Australian Council
for Civil Liberties

JOINT CCLs

Submission

PJCIS STATUTORY REVIEW

Division 3A of Part 1AA of the *Crimes Act 1914*
Division 104 and 105 of the *Criminal Code Act 1995*

A combined submission from:
NSW Council for Civil Liberties
Liberty Victoria
Queensland Council for Civil Liberties
South Australian Council for Civil Liberties
Australian Council for Civil Liberties

31st October 2017

PJCIS STATUTORY REVIEW

Division 3A of Part 1AA of the *Crimes Act 1914* Division 104 and 105 of the *Criminal Code Act 1995*

INTRODUCTION

1. The councils for civil liberties across Australia[1] (the CCLs) welcome the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) statutory review of the operation, effectiveness and implications of provisions under Division 3A of Part 1AA of the *Crimes Act 1914* (Police Stop, Search and Seizure Powers) and Division 104 and 105 of the *Criminal Code Act 1995* (Control Order regime And Preventative Detention Orders regime).

2. This review arises from the statutory requirement that the PJCIS review these provisions prior to their lapsing under a sunset clause on 7th September 2018.[2] In addition the PJCIS will review how the control order regime interacts with the continuing detention order regime for high risk terrorists introduced in December 2016.
3. The Independent National Security Legislation Monitor (INSLM), Dr Renwick SC, has also reviewed these provisions as required by the INLSM Act[3]. We were pleased the PJCIS extended the timeframe for submissions until after the tabling of his report in Parliament.

4. The CCLs have expressed their views on these provisions – individually and jointly – in a number of previous reviews[4].

5. As the INSLM office brings an independent perspective and has access to intelligence/security information not publicly available, it was important that we have the opportunity to consider his report to assess whether there are new grounds for amending any of our previously expressed views on these provisions prior to providing our submission to the PJCIS.

6. This submission covers the 'stop, search and seizure' provisions in some detail . For the control order and preventative detention order provisions, we provide only brief comments and reference Liberty Victoria's recent submission to the INSLM review.

CONTEXT

7. The terrorist threat in Australia is serious and evolving. It is clearly important that intelligence and security agencies and police have adequate powers and resources to do their job in the context of the heightened threat of terrorist activity.

8. There is no serious debate on this fundamental goal in the Australian community

9. The debate that has been running between many community, legal, civil liberties and human rights groups and governments since 9/11 is about the effectiveness and proportionality of measures taken to achieve the goal - especially in their impact on fundamental rights and liberties.

[1] New South Wales Council for Civil Liberties, Liberty Victoria, Queensland Council for Civil Liberties, South Australia Council for Civil Liberties, Australian Council for Civil Liberties
[2] Section 29 of the *Intelligence Services Act 2001* requires review by 7 March 2018
[3] Independent National Security Legislation Monitor: *Sections 119.2 and 119.3 of the Criminal Code: Declared Areas Report,* September 2017 (INSLM report: Declared Areas 2017)
[4] Liberty INSLM, NSWCCL 2012, Joint CCLS HRTO

10. Some of Australia's counter-terrorism laws have been unnecessary in that appropriate laws and powers already existed. A disturbing number of the counter-terrorism measures have been disproportionate and unjustifiably undermine longstanding democratic processes, rights and liberties.[5]

11. Cumulatively this stream of counter-terrorism legislation has had a disturbing effect. Laws which seriously breach long held liberties and rights, key principles of the rule of law and basic democratic values are increasingly numerous and increasingly unremarkable. They are no longer confined to counter-terrorism and national security measures. Our fear that this would occur would now seem to be irrefutable fact.

POLICE STOP SEARCH AND SEIZE POWERS

12. Division 3A of Part IAA of the *Crimes Act 1914* enables police officers to stop and search a person in a Commonwealth place, and seize items found in that search, if the officer suspects on reasonable grounds that the person might have just committed, might be committing or might be about to commit, a terrorist act; or if the person is in a prescribed security zone.

    These provisions were inserted in the *Crimes Act* by the *Anti-Terrorism Act (No. 2)*.

