The Hon. Nathan Rees
Premier of NSW
GPO Box 5341
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By email: thepremier@www.nsw.gov.au

20 March 2009

Dear Premier

Open letter to the NSW Government

We, the undersigned, were surprised and disturbed to read the report in the *Sydney Morning Herald* on 4 March 2009 that the NSW Attorney General had introduced the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009 into the Parliament. The Bill extends police powers to conduct secret searches, originally introduced by the passage of the controversial Terrorism Legislation Amendment (Warrants) Bill 2005, to offences unrelated to terrorism. Our surprise stemmed from the fact that none of us, or our members, were aware that the NSW Government proposed such laws, that such laws were considered necessary or on what basis they were considered necessary. We are disturbed by the Bill for a number of reasons.

First, if enacted as currently drafted, the Bill would allow police to conduct covert searches in relation to both serious crimes such as child pornography and drug trafficking offences and relatively minor crimes such as the possession of a loaded starter's pistol in a public place. The latter does not give effect to the Government's stated intention to extend the availability of covert search warrants only to serious and organised crime.

Second, the NSW Ombudsman's report of its review of the covert search warrant provisions under the *Terrorism (Police Powers) Act 2002* (NSW) was provided to the Police Minister and Attorney General in September 2008 but has not been released. We anticipate that this report would contain important evidence and information relevant to the justification for the extension of police powers proposed by the Bill, including the views of many members of the community who made submissions to the review. Failure to release the report demonstrates that reporting requirements supposedly included in

legislation as accountability safeguards are meaningless unless they ensure accountability not only to the legislature but also the community as a whole.

Third, while the Government has sought to justify the extension of these extraordinary powers to the police on the basis that they can only be issued by a Supreme Court judge, the Bill requires the Attorney General to "declare" a judge's nomination as an "eligible judge". This selection process by the Attorney General clearly breaches the doctrine of separation of powers and consequently the rule of law.

Fourth, a major concern of lawyers and human rights defenders opposed to the introduction of the *Terrorism (Police Powers) Act 2002* (NSW) was the gradual normalisation of extraordinary powers like covert search warrants, which breach a range of human rights, into general policing. With the introduction of the Bill, the reasons for that concern are manifest.

Queensland has extended covert search powers to police for "designated offences", which are limited to homicide and offences against the person for which conviction carries a maximum penalty of life imprisonment, and to "organised crime", which is defined far more narrowly than is proposed in the Bill. In Queensland, a Public Interest Monitor supervises covert search warrant application processes. No Public Interest Monitor exists in NSW to supervise the administration of covert search warrants in this jurisdiction.

It has always been our view that the *Terrorism (Police Powers) Act 2002* (NSW) is itself unnecessary and poses a threat to the fundamental human rights of privacy, freedom of speech and freedom of association. Extension of these powers to people not suspected of any crime who happen to live in property adjoining that of a suspect is disproportionate to the purpose that covert search warrants are intended to achieve and is an unjustifiable incursion of rights to privacy. Crimes defined in the Bill as "serious offences" include destruction of property, including one's own, in the course of a "civil disturbance". We do not condone damage caused by events such as the Cronulla riots but recognise that careful consideration must be given to the classification of an offence in relation to which ordinary rights and protections will not apply.

The International Commission of Jurists' report *Assessing Damage, Urging Action*, is replete with historical and contemporary information about the abuse of police powers and the effect that such abuse has on the rule of law and civil society. That report concludes that there is no justification for anti-terrorism laws introduced globally following 11 September 2001 which breach human rights and finds that such responses to the very real threat of terrorist attack has done much damage to both civil society and the international legal framework, including human rights.

This Bill, and the way that it has been introduced without public consultation and debate and is being pushed rapidly through the Parliament, demonstrates the very real, if not urgent, need for consolidated human rights protection law, for example a charter of rights, in Australia. Such a law would provide a framework which would encourage informed and

considered debate and "sober and proportionate assessment" of any infringement of fundamental rights and the rule of law proposed by a law of any parliament.

Yours sincerely

Elizabeth Evatt AC
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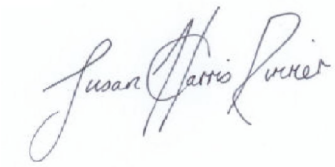

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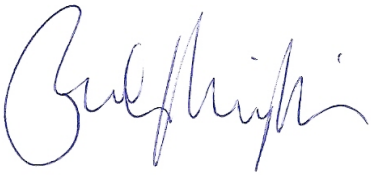

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