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Committee Secretary
Senate Legal and Constitutional Committee
Department of Senate
Parliament House
CANBERRA ACT 2600
By facsimile: 6277 5794

9 November 2005

INQUIRY INTO THE PROVISIONS OF THE ANTI-TERRORISM (NUMBER 2) BILL 2005

- 1. The Australian Lawyers Alliance is an association of lawyers and other professionals dedicated to promoting and protecting justice, freedom and the rights of individuals. We attach a further document describing our organisation
2. The Australian Lawyers Alliance has read the submission of the Australian Council for Civil Liberties by Terry O'Gorman dated 4 November 2005 and the submission from Civil Liberties Australia (ACT) Incorporated dated 7 November 2005. The Australian Lawyers Alliance respectively adopts and supports the submissions outlined in those documents.

3. Control Orders

In addition to the matters outlined in the abovementioned submissions, the Lawyers Alliance wishes specifically to make some further brief comments about the proposed law. Provisions relating to control orders provide that an Australian Federal Police member can make an application to a court for a control order. The only precondition to such an application is the Attorney-General's consent. In our submission, this provides no safeguard whatsoever to the abuse of the power to seek such a control order. It is difficult to conceive of a situation where the Attorney would refuse to provide his consent in circumstances where a senior Australian Federal Police member presented any evidence of potential terrorist activities. The safeguard is therefore no safeguard whatsoever.

The Bill provides that the issuing court may make a control order if the Court is satisfied on the balance of probabilities:

- that making the order would substantially assist in preventing a terrorist act; or
• that the person has provided training to or received training from a listed terrorist organisation; and
• that the Court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

APLA Limited
Suite 5, Level 7, 189 Kent Street, Sydney NSW 2000 GPO Box 7052 Sydney NSW 2001
DX 10126 Sydney Stock Exchange ABN 96 086 880 499

T + 61 2 9258 7700 F + 61 2 9258 7777 E enquiries@lawyersalliance.com.au www.lawyersalliance.com.au

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It must be remembered that the issuing of a Control Order mean that the subject of such an order is required to remain at specified premises between times or during specified days, can be prohibited or restricted from communicating or associating with specific individuals, can be prohibited from accessing or using specified forms of telecommunication including the internet, and can be prohibited from carrying out their occupation.

In our submission it is simply inconceivable that such an order can be made on the civil standard of proof, namely the balance of probabilities. Balance of probabilities requires only that the court is satisfied by the slightest of margins that the preconditions are made out; that is, 51% will be sufficient to satisfy that burden. In our view, such a standard is inappropriate for this type of restriction of human rights.

It is also noted that an application can be made without the subject of the proposed order being present, although after the order is made the person can challenge the existence of the control order. Further, the Bill provides that after an ex parte order is made, the controlled person's lawyer may obtain a copy of the ex parte order but no other information. In our submission, such a position is a denial of natural justice and totally inappropriate.

In our submission, it would be reasonable for the proposed subject of such a control order to be heard at the time of the application for the order but, in any event, if an order is made ex parte, it is essential that lawyers for the controlled person have access to all information on which the application was based in order to enable them to properly assess the validity of the ex parte control order. As is well known, legislation has been passed requiring defence lawyers to obtain ASIO Security Clearance, so there is simply no basis for denying access to information for such lawyers.

It is our submission, for the reasons outlined in the Civil Liberties papers referred to above, that there is yet to be any proper justification for provisions allowing for control orders. If, however, such provisions are to be enacted, it is our submission that the abovementioned safeguards must be implemented. It is also our view that the legislation should provide for the overall supervision by the Public Interest Monitor where such a body exists, and where no such body exists, for the appointment of such a monitor in relation to the processes referred to above.

4. Preventative Detention

The Anti-Terrorism Bill states that the object of preventative detention is to allow a person to be taken into custody and detained for a short period of time in order to prevent an imminent terrorist act occurring **or** preserve evidence of, or relating to, a recent terrorist act.

It is conceivable that if appropriate court supervision and safeguards were implemented, there may be some justification for being able to hold a person for a short period to prevent an **imminent terrorist act**. It appears inconceivable, however, that any person should be detained in order to "preserve evidence" of a terrorist act.

It is also not clear why these powers are necessary, given that the Australian Federal Police already possess significant powers to arrest persons suspected on reasonable grounds of committing offences. It therefore appears that these preventative detention provisions are aimed at persons not suspected of having committed

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crimes, but merely of having some connection with someone who may have committed a crime.

Bearing in mind the extent of the proposed detention power, and the uncertainty of what constitutes 'a terrorist act' giving rise to the potential application of the power, it is our submission that such terms must be clearly defined.

It is noted that under the preventative detention provisions a court can make a prohibited contact order to the effect that the detained person is not, while detained, to contact a person specified in the order. It appears that such "non contact orders" can be made in very wide circumstances. In relation to a detained person's family, it is apparent that all that the detained person will be able to do is to let family members know that they are safe but not any other details of their place of detention or reason for detention.

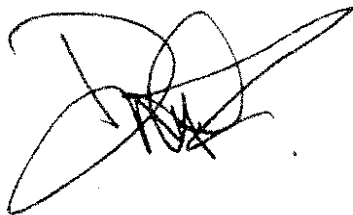
It is the view of the Lawyers Alliance that if sufficient evidence exists to connect a person to a terrorist act or an imminent terrorist act, such a person should be taken into custody and charged with an offence. It is unacceptable that a person can be detained for 14 days without charge and without even having committed an offence but merely on the basis of a reasonable suspicion of having information about an offence.

5. Conclusion

Consistent with the views expressed above and in the submissions referred to, it is the view of the Lawyers Alliance that there are no adequate judicial oversight provisions or other safeguards in the Bill in relation to control orders or preventative detention orders.

It is our submission that there are already significant and effective laws in place to deal with imminent terrorist acts, and the removal of the rights of Australians on a flimsy balance of probabilities standard, is simply not justified and is likely to lead to injustice for many. We encourage a rethink of the need for any further anti-terrorist legislation at this time.

Yours faithfully,



RICHARD FAULKES
National President
Phone: 02 6201 8985
Email: rfaulks@stackshg.com.au

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WHO WE ARE



Background

The Australian Lawyers Alliance is the only national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. We have some 1,500 members and estimate that they represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. The Lawyers Alliance started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

Corporate Structure

APLA Ltd, trading as the Australian Lawyers Alliance, is a company limited by guarantee that has branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a president-elect, who serves a one-year term in that role and then becomes National President in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by ten paid staff who are based in Sydney.

Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of Continuing Legal Education/Continuing Professional Development, with some 25 conferences and seminars planned for 2005. We host a variety of Special Interest Groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for education, exchange of information, development of materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine *Precedent* is essential reading for lawyers and other professionals keen to keep up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.

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