13. These powers involve restrictions on the freedom of movement (protected by article 12 of the ICCPR) and the right to privacy (protected by article 17 of the ICCPR).

14. The CCLs have commented on these provisions previously[6] and have consistently registered major concerns in relation to the sweeping nature of the powers, the extraordinary discretionary power of the Minister to declare an area a 'prescribed security zone', the low standard of proof required, and the inadequacy of independent scrutiny of the use of the powers.

15. On the basis of these concerns the CCLs opposed the initial passage of the legislation and, on their passage, argued they should lapse at the expiry of the initial and then the extended sunset clauses.

16. Accepting this was not likely to be acted on, we also recommended amendments to insert safeguards to address these concerns.

1.

THE INSLM FINDINGS AND RECOMMENDATIONS

17. The INSLM, consistent with his Act, systematically reviewed the 'declared areas' provisions in terms of:
    - their 'effectiveness' in deterring and responding to security/terrorist-related activity
    - their 'appropriateness' in terms of consistency with international human rights and counter-terrorism and security obligations;
    - their safeguards for protecting rights of individuals and their proportionality to any threat of terrorism or threat to national security or both
    - whether they 'remain necessary – derived from the above questions.

[5] See ALRC list of Commonwealth statutes-many of which are security/counter-terrorism related- which breach traditional freedoms. Although not all are unjustified-this list should be ringing alarm bells for those who are concerned to protect core freedoms as a central element of our democratic way of life. Australian Law Reform Commission: *Interim Report on Traditional Rights and Freedoms – Encroachment by Commonwealth Laws.* (Report 127), July 2015.

[6] Most recently LibertyVictoria Submission to INSLM Statutory Deadline Review April 2017

18. The INSLM's summarised his conclusions:
19.

> *I have come to the **conclusion** that the laws ought to be continued, subject to the addition of new safeguards in the form of reporting requirements (akin to the existing requirements for delayed notification search warrants) to the relevant minister, the Ombudsman, the PJCIS and my Office so that each such body can review, in accordance with their own powers and procedures, any exercise of div 3A powers, including the making of a ministerial declaration.*
>
> *Provided those safeguards are implemented, **I recommend** the laws be continued for a further period of five years. I do so in substance because, as to matters in s 6(1)(a) of the INSLM Act, I conclude that the laws have the capacity to be effective (nothing that the laws have not operated in that they have not been used) and the laws are truly 'emergency' powers.*
>
> *As to the matters in s 6(1)(b) of the INSLM Act, I have considered Australia's human rights, counter-terrorism and international security obligations, and intergovernmental agreements within Australia, and **I conclude** that the laws are: a. consistent with the obligations referred to above and contain appropriate safeguards for protecting the rights of individuals b. proportionate to the current threats of terrorism and to national security c. necessary.*[7]

Lack of use –implications

20. These provisions have not been used so there is no empirical information based on operational experience that can be accessed for this statutory review.

21. The CCLs, as with other commentators, have argued that the lack of use of these provisions adds substance to our view that they were not and still are not necessary for national security or counter-terrorism purposes given the range of other existing provisions in Division 3A *Crimes Act 1914* (Cth) and at the state level.

22. We do however accept that the lack of use of this and other contentious counter-terrorism provisions can have an alternative, valid interpretation.

23. The AFP argue that the lack of use of these powers reflect the fact they 'are designed to meet particular circumstances, which, fortunately, have not yet arisen'. They point to the narrow geographic ambit for their use and the limited possible application of the s 3UEA emergency entry power. The INSLM also notes the likelihood that "in almost every circumstance, state and territory police forces will be first responders".[8]

24. The AFP are nonetheless adamant that these powers remain necessary to meet a possible emergency security context.

25. The INSLM shares that view:

> *'I am persuaded by the information and submissions provided by the AFP and AGD as to the ongoing utility and importance of the powers in div 3A. The fact the powers have not been exercised is a reflection of their limited (but nevertheless important) application. I accept the*

[7] INSLM Report: Stop, Search and Seize powers 2017) p39
[8] INSLM Report: Stop, Search and Seize powers 2017) p25

observation of ASPI that there is a reasonable public expectation that law enforcement authorities will be properly empowered to respond swiftly to a terrorist situation.[9]

26. There is a circular element in the arguments. For example the reference by the AFP to the likelihood of the state and territory police being the first responders to a terrorist incident is central to the questioning of the necessity for these extraordinary powers.

