

26 April 2016



NEWS RELEASE –

INTERNATIONAL COMMISSION OF JURISTS AUSTRALIA

ICJ GENEVA

President

Prof. Sir Nigel Rodley, United Kingdom

Secretary-General

Wilder Tayler

Australian Commissioner

The Hon Justice Evatt AC
The Hon Judge O'Meally AM RFD

ICJ AUSTRALIA

NATIONAL SECTION

President

The Hon John Dowd AO QC

National Vice-President

The Hon Justice Bromberg

Federal Court

Chairperson

Steve Mark

Secretary-General

Tahlia Gordon

STATE BRANCH PRESIDENTS

Australian Capital Territory

The Hon Jeffrey Miles AO

New South Wales

The Hon Judge O'Meally AM RFD

Northern Territory

Sally Gearin

William Forester Chambers, NT

Queensland

The Hon Justice Atkinson AO

Supreme Court of Queensland

South Australia

The Hon Justice Bleby

Supreme Court of SA

Tasmania

The Hon Justice Alan Blow OAM

Supreme Court of Tasmania

Victoria

The Hon Justice Bromberg

Federal Court

Western Australia

Adjunct Professor Greg McIntyre SC

THE STATE GOVERNMENT SHOULD WITHDRAW *CRIMES (SERIOUS CRIME PREVENTION ORDERS) BILL 2016* (NSW)

“The Government should withdraw the proposed legislation enabling Serious Crime Prevention Orders to be made against individuals and corporations, as being an excessive power in the hands of the police. No case has been made out to extend such wide ranging restrictions on individuals and corporations”, said John Dowd AO QC, President, ICJ Australia.

“This bill, although expressed to be preventative, will in fact be punitive in function. There has been no prior discussion with legal organisations or civil community groups before setting up a regime that may be used as an alternative to the criminal justice system with its traditional safeguards but may be used in addition to, or subsequent to conviction or acquittal or the service of an offender’s term in prison.” said Mr Dowd.

“There should be an inquiry through the NSW Law Reform Commission as to the necessity of such legislation and to consider what safeguards may be imposed to protect persons, corporations or unincorporated associations who may be affected by the proposed legislation.”, said Mr Dowd.

Proceedings under this proposed Act will only require a civil onus and not proof beyond a reasonable doubt. It permits an application for restrictive orders to be made against someone who has been convicted and served a sentence, or against somebody who has not even been charged with an offence. The proceedings for an order do not permit a cross-examination and will make a decision on

the basis of a civil onus, not to the standard of a criminal trial. This legislation will give power to the police to seek orders based on hearsay evidence and will not have the same safeguards provided to protect any person in a criminal trial.

The proposed Act sets up a complimentary regime to the long established Criminal Trial system. It gives extraordinarily wide powers to a court to restrict a person's movements or association with other people, or any other conditions that may be sought. Even in a civil trial, evidence can be tested by cross-examination, whereas this proposed Act only permits submissions to be made. Sometimes facts can be challenged with a few simple questions in civil or criminal proceedings. That cannot happen here.

The proposed Act provides winding up powers on corporations and unincorporated associations for breaches of orders made.

There has been no case shown for this legislation to be brought in. The fact that it may be used against serious crime, does not justify the granting of powers to the Police, Director of Public Prosecutions and the New South Wales Crime Commission to bring proceedings against individuals without criminal convictions.

"The fact that similar legislation in the UK exists, does not justify bringing in such legislation, being the first in Australia, without proper community consultation and a demand being shown for it.", said Mr Dowd.

Comment:

Telephone: (02) 8249 3221

Mobile: 0439 625 007