



11 December 2015

Mr Dan Tehan MP  
Chair  
Parliamentary Joint Committee on Intelligence and Security  
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Dear Mr Tehan,

### **Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (No.1) Bill 2015**

Amnesty International welcomes the opportunity to provide comment on the *Counter-Terrorism Legislation Amendment (No.1) Bill 2015*.

While the bill incorporates amendments to numerous pieces of legislation, this submission will focus on the changes to the control order regime, which aim to lower the minimum age at which control orders can apply from sixteen years to fourteen years.

Amnesty International has opposed the introduction of control orders in a number of jurisdictions around the world, including Australia and the United Kingdom,<sup>1</sup> for reasons set out below.

When introducing legislation that is by nature coercive and curtails some human rights – on the basis of a perceived national security risk – governments must be able to demonstrate how the response to a threat is reasonable, necessary and proportionate.

#### **Amnesty International's concerns with control orders**

Amnesty International generally opposes Control Orders as they potentially violate a range of human rights.

Amnesty International holds that control orders can breach of a person's right to a fair trial<sup>2</sup> as the imposition of a control order is tantamount to "trying" and "sentencing" a person without the fair trial guarantees required in criminal cases.

In addition, Amnesty International is concerned control orders violate the right to liberty and security of the person,<sup>3</sup> the right to freedom from arbitrary detention and the right to freedom of movement,<sup>4</sup> the rights to freedom of expression and association,<sup>5</sup> and the right to be presumed innocent.<sup>6</sup>

Although international human rights law allows for some limitations to these rights under prescribed certain circumstances including national security, Amnesty International does not believe that the use of control orders to restrict the rights and remove the rights of individuals who have not been convicted of any crime can be adequately justified.

<sup>1</sup> See, for example: <http://www.amnesty.org.uk/press-releases/uk-control-orders-unlawful-amnesty-reaction>

<sup>2</sup> Article 10 Universal Declaration on Human Rights; Article 14 International Covenant on Civil and Political Rights (ICCPR)

<sup>3</sup> Article 9(1), ICCPR

<sup>4</sup> Article 12, ICCPR

<sup>5</sup> Article 19, ICCPR

<sup>6</sup> Article 14, ICCPR

In addition, this legislation applies specifically to children aged between fourteen and sixteen years of age, which triggers Australia's obligations under the Convention on the Rights of the Child (CRC), which Australia has signed and ratified. Under international law, children (those under 18) have all fair trial and procedural rights that apply to adults as well as additional juvenile justice protections. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>7</sup>

The Committee on the Rights of the Child, which monitors States Parties' implementation of CRC, noted in 2012 that Australia's juvenile justice system "requires substantial reforms for it to conform to international standards."<sup>8</sup> Without strong safeguards, lowering the age of culpability to impose a control order could place Australia in abrogation of its obligations under the CRC.

### **The need for oversight and safeguards**

Amnesty International notes the clarification within the Explanatory Memorandum that a child subject to a control order will not be separated from family and will be able to attend school. This is welcome. However, Amnesty also notes that the issuing court can impose a restriction on the child's movements if that is deemed necessary and appropriate to achieve one of the control order regime's purpose. In essence, this could amount to a curfew.

By their nature control orders restrict freedom of movement. It is appropriate that a court is the party issuing such a restriction. Amnesty International believes periodic review of this legislation's operation is appropriate. In this way, it is peculiar that this legislation has been introduced while the Independent National Security Legislation Monitor is conducting an inquiry into the existing control orders regime.<sup>9</sup>

Amnesty International notes the legislation includes its own safeguards – that a control order for a child can only be issued for three months, unlike the twelve months available for adults, and that a court must appoint an advocate for the child to act in control order proceedings. These two safeguards are absolute minima. Amnesty International remains concerned that a court can issue successive control orders – notwithstanding the time limited nature of an individual order. Successive control orders can mean, for example, an individual has their freedom of movement restricted without end.

Amnesty International supports the call by the Parliamentary Joint Committee on Human Rights for the Attorney-General to report on:

*"...how these safeguards will fully ensure that the control orders regime imposes only proportionate limitations on the range of human rights engaged by control orders. This includes more information about how the child's best interests will be taken into account in applying a control order, and how the policy intent that control orders be used only rarely is reflected in the legislation."<sup>10</sup>*

In light of these concerns, Amnesty International urges the Committee to recommend the legislation is not passed. At the very least, the Committee ought to delay further consideration of the legislation until the conclusion of the National Security Legislation Monitor's inquiry into the existing control orders regime.

Yours sincerely

Stephanie Cousins  
Government Relations Manager

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<sup>7</sup> Article 3, CRC

<sup>8</sup> Committee on the Rights of the Child, Concluding Observations – Australia (28 August 2012) CRC/C/AUS/CO/4 [82]

<sup>9</sup> <http://www.dpmc.gov.au/pmc/about-pmc/core-priorities/independent-national-security-legislation-monitor>

<sup>10</sup> Hon Philip Ruddock MP, Parliamentary Joint Committee on Human Rights Chair's Tabling Statement, Hansard, 1 December 2015