27. The AHRC argues:

In determining whether the Division 3A powers are a proportionate response to the legitimate need to protect public safety, the INSLM may wish to consider in the first instance whether there is sufficient evidence of their effective use. While it is sometimes argued that retaining a rarely-used criminal offence can be justified for the purpose of deterrence, there can be no such justification for retaining intrusive policing powers. If the INSLM receives evidence that these powers are rarely if ever used, this would appear to indicate that the extensive pre-existing powers of stop search and seize at the federal and state and territory level are sufficient to fulfil the important aim of preventing terror attacks[10].

28. The CCLs agree with the AHRC. However, lack of use in itself may not prove powers to be unnecessary. The CCLs continued opposition to the provisions is based on lack of any solid evidence that there is a dangerous gap in available powers that can justify the continuation of these extraordinary powers which significantly breach rights and extend arbitrary power.

29. This is a widely held concern. We note for example that the Law Council of Australia continues to argue similarly:

The Law Council is not aware of any evidence to suggest that ordinary entry, search and seizure powers requiring a judicial warrant have caused an operational problem for law enforcement so as to justify the potential invasion of privacy for the exercise of powers in Part 1AA, Division 3A of the Crimes Act.[11]

30. The INSLM is not persuaded by these arguments and has determined that the powers are necessary and therefore rejects arguments that they should be repealed. [12]

31. **The CCLs maintain their in-principle opposition to these provisions.**

32. The CCLs also acknowledge that in the current context (including the intense focus of COAG on greatly expanding counter-terrorism/national security laws and the recommendations of the INSLM) it is not likely the Police Stop, Search and Seizure Powers (Division 3A of Part 1AA of *Crimes Act 1914*) will be repealed or allowed to lapse by the current Government.

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[9] INSLM Independent National Security Legislation Monitor: Review of Division 3A of Part 1AA of the Crimes Act 1914: Stop, Search and Seize Powers Report September 2017 (INSLM Report: Stop, Search and Seize powers 2017) p32

[10] Australian Human Rights Commission: Review of police stop, search and seizure powers, the control order regime and the preventative detention order regime September 2017 (AHRC PJCIS submission Statutory review 2017) Submission 3 pp9-10

[11] Quoted in (INSLM Report: Stop, Search and Seize powers 2017) p25

[12] (INSLM Report: Stop, Search and Seize powers 2017) pp30-31.

33. Therefore the CCLs' focus in this submission is on arguing for amendments to incorporate additional safeguards around these extraordinary powers.

Standard of belief/suspicion

34. If a person is in a Commonwealth place, such as a post office, airport or election booth, an officer only has to hold 'reasonable grounds to suspect' that (s)he might have committed, might be committing or might be about to commit a terrorist act in order to exercise the power to stop, search and seize. (s3UB(1)(a)).

35. The CCLs have argued that 'reasonable grounds to suspect' is too low a standard in relation to emergency search and seizure powers which authorise entry into premises without warrant[13].

36. It is lower than 'reasonable belief'. The High Court of Australia in *George v Rockett* (***Rockett***) held that the facts which can reasonably ground a suspicion may be quite insufficient to ground a belief[14].

37. The Court also endorsed a definition of reasonable suspicion as 'more than a mere idle wondering', but equivalent to 'a positive feeling of actual apprehension or mistrust', amounting to 'a slight opinion but without sufficient evidence'.

