# Counter-terrorism

## NGO Coalition Fact Sheet 3 (LOIPRs 7-8)

### Counter-terrorism laws (page 15)

Since 2009, Australia has created even more criminal offences under counter-terrorism laws. Many laws criminalise activities which may not give rise to any national security risk.

For example, a journalist could face 5 years in prison for unintentionally disclosing information about a secret ASIO operation. Irrespective of whether the reporting was in the national interest, or if national security was actually compromised.

Another law prohibits "recklessly advocating terrorism", and a person could face up to 5 years in prison for doing so.  This law has been criticised by the PJCHR on the basis that it could apply to a general statement of support for unlawful behaviour or acts of political protest, with no particular audience.

Other laws allow for the indefinite post-sentence detention for people convicted of terrorism offences, and for convictions potentially based on evidence not seen by the accused (see page 19 for Mr Abdellatif's case study).

### Control orders    (page 16)

Australia has introduced a control order system. A control order can be made to restrict a person's movements and communications, even requiring them to wear a tracking device.

A control order can be made if it would substantially assist in preventing a terrorist act. Or if the order would substantially assist in preventing the provision of support for a terrorist act.

Australia's INSLM has said that control orders are not necessary in their current form.   .

### Questioning and detention (pages 16-17)

The most controversial and worrying aspect of Australia's counter-terrorism regime is ASIO's extraordinary questioning and detention powers.

Under a questioning and detention warrant, ASIO is able to keep a person in custody, virtually incommunicado, without ever being suspected or accused of a crime or any terrorist activity involvement.

If the person detained under warrant does not provide the information that ASIO has asked for, or even tells anyone they are being questioned, they are liable for 5 years in prison.

Also, if a person wanted to challenge a warrant, they would not be able to see any reasons put forward for the warrant, or indeed any other document except the warrant itself.

**Australia should:**

- **comprehensively review counter-terrorism legislation to ensure that it complies with its obligations under the ICCPR, in particular articles 9, 12, 14, 15, 17, 19 and 22. All laws impacting on human rights should be strictly necessary for national security purposes, and proportionate to an identifiable threat to national security.**
- **repeal or amend laws restricting freedom of speech, imposing harsh criminal penalties for activities that pose no threat, and undermining accountability of government agencies, in line with ICCPR obligations.**
- **repeal control order and ASIO questioning and detention powers.**

## Evidence obtained under torture (page 18)

There are inadequate safeguards to prevent evidence obtained under torture, or other cruel, inhuman or degrading treatment or punishment from being used in Australian courts (for terrorism-related prosecutions) and in counter-terrorism operations.

There is at least one refugee who is still being indefinitely detained on the basis of an Egyptian conviction, which was based on evidence obtained as a result of torture.

The government has been aware of the flawed basis of his detention for years, and yet he still remains detained and separated from his family (see page 19 for Mr Abdellatif's case study).

**Australia should:**
- **remove ASIO's legislative grant of immunity for engaging in CIDTP.**
- **ensure that courts considering evidence from other jurisdictions in terrorism and other prosecutions impose a positive obligation on the party seeking to rely on the evidence to show that it has not been obtained as a result of torture or CIDTP, either directly or indirectly.**
- **provide reparations, including financial compensation and mental and physical health care, to individuals who have been subject to torture or CIDTP.**