



VICTORIAN BAR

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11 December 2015

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Dear Committee Secretary

Counter-Terrorism Legislation Amendment Bill (No.1) 2015

The Victorian Bar and the Criminal Bar Association of Victoria welcome the opportunity to provide submissions to the Parliamentary Joint Committee Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015.

1. The Victorian Bar ("The Bar") and the Criminal Bar Association of Victoria ("CBA") are opposed to Control Orders being available against persons who have not been convicted of, or charged with, a terrorist offence.
2. The Bar and CBA supports the recommendation of the Independent National Security Legislation Monitor ("INSLM") that the Control Order legislation (Division 104 of Part 5.3 of the *Criminal Code*) should be repealed.¹
3. Control Orders are said to be preventative but their conditions are punitive.
4. A Control Order which restricts the movement of a person from a specific location for up to 12 hours in a day is akin to a deprivation of liberty.
5. The Bar and CBA are opposed to Control Orders because, by their punitive nature, they impose substantial restraints on the rights, to communicate, associate and move freely, of a person who has committed no crime.
6. The Bar and CBA submit the existing Control Order provisions have too low a threshold for proof, that is, the civil standard of the balance of probabilities, and inadequate safeguards to ensure procedural fairness.²
7. The Bar and CBA note that the Australian Government has failed, at the least, to act on COAG recommendations for safeguards and protections to prevent abuse of exercise of the power to make a Control Order.
8. Control Orders were introduced in 2005.
9. The first Control Order was made against Jack Thomas in 2006.

¹ The INSLM Annual Report 2012.

² Council of Australian Governments Review of Counter-Terrorism Legislation 2013.



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10. The second was made against David Hicks in 2007.
11. More than eight years later, the third was made against Ahmad Naizmand, a 20 year old Muslim man, living in Sydney at the end of November 2015.
12. Three others are the subject of Control Order applications currently. Two are unidentified. The third controlee is Harun Causovic, an 18 year old Muslim, living in Melbourne, who had terrorism charges against him dropped in August 2015.
13. The Bar and CBA are concerned the proposed amendments represent a 'creep' towards further unjustified limitations on the liberties of an individual.
14. In particular, the Bar and CBA oppose the lowering of the age of children who can be made the subject of a Control Order to 14 years.
15. The Bar and CBA submit the introduction of a Control Order for a child is ineffective, inappropriate and unnecessary.
16. No evidence has been identified that such a restraint will be effective in countering terrorism.
17. The Bar and the CBA submit lowering the age of Control Orders is potentially counter-productive to the interests of national security.
18. Many will view the amendment as targeting Muslim youth who already have a strong sense of persecution and alienation.
19. It is submitted there is a high risk the amendment will foster rather than deter radicalisation of youth.
20. The Bar and CBA submit the making of a Control Order against a child is inappropriate, all the more in the case of a 14 or 15 year old, for the reasons the then INSLM, Bret Walker SC, gave in his 2012 Review.
21. The Bar and CBA also submit such orders are not necessary to prevent a terrorist event as the *Criminal Code* creates criminal offences for planning and preparing for terrorist acts and police already have wide powers to monitor individuals.
22. That police have applied for few Control Orders to date demonstrates the lack of need for them.
23. Existing counter-terrorism legislation is disjointed and confused. Australia has 64 pieces of counter-terrorism legislation, more than any other country in the world.
24. Too often, Governments have passed counter-terrorism laws in haste and without proper scrutiny.
25. Before further laws are made there needs to be significant public consultation and parliamentary debate.
26. The Government has failed to act on any of the recommendations of the INSLM and the COAG Review.
27. The current INSLM, Roger Gyles QC, is conducting an enquiry into whether the COAG recommendations should be introduced taking into account this new package of legislative amendments.



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28. The Bar and the CBA submits, at the very least, consideration of the Bill should be deferred until the INSLM has made his recommendations.

If you would like to discuss any aspect of our submission, please contact Emma Fox, Policy Lawyer

Yours faithfully

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President
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