



INTERNATIONAL COMMISSION OF JURISTS

AUSTRALIAN SECTION

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MEDIA RELEASE

Terrorism (Police Powers) Bill 2002

"The *Terrorism (Police Powers) Bill* listed for debate in NSW Parliament this week is dangerous as it significantly increases Police powers of interrogation, search and seizure without setting up adequate checks and balances to guard against abuse," said Mr David Bitel, Secretary-General of the Australian Section of the International Commission of Jurists (ICJ). "The case has not been made out that law enforcement agencies do not have sufficient powers under existing laws to investigate and respond to terrorist threats."

Mr Bitel went on to say, "Clearly a measured response to terrorism is needed. Australia is a potential target for terrorist activity and we need laws that strike the right balance between the public interest in preventing loss of life through terrorist attacks, with the public interest in preserving our long held and fundamental democratic freedoms. We mustn't throw the baby out with the bathwater by bringing in laws that attack the very foundations of Australian society and culture."

Mr Bitel noted, "Under the news laws, the Police Commissioner can authorise, without a warrant, a whole range of special powers for Police when investigating terrorist threats. Police could detain, interrogate and strip search people as young as 10 years old, or forcibly enter and search homes and vehicles and seize the property of ordinary Australians. It is not just terrorist suspects that may be subjected to these powers. Police can search an entire suburb under these laws. Furthermore, we are gravely concerned that there is no need under these laws for Police to obtain a search or arrest warrant from an impartial judicial officer, as is presently required. This represents the removal of an important protection for the people from Police corruption, abuse of Police powers and the unjustified targeting of innocent people."

Another major problem with the legislation identified by ICJ, which is an organisation dedicated to the preservation of the rule of law in society, is that the decision to authorise the use of these special powers is exempt from any subsequent scrutiny or review by the Courts. Mr Bitel said, “There is nothing to fear from Courts being able to scrutinise an authorisation to use these powers. The Courts obviously have no interest in obstructing legitimate police investigations into terrorist threats. People may take it for granted, but the stability of our society has been built on access to judicial review of the actions of State. The legislation tries to remove traditional protections enjoyed by citizens, such as writs of Habeas Corpus, prohibition, and Mandamus. In fact there is potential for a Constitutional challenge in that the Bill seeks to limit the entrenched jurisdiction of the High Court in this regard.”

Proponents of the Bill say that as a safety mechanism, the Police Minister has to also concur with the Police Commissioner’s decision to authorise the use of these special powers, but David Bitel says, “I don’t think anyone is under the illusion that the NSW Police Minister and the Police Commissioner act independently of each other, or that the Minister’s office represents an impartial or uninterested party in all of this. In fact, the hierarchical structure entrenched by this Bill has the potential to further politicise the position of Police Commissioner, and could jeopardise the independence of the NSW Police Service by subjecting it to political influence and control.”

“This Bill is a dangerous step in the wrong direction for Australia and will have the same effect as a number of draconian internal security laws in many authoritarian regimes around the world. It is a scheme that is open to grave abuse by government and State agencies, and should be opposed.”

The Bill is due for further debate in the NSW Upper House on Tuesday this week.

For further comment and information, please contact David Bitel, Secretary-General, International Commission of Jurists, Australian Section, on (02) 9286 8700 (work), 0409 717 571, sec-gen@icj-aust.org.au, or Nicholas McNally, Treasurer, on (02) 9286 8189, 0419 855 002, treasurer@icj-aust.org.au