committee to take these concerns into consideration during its deliberations.

Yours sincerely

Julie Bishop  
Director  
National Association of Community Legal Centres

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