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Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

11 November 2005

**SUBMISSION IN SUPPORT OF THE
SUBMISSION BY THE LAW COUNCIL OF AUSTRALIA TO THE
INQUIRY INTO THE PROVISIONS OF THE ANTI-TERRORISM BILL (NO. 2) 2005**

Dear Committee Secretary,

ENDORSEMENT OF THE SUBMISSION BY THE LAW COUNCIL OF AUSTRALIA

The Women Lawyers Association of New South Wales (WLA NSW) is the peak representative body of women lawyers in NSW. Apart from advocating for the rights of women in the legal profession, WLA NSW works to advance the rights of women and children in the community. As a professional body of lawyers, WLA NSW is concerned that the fundamental principals, guarantees and safeguards upon which the justice system is based are upheld, and that systemic access to justice is maintained.

We have reviewed the submission on the Anti-Terrorism Bill (No. 2) 2005 made by the Law Council of Australia to the Senate Legal and Constitutional Committee, and we endorse the views expressed in the document as a whole. We make the following specific comments:

AUSTRALIA'S INTERNATIONAL OBLIGATIONS

WLA NSW considers that the risk that the provisions of the Ant-Terrorism Bill (No. 2) 2005 will breach Australia's international obligations under the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights and the Convention on the Rights of the Child

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(CROC) is a serious one.

We agree with the Law Council's submissions in relation to Australia's obligations under Article 3 of CROC, and oppose all measures that aim to introduce preventative detention in respect of children between 16 and 18 years of age where no criminal offence has been committed. Not only would such measures breach the fundamental rights of children under CROC, it establishes a system which entrenches a lack of rights for some of the most vulnerable and powerless members of society.

THE AUSTRALIAN CRIMINAL JUSTICE SYSTEM

As an organisation consisting of a diverse membership of practicing and non-practicing lawyers, WLA NSW cannot emphasise strongly enough the importance of the guarantees and safeguards underpinning the Australian criminal justice system, especially:

- the right of an accused to a fair trial;
- rules of evidence which are fair;
- the presumption of innocence; and
- the requirement that guilt be established beyond reasonable doubt.

CONTROL ORDERS AND PREVENTATIVE DETENTION ORDERS

Ensuring that both parents (or legal guardians) are able to be contacted by a child subject of a preventative detention order

WLA NSW supports recommendation g. of the Law Council's recommendations in relation to control orders and preventative detention orders. The vulnerability of children, the dependence of children on their parents or legal guardians, and the right of both parents or legal guardians to be informed about where their child is, requires this. Being detained by the police for the purpose of investigating standard criminal charges, that are unrelated to suspected acts terrorism, is an intimidating and confronting ordeal for most people. WLA NSW cannot accept that it is necessary to make the process of detention under anti-terrorism laws any more intimidating and confronting for children than processes that apply to standard criminal charges.

Access to a lawyer within a reasonable time

WLA NSW supports recommendation h. of the Law Council's recommendations in relation to control orders and preventative detention orders. As a professional body of lawyers we are concerned that the proposed law does not require authorities to facilitate access to a lawyer, and are of the view that such obligations should be placed on authorities. It is vital that a person who is the subject of a preventative detention order has access to legal advice, particularly given the implications of a preventative detention order and the serious nature of potential charges which may be laid against the person.

Explanation of control orders and preventative detention orders to children in the presence of their parents (or legal guardians)

WLA NSW supports recommendation i. of the Law Council's recommendations in relation to control orders and preventative detention orders. The reduced capacity of children to understand complex procedures, particularly in stressful circumstances, should be acknowledged. Unless children are adequately informed about the conditions that they are being subjected to in language that they understand, any rights which they are entitled to cannot be effectively exercised. WLA NSW questions the value of rights afford to individuals who are not afforded any real opportunity to exercise them.

USE OF FORCE

WLA NSW opposes the use of unreasonable force, particularly against women, children and other vulnerable people. We share the Law Council's views on the use of force by the Australian Federal Police in exercising their powers in relation to anti-terrorism offences.

DISCLOSURE OFFENCES

WLA NSW shares the concerns of the Law Council about the publication by the Media of details of people who have previously been subject to preventative detention orders. The tendency of media publicity to inflict adverse consequences on individuals and their families has been experienced as a result of recent publicity surrounding cases of gang rape. WLA NSW additionally observes that stigmatisation arising from media publicity does nothing to improve the tensions between ethnic groups who already feel they are the victims of public prejudice, and the wider community; rather the likely effect is that existing tensions will be exacerbated.

For further information or enquiries please contact:

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