



## FEDERAL CIRCUIT COURT OF AUSTRALIA

Telephone: 1300 352 000  
Facsimile: (03) 8600 4445

Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

12 October 2015

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

Dear Judge

**Re Inquiry concerning the adequacy of the safeguards relating to the control order regime provided for by Division 104 of the Criminal Code.**

I have been asked to respond on behalf of the Federal Circuit Court to one aspect of your current inquiry being *the appropriate issuing court in respect of control orders*.

The submission made on behalf of the Federal Court has the support of the Federal Circuit Court.

Currently the definition of 'issuing court' includes the Federal Court, the Family Court and the Federal Circuit Court. The control order is a power conferred on these courts and is complementary to the preventative detention regime which is a power conferred on a judge in his or her personal capacity and not as a Court or a member of a Court. The relevant Division of the Criminal Code (as in place at the time) was the subject of High Court consideration in the decision of *Thomas v Mowbray* [2007] HCA 33. The interim control order in that matter was issued *ex parte* by a federal magistrate and the Court currently has three such applications pending. While the High Court decision gives some guidance on the determinative process that must be undertaken by an issuing court, the regime is one that is likely to be the subject of further legislative refinement.

As you would appreciate the Federal Circuit Court is a court of high volume and relies on the resource and registry support of both the Federal Court and Family Court. In Sydney, the Court operates from a number of localities, including commercial premises, which do not have the necessary security infrastructure to accommodate these applications.

While any decision in respect of the conferral of jurisdiction is a matter for Government, it is appreciated that the control order/national security provisions jurisprudence is still evolving and may possibly be the subject of future judicial challenge with consideration as to whether the law is reasonably appropriate to achieve the legitimate purpose. In this regard, the Court appreciates the rationale for confining the jurisdiction to a Court that can make more authoritative determinations.

Yours sincerely,

Adele Byrne  
Principal Registrar  
Federal Circuit Court of Australia