

Liberty strikes back

By Rhys Michie*

In a significant move against the forces of autocracy, the Independent National Security Legislation Monitor (INSLM), Mr Brett Walker SC, has agreed with Civil Liberties Australia that the powers of the intelligence community need to be wound back.

In the 2012 annual report, tabled in the Commonwealth Parliament on Tuesday 14 May, the person appointed to inquire into the operation, effectiveness and implications of Australia's Counter Terrorism (CT) legislation has found that

“preventative detention orders are not effective, not appropriate and not necessary. They should simply be abolished”.

He writes in the Annual Report that

“control orders in their present form are not effective, not appropriate and not necessary”

and that

“investigation and particularly surveillance carried out under the authority of other laws apart from the CT Laws themselves emerge as by far the most effective powers in preventing terrorism.”

This was the second and most thorough review of Australia's CT legislation by the INSLM.

In considering whether Australia's CT laws contain appropriate safeguards for protecting the rights of individuals, remain proportionate to any threat of terrorism or threat to national security or both, and remain necessary, the INSLM consulted widely. Within government, 10 hearings were conducted including; with the AFP, ADF, ASIO, IGIS, the Commonwealth AG, DFAT, DPP, PM&C and the Department of Defence.

Outside of government, eight prominent authorities were consulted including the present and the former UN Special Rapporteurs on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, the Special Adviser to the UK Independent Reviewer of Terrorism Legislation, and a number of internationally recognised academics specialising in the field.

The INSLM invited the public to participate and received 16 written submissions including; the Gilbert and Tobin Centre of Public Law, the Law Council of Australia, the Human Rights Law Centre, the Castan Centre for Human Rights, Australian Lawyers for Human Rights, the Australian Human Rights Commission, the NSW Council for Civil Liberties, the Centre of Excellence in Policing and Security, and of course, Civil Liberties Australia (CLA).

CLA has been a forceful advocate against the preventative detention and control order regimes from the beginning. The Independent National Security Legislation Monitor has made it clear to the Australian Government that these are not appropriate and that

“it is intended that emphasis be given to the separate but concordant streams of common law liberty and international human rights treaty obligations... CT Laws should comply with those obligations.”*

Has the Attorney-General heard?

Read the INSLM recommendations in the 2012 Annual Report

http://www.dpmc.gov.au/inslm/docs/INSLM_Annual_Report_20121220.pdf, or read CLA's submission <http://www.cla.asn.au/Submissions/2012/INSLM%20120910.pdf>.

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Rhys Michie is a Melbourne-based lawyer. He was author of CLA's submission to the INSLM process.

* [Independent National Security Legislation Monitor Annual Report \(20 December 2012\)](#)