



## International Commission of Jurists Tasmanian Branch

President: Justice Alan Blow  
Vice President: Professor Don Chalmers  
Secretary/Treasurer: Eloise Haddad

---

GPO Box 32  
HOBART TAS 7001  
[www.icj-aust.org.au](http://www.icj-aust.org.au)

Dear Secretary

### **Re: Submission on the *Anti-Terrorism (No.2) Bill 2005* ("the Bill")**

This submission is made by the Tasmanian Branch of the International Commission of Jurists to the Senate Legal and Constitutional Affairs Committee for its consideration of the Bill.

- 1 In 2004 the International Commission of Jurists ("ICJ") adopted a *Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism* ("the Declaration").
- 2 Pursuant to that Declaration, members of the ICJ have an obligation to "monitor and challenge counter-terrorism legislation" to ensure that such legislation or proposed legislation properly protects the human rights of all and, equally importantly, upholds the rule of law.
- 3 The Australia ICJ has already made a public statement ("ICJ Australia Denounces New Counter-Terrorism Laws", media release 17/10/05) opposing the introduction of the counter-terrorism measures contained in the Bill. A copy of that statement accompanies this Submission.
- 4 The Tasmanian Branch of the ICJ supports and endorses the public statement issued by the ICJ Australia expressing opposition to the Bill.
- 5 The Tasmanian Branch of the ICJ makes the following further observations:
  - a) The recent successful apprehension of persons suspected of terrorist activities in Australia would suggest that the current provisions of the *Criminal Code*, as amended by the passage of the Bill last week, are sufficient to protect the Australian community from a threat of terrorism of the kind argued to justify the introduction of the Bill.

- b) The Bill, read together with existing criminal laws and procedures in Australia, contains incursions upon the liberty of its people and their legal rights in this country, including the right to a fair trial, procedural fairness and the presumption of innocence.
- c) The grant of such extensive powers in the Bill to government agencies requires that trust be placed in these agencies to exercise these powers honestly and fairly and only to the extent necessary to uphold the criminal law. Recent experience of reported misuses of power by federal government agencies in the area of immigration detention without charge challenges community confidence and trust in these agencies.
- d) Recent statements by the Attorney-General, the Hon. Mr Philip Ruddock, that the extensive powers contained in the Bill would "probably not be used" does not provide reassurance. If powers are not demonstrated to be reasonably necessary in the daily operations of government agencies involved in the apprehension of persons suspected of terrorist activities, the Bill should not be enacted.
- e) A grant of power restricting civil liberties must always be justified if it is to be tolerated in a democratic society. State power and State intervention in the lives of the Australian people has only ever been tolerated on the grounds of what is necessary for government to function in the best interests of its people.

6 The Tasmanian Branch of the ICJ makes the following submissions:

- (i) We question whether it has been demonstrated, to the satisfaction of the Australian community, that the new regimes of detention and 'control', and the significant expansion of police and other agency powers contained in the Bill, are necessary to protect the freedom and well-being of Australians.
- (ii) We submit that, in order to determine whether State interventions of the kind contained in the Bill are in the best interests of the people, extensive consultation and participation with the broadest possible cross-section of people in the Australian community is required.
- (iii) We submit that this process of consultation should be given sufficient time to ensure that all concerned in both the exercise of and the subjection to powers of the kind contained in the Bill are satisfied that this is indeed in the best interests of the community as a whole.

*We have to be vigilant from the very beginning...if you concede the first step, every next step will lead to the further erosion of the rule of law and disregard of human dignity".*

Arthur Chaskalson, ICJ President and  
Chief Justice, Constitutional Court of South Africa

## **MEDIA RELEASE - 17 October 2005**

### **ICJ Australia Denounces New Counter-Terrorism Laws**

ICJ Australia has denounced the Australian government's Anti-Terrorism Bill 2005 as an overly-aggressive encroachment on precious liberal, democratic values that go to the heart of the Australian identity. ICJ Australia acknowledges the need for laws that tackle the increased threat of terrorism, but says that these laws go too far. The Geneva-based rule of law organisation also doubts that the new laws will be effective in reducing the risk of terrorist attacks in Australia. The alienation of certain minorities through these laws may in fact prove counterproductive in the long run.

