



Telephone: (02) 9230 8336
Facsimile: (02) 9223 1906
DX 613 SYDNEY

**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

A.B.N. 49 110 847 399

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

Your Ref:
Our Ref:

8 October 2015

Hon. Roger Gyles AO QC
Independent National Security Legislation Monitor
P O Box 6500
CANBERRA ACT 2600

Dear *Judge,*

Control Order Regime – Division 104 of the *Criminal Code*

I am writing on behalf of the Federal Court of Australia (Federal Court) in regard to your current inquiry into safeguards attaching to the control order regime established by Division 104 of the *Criminal Code* (Cth).

A request for a control order may be made to an “issuing court”. That term is defined in section 100.1 of the Criminal Code to mean the Federal Court, the Family Court of Australia or the Federal Circuit Court of Australia. In a report tabled in the Federal Parliament on 14 May 2013 following a review of counter-terrorism legislation by a Committee appointed by the Council of Australian Governments (COAG), it was recommended that that definition be amended to mean the Federal Court only. In making that recommendation and after consideration of whether it may be appropriate to substitute State and Territory Supreme Courts it appears that the Committee felt that reposing this jurisdiction solely in the Federal Court would best achieve comity, fairness and consistency.

It is, of course, a matter for the Federal Government to decide what jurisdiction each court, federal or state/territory, should have under federal law. The Chief Justice, however, has asked me to advise you that, for the reasons that follow, the Court strongly supports the COAG Committee’s recommendation that the Federal Court should have exclusive jurisdiction at both the trial and appellate levels in control order proceedings. The Court is also of the view that the limitation of an individual inherent in any such order made requires that these proceedings should only be undertaken by a superior court.

As highlighted in the COAG review, control order proceedings are difficult and complex. Procedurally this includes ensuring a fair hearing when key evidence cannot be disclosed to the person sought to be controlled or his or her legal representative. Determination of these proceedings at both the interim control order and confirmed control order stages requires careful balancing of the need for restriction of the rights and freedom of the person sought to be controlled and the impact that this might have on that person and (for many) his or her family, on the one hand, and the safety and concerns of the community, on the other. As also

highlighted in the COAG review, the jurisprudence in Australian in relation to control orders is not well developed. If these proceedings are to remain a feature of Australian law, it is important that this occurs both authoritatively and consistently.

The structure of the Federal Court and the expertise of its judges ideally equip it to deal with control order proceedings both at the trial and appeal levels.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Mathieson', written in a cursive style.

John Mathieson
Deputy Registrar