LAW & JUSTICE INSTITUTE (QLD) Inc
Level 19, 179 Turbot Street Brisbane Q 4000

Patron: The Honourable James Thomas AM QC

6 October 2015

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000
Email: lacsc@parliament.qld.gov.au

Dear Research Director,

Re: *Counter-Terrorism and Other Legislation Amendment* Bill 2015

We thank the Committee for the opportunity to address the 2015 amendment.

In 2005, Queensland introduced a preventative detention order regime. That regime runs counter to the accepted principle that detention of an individual should ordinarily only occur after a finding of criminal guilt by a court or the laying of criminal charges for which detention awaiting trial is justified and has been considered by a court.

The *Terrorism (Preventative Detention) Act 2005* ("the Act") and its State and Commonwealth counterparts, is an unusual step in seeking to combat terrorism. There are no similar steps taken in powers introduced in the USA, UK or Canada. That alone reflects the extraordinary nature of these powers.

The *Counter-Terrorism and Other Legislation Amendment Bill 2015* ("the Bill") extends the operation of the Act by increasing the time period applicable to the 'sunset clause' and introduce a review regime. One primary objective of the Bill is to extend the extra-territorial operation of the Act.

Whilst the sunset clause is of concern, to amend aspects of this Act to widen the operation of those extraordinary powers without taking stock of the balance of those provisions should not be undertaken lightly.

The Parliament should conduct a proper review of the manner in which a Police Officer may apply for an initial or final preventative detention order. The current provision should be amended so that both initial and final orders for preventative detention are issued by the Supreme Court.

Sunset Clauses and Review

We understand from the Explanatory Notes to the Bill that it is proposed that this Act be extended for a further period of 10 years. Firstly, it should be acknowledged

LAW & JUSTICE INSTITUTE (QLD) Inc
Level 19, 179 Turbot Street Brisbane Q 4000

Patron: The Honourable James Thomas AM QC

that the inclusion of the sunset clause in the original Act reflected both the extraordinary nature of the powers authorised by the Act and uncertainty of its effectiveness and to permit an opportunity to address unintended consequences.

The first consideration is whether the preventative detention regime is required and effective. The COAG Report 2013 at Recommendation 39 suggested the repeal of all Commonwealth, State and Territory operations of the preventative detention legislation.[1]

There is almost no basis to suggest that these measures and powers increased the capacity of law enforcement agencies to combat terrorism. The INSLM Report suggested that the Monitor was not provided with "material or argument demonstrating that the traditional criminal justice response to the prevention and prosecution of serious crime through arrest, charge and remand is ill-suited or ill-equipped to deal with terrorism."[2]

Where there is a substantial question surrounding the utility of the existing legislation, it is imperative that a review of the legislation occur. The Bill suggests a review within 4 years with a report tabled within 5 years. The Bill suggests that the Act be reviewed by the Minister. In circumstances where there are now 10 years of operation of the legislation to review and the act is to be extended by this Bill without a review having been conducted is concerning. This is compounded by the proposal to suggest a further 4 year review timeframe for review.

This Act should be comprehensively reviewed within 12 months and a report tabled within 2 years. The Review should be conducted not by a Minister or even a parliamentary committee, but rather by an independent monitor or the Ombudsman.

If the Act continues in operation following that review, it should be reviewed on a biennial basis by an independent monitor or the Ombudsman.

Initial and Final Orders

Pursuant to the current Act, an initial order can be issued by a senior police officer. The operation of the order may last itself for 72 hours and the detention of a person under the initial order is 24 hours. A final order is issued by a judge or a retired judge appointed by the Minister. It allows for the detention of a person for up to 14 days.

---

[1] COAG "Council of Australian Governments Review of Counter-Terrorism Legislation" (Report 2013) at xv.

[2] Bret Walker SC "Declassified Annual Report" (Annual Report, Independent National Security Legislation Monitor, 2012) at 52.

LAW & JUSTICE INSTITUTE (QLD) Inc
Level 19, 179 Turbot Street Brisbane Q 4000

Patron: The Honourable James Thomas AM QC

In Queensland, under the *Police Powers and Responsibilities Act 2000* ("PPRA") a person may be detained for questioning for not more than 8 hours unless the period is extended by an order issued by a Magistrate or Justice of the Peace once that judicial officer is satisfied of certain matters germane to the investigation.

The Parliament should consider amending the legislation to put in place a system where both initial and final orders must be authorised by the Supreme Court.

The Act requires that a senior police officer, a judge of retired judge, or a police officer making the application for a detention order have 'reasonable grounds to suspect' that there will be a terrorist act and that the detention of the person for the period is reasonably necessary for the purpose of substantially assisting in preventing a terrorist act. Such a threshold permits an order to be made authorising the detention, without charge, of a person for up to 14 days. Such a Draconian power, viz. to detain a person without charge and without a reasonable suspicion being formed of planned wrongdoing is an abhorrent concept and challenges the 'rule of law'.

A considered review is necessary to formulate a threshold, which meets the needs and expectations of the community to be protected whilst not ministerially removing fundamental rights.

The threshold should require that any applicant be required to present their basis for suspicion of planned wrongdoing to the Supreme Court for determination and that it be objectively reasonable. Accepting that these applications will ordinarily be made ex parte, consideration should be given for the appointment of a statutory contradictor and a mechanism for the subject of any such Order to be able to swiftly review it in a court. Any statutory provision that effectively decimates the rules of natural justice should have, at the very least, these checks and balances.

For these reasons we respectfully encourage the Parliament to review the Act forthwith before considering any elongation of its operation.

Yours faithfully,
Law & Justice Institute

Andrew Boe
Vice-President