38. In *Rockett*, the High Court also cited with approval Lord Devlin's definition of reasonable suspicion in *Hussein v Chong Fook Kam* as a 'state of conjecture or surmise where proof is lacking'.[15]

39. 'Mistrust' or 'slight opinion' as the relevant standard is wholly inadequate to safeguard against police abuse. This is even more so the case in relation to the emergency search and seizure powers – which authorize entry in to a premises without warrant (s 3UE) on the same low standard.

40. Amending the standard of proof to 'reasonable belief' would require objective evidence before the exercise of the power. This standard would still permit extraordinary stop, search, and entry in to premises and seizure without warrant if necessary.

41. The INSLM, responding to Liberty Victoria's submission, considered and rejected this view:

> *The facts which reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown. Where a suspicion arises from idle speculation and has no foundation on the facts, it is not a reasonable one*

[13] Liberty Victoria, Submission to the INSLM, Statutory Deadline Reviews, 18 May 2017,
[14] (1990) 170 CLR 104, 115.
[15] [1970] AC 942, 984.

> *In **Queensland Bacon Pty Ltd v Rees, Kitto J** observed that '[a] suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion, but without sufficient evidence.*
>
> *As noted above …the COAG Review Committee declined to recommend that the threshold of 'reasonable suspicion' be raised to 'reasonable belief' as there was no empirical evidence that this distinction had led to the misuse of police powers, nor that it had operationally altered police behaviour. I agree.*
>
> *Furthermore, I consider the very purpose of the powers in div 3A, requiring swift action in an emergency situation, makes the existing test in s 3UB appropriate.*
>
> *Accordingly, I recommend that this test be retained.*[16]

42. The INSLM and COAG arguments have substance- including precedent. **However, the CCLs maintain their concern that 'reasonable grounds to suspect' is too low a level of proof for the exercise of these powers and brings a heightened risk of misuse by police**. If ever used, operational experience may provide firmer grounds from which to assess the validity or otherwise of the CCLs' concerns.

43. We note also that the first INSLM Bret Walker SC registered a level of disquiet that 'reasonably suspects' introduces another 'another layer of permissible uncertainty'.[17]

44. If the standard of proof is not to be amended (which is likely, given the COAG and the INSLM views) then the issue of strong independent oversight of the exercise of these powers becomes even more important.

Prescribed security zone

45. The Minister may declare a Commonwealth place a 'prescribed security zone' where the Minister 'considers' that doing so would assist in preventing a terrorist act occurring or assist in responding to a terrorist act that has occurred. The declaration remains in force for 28 days.

46. The CCLs have expressed concern as to the arbitrary nature of the Minister's ability to declare a 'prescribed security zone'. It is a broad power triggered by a low threshold: 'to assist in preventing or responding to a terrorism act occurring' (s 3UJ). This appears to allow police to stop, search or seize items, almost without limitation as no legislative criteria exist with respect to the power.

47. In a 'prescribed security zone', a person's right to privacy and movement is entirely abrogated as police can stop and search freely and randomly. This is a significant undermining of the right to privacy and freedom of movement.

48. Liberty Victoria also noted the lack of any requirement on the Minister to review the declaration within the 28 days. This is likely to lead to unnecessary infringement of the liberties of

[16] (INSLM Report: Stop, Search and Seize powers 2017) pp33-34.
[17] INSLM Annual Report 2014 pp 67

individuals if the terrorist threat no longer exists. Liberty Victoria also proposed a 14 day rather than 28 day limit.[18]

49. The LCA and the AHRC presented similar arguments to the INSLM. The AHRC's argument is referenced by the INSLM:

> *The AHRC submission raised concern as to the lack of meaningful review of the ministerial power to prescribe a security zone, noting that the breadth of the ministerial prescription power in div 3A is not insignificant. It added that it is unclear what matters a minister will take into account in prescribing a security zone, or indeed to revoke a prescription and suggested that the concentration of unfettered power compares unfavourably, for example, when considering the detailed scrutiny a court undertakes in judicially reviewing administrative decision-making, where a specified range of detailed information about the decision-making process is considered. Accordingly, the AHRC suggested that I consider whether the exercise of ministerial power to prescribe security zones can be justified.*[19]

