



The Law Society
of New South Wales

COPY

170 Phillip Street, Sydney NSW 2000
Australia; DX 362 Sydney
Tel (02) 9926 0333 Fax (02) 9231 5809
ACN 000 000 699 ABN 98 696 304 966
www.lawsociety.com.au

Our Ref: JC:ssh:1288758

4 February 2009

The Hon. Robert McClelland MP
Attorney-General
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Attorney,

Re: ASIO's questioning and detention powers

I am writing to you on behalf of the Law Society's Human Rights Committee with regards to Australian Security Intelligence Organisation's ("ASIO") questioning and detention powers.

As you will be aware, in 2003 the Australian Parliament granted ASIO the power to detain, in custody, for up to one week a person who may have information important to an investigation about a possible terrorism offence (contained in the *Australian Security Intelligence Organisation Act 1979*). A subsidiary power to compulsory question persons in the same circumstances was also granted.

Since these powers were granted there has been considerable debate over whether the detention power is constitutional. In the High Court decision of *Thomas v Mowbray* [2007] HCA33 a majority of the Justices agreed with Justices Gummow and Crennan who, in a joint judgement said:


"..exceptional cases¹aside, "the involuntary detention of a citizen in custody by the State is permissible only as a consequential step in the adjudication of criminal guilt of that citizen for past acts"².

The Committee believes that this power to detain people not suspected of criminal offences may be contrary to Australia's international human rights obligations and, in light of the decision in *Thomas v Mowbray*, may be unconstitutional.

¹ Exceptional cases have long been recognised by the High Court and include for example, where a person is taken into custody for his own or public protection as a result of mental illness or having a contagious disease. See *Chu Kheng Lim v Minister for Immigration Local Government & Ethnic Affairs* [1992] HCA 64

² *Thomas v Mowbray* [2007] HCA33 at paragraph 114.



The Law Society of
New South Wales is a
constituent body of the
Law Council
of Australia 
Law Council
OF AUSTRALIA

The Committee notes that between 2003 and 2006 the questioning powers were used fifteen times and then not at all in the 2006-2008 reporting periods. Similarly it also notes that the detention powers have never been used since their inception in 2003. As the powers have been so rarely if ever used, the Committee strongly supports the removal of these powers as they are overtly unnecessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe Catanzariti', with a long, sweeping horizontal line extending to the right.

Joe Catanzariti
President