

## **Submission to the Inquiry into the Review of the Counter-Terrorism (Temporary Exclusion Orders) Act**

On principle, Australian citizens should have the right and to freely return to their country. This is an important part of what being a citizen of this country means - that all of us can call this country home and can trust that we can return. Under the International Covenant on Civil and Political Rights (ICCPR) 12.2 and 12.4, for example: "Everyone shall be free to leave any country, including his own" and "No one shall be arbitrarily deprived of the right to enter his own country."

Comparatively, we have seen a notable example where these freedoms can be abridged - during the COVID-19 pandemic. The travel of overseas Australian citizens and residents had to be managed - stalling the return of some - for the sake of preventing the spread of the COVID-19 virus. There was a public health framework which affected the return of some individuals. The people that did return had to go through certain measures, such as waiting for a flight (with a cap on the amount of returns) and then going into a two-week quarantine. There was a human cost to this. Many Australians were stranded overseas, finding it difficult to return when they wanted to. This separated friends and families. It is not something that should be taken lightly - and whether these travel restrictions were the right move (whether from a human right or a health lens) could be debated in a history of the pandemic in hindsight.

The examples of the pandemic travel measures and the restrictions on radicalised people are radically different, but they do provide an interesting comparison. It does show there is precedent and reasonable arguments for the restriction and conditions on Australian citizens or residents returning to Australia - namely where there is a risk to the health or security of the Australian community. Conversely, it could show that there are harms from government restricting Australian citizens from entering Australia - and that we should be concerned about any legislation supporting this.

From reading the Act and summary, I note that the Temporary Exclusion Orders "prevents the return of certain individuals to Australia without a return permit" with certain entry conditions. Conditions can be placed on a person entering Australia, such as giving notice of their residence or employment. Orders are reviewed by an oversight authority. The Order can be imposed where they have been assessed as a risk to security by the Australian Security Intelligence Organisation (ASIO) and that the Order would assist in reducing that risk. Or there is a determination by the Minister that the Order would assist in preventing someone perpetrating a terrorist attack, training with a terrorist organisation, or providing support to a terrorist organisation. For those between 14 and 17 years of age, Ministers need to consider the balance between the "Protection of the community" and the "best interests of the person" - which includes their age, health, connection with family and friends, access to an education, and right

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to practice their religion - which are important considerations, given the gravity of preventing an Australian youth from entering Australia.

There are real and concerning dangers from the radicalisation of Australians, who may leave Australia to join terrorist groups overseas, and then return with the risk to support or perpetrate violent actions on Australian soil. People involved in terrorism or other crimes should naturally be charged and brought to trial - so they can be held accountable and, with the danger they pose, be placed in prison where they cannot perpetrate any more crimes. Those suspected of planning an attack should naturally be carefully watched and prevented from doing so.

I believe certain principles should be considered carefully. One is the presumption of innocence. If people are not convicted or even charged of a crime, we should be wary about the restrictions that are placed on them. And moreover, there are rights that are inherent in being the citizen of a country - namely, being able to return and live here. Australian citizens and permanent residents should never (and cannot) be deported, so by the same principle they should not be unreasonably prevented from returning to Australia.

There are some serious constitutional and human rights concerns from the impact of the Act - which were raised by some respondents to the original Inquiry into the Bill. Professing Irving noted various issues such as procedural fairness, impact on child citizens, and whether it was consistent with international human rights law – and whether it was even constitutional for the Commonwealth to pass powers to prevent Australian citizens from entering the country.<sup>1</sup> With this Inquiry review, the legality and constitutionality of the Act should be carefully examined and whether the legal concerns were adequately addressed.

Furthermore, the review should consider whether the legislation is still necessary. Governments tend to have a greater willingness to introduce new security legislation, and expand their powers to meet apparent threats, than they are to withdraw that legislation. Given the extraordinary nature of the legislation - in allowing the government to prevent Australian citizens from entering their own country - it should not stay in place any longer than is necessary.

There are complex issues that should be considered by this Inquiry - including when, if ever, the right of entering Australia for citizens can be abridged and how that should be managed. And, indeed, when these powers should be ended. Thank you for considering my submission.

Kind Regards,

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<sup>1</sup> Irving 2019.

Bibliography

Helen Irving. September 1st, 2019. "Can we come home now? Temporary Exclusion Orders Act raises serious constitutional concerns." *LSJ Online*.

<https://lsj.com.au/articles/can-we-come-home-now-temporary-exclusion-orders-act-raises-serious-constitutional-concerns/>