50. The INSLM has not accepted these views. He is persuaded by the arguments put forward by the AGD:

> *AGD noted a prescribed security zone declaration is likely only in response to exceptional circumstances, based on information that a terrorist act is being planned.*
>
> *As to the matters which a minister would take into account in prescribing a security zone, AGD indicated that the existing national security architecture would likely be relied upon to inform the Attorney-General's decision to make such a declaration*
>
> *AGD said that it was anticipated that, if conditions arise which cause law enforcement and intelligence agencies to form the view that the grounds for making a declaration in s 3UJ are no longer satisfied, advice would be provided to the Attorney-General accordingly.*[20]

51. The INSLM concludes:

> *I consider existing power in s 3UJ is not unfettered; it is clear as to its purpose and the matters which the Attorney-General would take into account in declaring, and where appropriate revoking, a prescribed security zone. Furthermore, the Attorney-General's exercise of power would be the subject of parliamentary and committee scrutiny by reason of the requirements to publish a statement on any such declaration. Furthermore, the Attorney-General's decision(s) could be subject to scrutiny in court proceedings brought under the Administrative Decisions (Judicial Review) Act 1977 (Cth) by a person aggrieved by such a decision, although I accept that it is unlikely that any such court challenge could be heard and determined during the period in which the declaration was in effect.* [21]

52. The INSLM rejects Liberty Victoria's proposal to reduce the duration of declaration of a prescribed security zone to 14 days. This is partly on the advice of the AGD that this "may prove insufficient for the purposes of mitigating the terrorist threat" and the need to make application for another 14 days "might cause a delay which prevented police acting swiftly to prevent, or respond to, terrorist acts".[22]

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[18] Liberty Victoria, Submission to the INSLM, Statutory Deadline Reviews, 18 May 2017, p

[19] (INSLM Report: Stop, Search and Seize powers 2017) p37

[20] Ibid pp37-38 See also p27

[21] Ibid p38

[22] Ibid

53. It is not apparent to the CCLs why a decision to apply for an extension could not be made in good time before the expiry of the initial period so as to avoid any delay or interruption to ongoing police activity.
54. The INSLM also noted the views expressed by COAG which recognised "there might be merit in reducing the duration of a declaration, but was cautious about recommending any such change in the absence of evidence to suggest the 28 day period was unreasonable".[23]

55. The INSLM also indicates that his conclusions on these matters are influenced by "the current nature and extent of the terrorist threat". He does however implicitly acknowledge there is merit in the concerns of the CCLs, LCA and the AHRC by his final comment:

> *"Again, though, if the PJCIS is to be given jurisdiction to review operational matters, it should also be able to review the basis of the minister's declaration"*[24].

56. **The CCLs maintain their concerns in relation to the arbitrary nature of the Minister's ability to declare a 'prescribed security zone', and we recommend that the PJCIS give consideration to reducing the duration of the declaration to 14 days, with the capacity for renewal if necessary.**

Reporting and oversight

57. The CCLs have argued that the exercise of these powers, especially given the low standard of proof required, must be subject to strong and independent oversight to prevent misuse.

58. The INSLM indicates that "the need to strengthen safeguards addressing the risk of abuse of the powers in div 3A" was a particular focus of the submissions.[25]

59. The LCA argued the oversight and reporting safeguards in div 3A ought to be improved in recognition of the breadth of the powers. It referenced the reporting/oversight regime in place for the delayed notification search warrant provisions in the *Crimes Act* and recommended a similar regime be legislated for these powers.[26]

60. The INSLM notes the earlier COAG Review Committee had supported 'ongoing vigilance in the use of emergency entry powers' and recommended that div 3A 'be amended to require the AFP report annually to the Commonwealth Parliament' on the use of the power in s 3UEA.73.[27]

61. The AFP cautioned that "detailed public reporting may create operational sensitivities, prejudice ongoing investigations or create a significant impost on resources" and noted it is already subject to oversight from ACLEI and the Commonwealth Ombudsman. Nonetheless the AFP

