



Our Ref: 200514328

Dr U Ne Oo
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Dear Dr Ne Oo

Thank you for your letter regarding the counter-terrorism laws considered by the Special Council of Australian Governments' (COAG) Meeting on Counter-Terrorism held on 27 September 2005 and introduced as the Anti-Terrorism Bill (No.1) and Anti-Terrorism Bill (No.2) into the Federal Parliament on 2 and 3 November 2005.

Firstly, I would like to advise that I shared your concerns about the proposed Federal counter-terrorism legislation and the need for appropriate checks and balances.

Prior to the COAG meeting, I chaired the Leaders Forum (a meeting comprising only the State and Territory leaders) and emphasised the need for safeguards to ensure that the enhanced powers are not misused.

The Leaders then met with the Prime Minister at COAG and considered the evolving security environment in the context of the terrorist attacks in London in July 2005, and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. It is firmly believed that the current terrorist threat to our community is very real and serious and that our police must be ably equipped to detect and deter terrorist activity.

However, to address the very concerns you raise, the Leaders also agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism, and contain appropriate safeguards against abuse, such as parliamentary and judicial review, as well as be exercised in a way that is evidence-based, intelligence-led, and proportionate. The Leaders also agreed that COAG would review the new laws after five years and that they would sunset after 10 years.

Before I go into further detail about the specific safeguards that have now been included in the Bill I wish to clarify that only the principal aspects of the Commonwealth Bill required State referred powers. That is, the State and Territory leaders only had the opportunity to contribute to the drafting of the Bill in relation to the expanded terrorism offences, preventative detention orders, and control orders.

The other aspects of the Bill do not require State referred powers and therefore there was little or no opportunity to contribute to the drafting. These aspects relate to:

- sedition offences;
- search and seizure by Australian Federal Police officers;
- extension of the power to obtain documents by Australian Federal Police officers;
- optical surveillance devices at airports and on board aircraft;
- financial transactions reporting; and
- ASIO powers.

Concerns relating to these aspects were not discussed at COAG nor agreed to by the State leaders and must be taken up with Federal Parliamentarians.

As you may be aware, since the early draft of the Anti-Terrorism Bill, there have been significant improvements to ensure appropriate checks and balances are in place to ensure that the new powers are not abused.

For example, in relation to Control Orders, the most significant change is the amendment to provide that control orders, made in the absence of the subject of that order, will only be issued on an interim basis, allowing the final order to be made by a court following a hearing on the merits at which the subject of the application can be legally represented.

The Bill provides for a review regime to ensure the person can seek a revocation as soon as the order is served on the person. The Bill in no way limits or restricts a person's review rights. That is, all the general law remedies, including rights to seek judicial review and damages, would be available to a person that is subject to a control order.

The Bill now also specifically states that when a preventative detention order is reviewed after twenty-four hours, the review must consider the matter afresh on the merits, and must take into account all relevant information, including any information that has become available since the initial order was made.

Additionally, the Bill now includes provisions that allow the Administrative Appeals Tribunal, after the period of detention under the Commonwealth law has expired, to review the merits of the detention decision. The Tribunal can order the Commonwealth Government to compensate the detained person if the Tribunal is of the view that it would have set aside the detention order if it had been able to review the order while it was in force.

If the person is subsequently detained under State law beyond the initial 48 hours of Commonwealth detention, additional merit review of the first 48 hours will also be available under State law.

Federal Court remedies are also available in relation to preventative detention orders. The detainee could also seek other general law remedies available, including damages for unlawful confinement and loss of income.

The use of force provision has now been amended so that State Police officers exercising a Commonwealth preventative detention order will continue to operate within existing State laws, and Australian Federal Police officers will not be able to use more force than is necessary or reasonable. Further, officers may only use force that is likely to cause death or serious harm where it is necessary to protect life or prevent serious injury.

I took the view that the use of force provisions should be tightened even further in order to prevent a "shoot-to-kill" culture emerging in Australia, but was unable to convince my colleagues of this.

These are important safeguards. Along with existing review mechanisms already in the Bill, these additional safeguards assist to achieve the balance required between the need for strong counter-terrorism laws and the protection of individual liberties.

There was also considerable public discussion about the constitutionality of some of the provisions of the Anti-Terrorism legislation. The Prime Minister advised, following consideration of the legal advice he received, that he is satisfied that the legislation could, using an existing reference of power, survive a potential High Court challenge on constitutional grounds.

Finally, on 3 November 2005, the Senate referred the provisions of the Anti-Terrorism Bill (No.2) 2005 to the Senate Legal and Constitutional Legislation Committee. The Committee has invited written submissions to its inquiry and will report back to Parliament on its findings by 28 November 2005. The Bill, second reading speech, and Explanatory Memorandum are on the Committee's website at www.aph.gov.au/senate_legal. Hard copies are also available from the Secretariat on (02) 6277 3560.

Thank you for bringing your views to the attention of Government. I trust this information will go some way to allaying your concerns.

Yours sincerely



DR GEOFF GALLOP MLA
PREMIER

9 November 2005