President of ICJ Australia, The Hon Mr John Dowd AO QC, said today, "Much of this legislation abandons the most fundamental principles one would expect to be inviolable in a liberal democratic society. The protection of individual liberty, the freedom of thought and speech, the absence of guilt by association, and the right to quiet enjoyment of life are the keystones of our democracy."

Mr Dowd also said, "These are not just exaggerated civil libertarian platitudes being trotted out for the sake of dissent. These laws create imminent potential for abuse, and have such wide application that they will inevitably ensnare innocents in their net. Let there be no mistake. The Australian people are facing a critical fork in the road, and our Federal and State governments are about to take us down the wrong path from which there may be no return."

Mr Dowd went on to say, "The indecent haste with which the government seeks to pass these laws through Parliament's systems of review, including the Senate, also strikes at the heart of our Westminster system of democracy. What does the government have to fear from community consultation? Surely that is what democracy is all about. Our complaints are not just about minor drafting issues. They are serious objections to substantive policy matters."

"Control orders based on mere suspicion rather than any finding of guilt by a court, where a 16 year old person can be fitted with a tracking device, can be placed under house arrest, can be banned from talking to people, can be prevented from departing Australia, should toll alarm bells for all of us. The creation of sedition offences where one can go to jail for up to seven years if they 'urge disaffection against the government' is anathema to basic democratic principles. The removal of solicitor and client confidentiality is another radical step that is entirely unwarranted.

Further, fourteen days of preventative detention without charge, partly for the purposes of ASIO interrogation of people not necessarily suspected of offences, but who might unwittingly possess information, should be repugnant to all fair-minded Australians. The scope is far too wide. Detainees are not even allowed to tell their spouse or friend where they are when being detained. They have to say 'Trust me. I'm safe but I can't contact you for two weeks'. That is going to hurt families." said Mr Dowd.

ICJ Australia says that the proposed laws are the kind that might be expected if the country was in a state of emergency. Many of the proposals represent a serious departure from the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) to which Australia is a party.

Under the ICCPR, Australia is only entitled to derogate from basic civil and political rights after it has declared a state of emergency in accordance with Article 4. The government has not declared a state of emergency and appears to have no intention of doing so. ICJ Australia therefore calls on the Australian government to abandon these legislative proposals that breach fundamental rights, and demonstrate its commitment to the rule of law by conforming to the procedures established by Article 4 of the Covenant, and with the Covenant generally.

ICJ Australia does not accept that the claimed checks and balances address their concerns. "It is not enough to say that a Judge has to be consulted before such orders would be made. A Judge is bound to apply legislation on its terms, and when the laws are bad laws, Judges are compelled to implement them. Recently retired High Court Justice McHugh eloquently articulated that dilemma just last week." said Mr Dowd.

The sunset clause which provides that the laws would remain in force for ten years is no protection. Five years would enable examination as to the effectiveness and consequences of the laws with the benefit of experience. ICJ Australia has the view that if the laws are passed, a ten year period of application will only entrench a climate of fear and division in the long term, whereby certain minorities feel alienated, and the next generation of Australians will grow up in a country that barely resembles the one we have always known. "In a democracy, the people must have more control over the extent to which, and the length of time during which, their rights may be infringed. International law does not permit violations of basic rights to persist longer than is strictly necessary in circumstances of emergency. Domestic laws should be held to the same standard." said Mr Dowd.

"Terrorists cannot claim victory in their attempts to change the world, unless the world's response to their crimes in itself effects that change. Without that, all they can do is claim responsibility for a series of monstrous crimes. If these laws are passed, however, Australia will have surrendered its society, its way of life. If these laws are passed, then yes, the world will have changed for Australians. We do not have to go that far. We should pause for a moment, slow the snowball, and consider the full implications of what we are about to do. Protection of our societal values and way of life is the objective. We are about to kick an own goal." said Mr Dowd.

Prior to the release of the draft Bill, ICJ Australia published a paper dealing with its specific concerns over the legislation package. A full report into the draft Bills will be released in days to come with a view to submission to the government's accelerated Senate review of the legislation.

[www.ICJ-Aust.org.au](http://www.ICJ-Aust.org.au)

---

For further information, please contact The Hon Mr John Dowd AO QC, President, ICJ Australia; or in the alternative, Mr Steve Mark, Chairperson, ICJ Australia; or Mr Nicholas McNally, Treasurer, ICJ Australia.

17 October 2005