[23] Ibid p38
[24] Ibid p38
[25] Ibid p35
[26] Ibid p35
[27] Ibid p35

indicated a "general endorsement of transparency, and indicated that it is willing to comply with additional oversights that do not impact adversely on operational matters". [28]

62. The AGD accepted the need to extend the current oversight by the Commonwealth Ombudsman and to include reporting to the Minister[29].
63. The INSLM concludes

    ….it would be both sound and appropriate for div 3A to be amended to require annual reporting to the Minister and oversight by the Commonwealth Ombudsman in the same manner as for delayed notification search warrants. If the powers are not used, no report will be required. The reports should be copied to the INSLM and to the PJCIS[30].

64. **The CCLS endorse this recommendation with a caveat that the reporting should be as transparent to the public as is compatible with operational security.**

65. The ISLM also raises possible change to the PJCIS ambit to allow it to consider operational matters in relation to the intelligence and security agencies[31] and recommends that if this occurs:

    the PJCIS should be able to review a Ministerial declaration of a prescribed security zone and powers used following that declaration. In the meantime, I recommend the report should still be copied to the PJCIS.[32]

66. **The CCLs endorse this recommendation**.

Sunset provision

67. The INSLM recommends the declared area provisions be continued for another 5 years post September 2018[33].

68. The CCLs disagree with this time frame.

69. We have consistently argued that lengthy sunset clauses bring a high risk of 'extraordinary' provisions becoming 'normal' provisions. We have abundant evidence in recent times of the disturbing tendency for extraordinary provisions set up to address a specific threat of terrorism, to be expanded and flow-over to other areas of law.

70. The longer extraordinary provisions exist under sunset clauses, the less likely they are to be rolled back by governments or parliaments. It is already obvious that this trend has disturbing implications for the long standing principles and rights that have long underpinned our legal system.[34]

[28] Ibid p36
[29] Ibid p36
[30] Ibid p36
[31] As recommended by the Review of Intelligence Agencies ibid p36
[32] Ibid p36
[33] Ibid p38
[34] Cite ccls sub and Williams

71. The CCLs note the recent, distressingly cavalier attitude that political leaders manifested in their hasty endorsement of extraordinary new national security proposals in the context of the recent COAG meeting. The dismissive way in which some Premiers deflected any need for serious consideration of the impact on individual rights and liberties and the rule of law was powerfully revealing as to the 'normalisation' of extraordinary laws has progressed among our political leaders.[35]

72. In the context of the ongoing absence of a Federal framework for protection of human rights such as a human rights act or charter, the CCLs maintain a serious concern about the normalisation of increasingly draconian measures.

73. If the recommendation to repeal or allow the stop, search and seize powers to lapse is not accepted- **the CCLS recommend** that the legislation incorporate a sunset clause for no longer than 2 years to ensure regular review of the necessity and effectiveness of the provision and to ensure the powers continue to be recognised as targeted, extraordinary and temporary.

SUMMARY OF THE CCLS RECOMMENDATIONS – STOP SEARCH AND SEIZE POWERS

Recommendation 1
The CCLs maintain their in-principle opposition to the stop search and seize powers and recommend they be allowed to lapse with the expiry of the sunset clause in 2018.

Recommendation 2
If the provisions are to continue, the CCLS recommend that the legislation incorporate a sunset clause for no longer than 2 years to ensure regular review of the necessity and effectiveness of the provision and to ensure the powers continue to be recognised as targeted, extraordinary and temporary.

Recommendation 3
The CCLs recommend that the standard of proof in s 3UB be amended to replace 'reasonable grounds to suspect' with 'reasonable belief' to protect against the risk of misuse of these powers.

Recommendation 4
The CCLs maintain their concerns in relation to the arbitrary nature of the Minister's ability to declare a 'prescribed security zone', and recommend that the PJCIS give consideration to reducing the duration of the declaration to 14 days, with the capacity for renewal if necessary.

Recommendation 5
The CCLS support the INSLM's proposal to require annual reporting to the Minister and oversight by the Commonwealth Ombudsman in the same manner as for delayed notification search warrants.

