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Dear Sir,

Anti-Terrorism Bill (No. 2) 2005

This legislation is of great concern, even in the context of current events.[1]

It would be preferable that the provisions of the Anti-Terrorism Bill (No. 2) 2005 ('the Bill') refer to a "prescribed person", rather than simply "a person". After all, if as Glenn Milne has written "these laws will not affect 99.9 per cent of the population,"[2] then it seems arguable that authorities should have to satisfy the Attorney-General that it was reasonable to "prescribe" a person in much the same way as an organisation can be prescribed.

At the time the application to the Attorney-General was made, it would seem unlikely that all relevant evidence had been collected, so the Attorney should be satisfied "on the balance of probabilities" that the prescription of an individual was necessary. Certainly, if the Attorney's consent is needed to apply for an interim control order[3] then it seems equally reasonable that a similar consent should be required for the laws to become operative. An additional safeguard would be to legislatively ensure that the Attorney was prohibited from delegating this decision-making power to a Departmental official, by way of regulation.

When the "prescribed individual" was arrested and charged, the validity of that prescription could be duly tested in Court. Some may still think that this is contrary to long standing principles that law be generally applicable to everyone. However, there is precedent for Parliament to pass laws which apply to a particular individual or individuals. An example is *Kable v The Director of Public Prosecutions for New South Wales* FC 96/027. In that case, the High Court affirmed that the NSW Parliament could legislate to keep an allegedly dangerous individual in goal. Brennan CJ (as he then was) said:

"...This question is whether the instrument that stands on the statute book as the Community Protection Act 1994 has the character of a law. The instrument, enacted in due form and by due process, purports to create a power to make a detention order and it prescribes the procedure by which the order may be made and the consequences of the order when made. True it is that it singles out the appellant as the sole subject of a detention order, but a purported law has never been held to lack the character of a law simply because it affects the liberty or property of only a single individual. Acts of Attainder were nonetheless laws, as Sir Edward Coke accepted, albeit protesting that, in the

procedure of imposing the attaint, the high court of Parliament ought to give example of justice to inferior courts...The Act may be a law which, by reason of its specificity, is enacted in exercise of a power that is not purely legislative, but it is nonetheless a law. Specificity does not deny the character of law to an enactment that is otherwise within power..."[4]

Later in his judgment, Brennan CJ finds the Community Protection Act was a valid exercise of State power.[5] Given that the Bill requires a combination of Commonwealth and State powers, it may be useful to give it more of the character of the Community Protection Act (NSW) 1994.

Equally, given the concerns raised about the sedition provisions in the Bill,[6] these should be amended, so that they too only apply to "prescribed persons".

I hope these comments assist the Committee in its deliberations.

Yours faithfully,

Adam Johnston
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[1] See for example, Silvester, John, Ian Munro and Stephen Gibbs, Enough to build 15 bombs, November 10, 2005, <http://www.smh.com.au/>

[2]Milne, Glenn, Rolling with the punches, November 6, 2005, <http://www.sundaytelegraph.news.com.au/story/0,9353,17149662-28783,00.html>

[3] See Subdivision B-Making an interim control order, Anti-Terrorism Bill (No. 2) 2005, http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/index.htm

[4]Kable v The Director of Public Prosecutions for New South Wales FC 96/027 (Brennan CJ at paragraph 6 of His Honour's judgment), <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/high%5fct/unrep279.html?query=%22community+protection+act%22>

[5] See *ibid*, Brennan CJ at paragraph 14

[6] Dodson, Louise (Chief Political Correspondent) with Joseph Kerr, Sedition laws need the chop, say MPs, November 5 2005, <http://www.smh.com.au/> and Wendy Frew, Sedition gag is no joke, say satirists, November 7, 2005, <http://www.smh.com.au/>