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[35] Daniel Andrews Premier of Victoria: "There is going to be people out there talking about civil liberties today, they are going to be talking about the thin edge of the wedge and all this sort of stuff, well frankly, that talk … is a luxury that might be available to them it is not available to political leaders in this country,". Gladys Berejiklian NSW Premier: "I think protecting the public is the more appropriate concern," ABC news 20/10/17 http://www.abc.net.au/news/2017-10-05/terrorism-suspects-to-be-held-for-up-to-a-fortnight/9018720

The CCLS additionally recommend the reporting should be as transparent to the public as is compatible with AFP operational security.

Recommendation 6
The CCLS support the INSLM's recommendation that the PJCIS should be able to review a ministerial declaration of a prescribed security zone and powers used following that declaration.

CONTROL ORDERS & PREVENTATIVE DETENTION ORDERS

74. The CCLs – jointly and individually- have expressed their opposition to the control the control orders and preventative detention orders regimes in many submissions and public statements from the time of their introduction to the recent INSM review.[36]

75. The CCLs view is that the control orders (COs) and preventative detention orders (PDOs) regimes should be repealed as unnecessary and unjustified encroachments on rights and liberties and rule of law principles.

76. Similar views have been widely and repeatedly expressed over the years and numbers of review processes have recommended their repeal. This has not occurred and the provisions have been extended a number of times at federal and state levels.

77. It is clear from recent trends in the counter-terrorism debates that these regimes will continue to operate for the foreseeable future and the provisions are likely to be further extended. There is a current disturbing proposal to extend the CO provisions to children as young as 12.

78. The CCLs focus in this context is to support strong oversight and the inclusion of safeguards into these provisions.

79. We refer the PJCIS to the Liberty Victoria submission to the INSLM Statutory review for detailed comment and recommendations. [37] In this context we make several recommendations.

Recommendation 7
The CCLs disagree with the INSLM recommendation that the CO and PDO provisions be continued for another 5 years from 2018.

If the CO and PDO provisions are to continue, the CCLS recommend that the legislation incorporate a sunset clause for no longer than 2 years to ensure regular review of the necessity and effectiveness of the provision and to ensure the powers continue to be recognised as targeted, extraordinary and temporary.

[36] See for example: NSWCCL Submission to Senate Legal and Constitutional Committee Inquiry Into The Provisions Of The Anti-Terrorism Bill (No 2) 2005, November 2005; NSWCCL: Submission to COAG Review of Australia's Counter-Terrorism Legislation 2012; Submission Of Civil Liberties Councils Across Australia To The Parliamentary Joint Committee On Intelligence And Security Inquiry Into The Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill; 3rd October 2014; Joint CCLs submission to PJCIS Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015; LibertyVictoria submission to the INSLM Statutory Deadline Reviews April 2017.
[37] LibertyVictoria submission to the INSLM Statutory Deadline Reviews April 2017.
https://www.inslm.gov.au/sites/default/files/submissions/submission-liberty-victoria.pdf

Recommendation 8
The CCLs recommend that control orders and preventative detention orders should not be imposed on persons under the age of 18.

Recommendation 9
The CCLs agree with the INSLM recommendation that the Attorney-General give consideration to the adequacy of legal aid for controlees in control order proceedings.

Concluding comments

80. The joint CCLs hope this submission assists the Committee in its review process. We are available to respond to any queries or requests for clarification or additional information. We thank the PJCIS for providing additional time for responses so that the report of the INSLM could be appropriately considered and inform our submission.

81. This submission was coordinated on behalf of the joint CCLs by Dr Lesley Lynch (Vice President NSWCCL) and Michael Cope (President Queensland CCL) with significant input from Jack Maxwell (Liberty Victoria). It incorporates material from previous CCLs submissions. Significant assistance in research and writing was provided by Ryan Thomson, Vanessa Lyons, Sarah Stronge and Nathan Condoleon (interns with Queensland CCL.)

With regards

Therese Cochrane
Secretary
NSW Council for Civil Liberties

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