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14 July 2006

Ms Jane Hearn
Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Ms Hearn

Thank you for the invitation to make a submission commenting on the recommendations of the Sheller Inquiry.

This submission is made by Uniting*Care* NSW.ACT, which is a Board of the NSW Synod of the Uniting Church in Australia. Uniting*Care* NSW.ACT has the responsibility to comment on matters of public policy on behalf of the NSW Synod. Unfortunately, due to the timing of the inquiry, a national submission has not been possible, as the national Assembly of the Uniting Church in Australia is taking place at this very time.

We consider the Sheller Report to be a wise response to the complex issues arising from the need to provide security against a terrorist attack while maintaining the rule of law and upholding human rights. We welcome the consideration given to all views and the reasoned and clear conclusions made.

We support all 20 recommendations of the report.

We also support the other 'key findings' of the inquiry which, in some cases, involve recommendations not to amend certain components of the Criminal Code 1995 and other legislation.

On subsequent pages we have made some brief comments on some of the recommendations made by the Sheller Report and the basis for our support of them.

Should the Committee feel it would assist them in their inquiry, we would be happy to attend a hearing to discuss the recommendations further.

Yours sincerely,

Rev. Harry Herbert
Executive Director

Background

The Uniting Church remains very concerned about the threat of terrorist attack in Australia, but also the disproportionate nature of some of the legislation passed in response to that threat.

The church, through its agencies, have made a number of submissions to various inquiries concerning anti-terrorism legislation at both federal and state level. UnitingJustice Australia and the Justice & International Mission Unit of the Synod of Victoria and Tasmania both made submissions to the Sheller Inquiry. In 2005 submissions were also made in relation to the review of ASIO special powers and the *Anti-Terrorism Bill (No.2) 2005* as well as state legislation connected to it.

In all of our submissions, the church has attempted to grapple with the complex issues arising from the nature of the threat of terrorism and the intersection of anti-terrorism legislation with human rights obligations. The Uniting Church in Australia believes that human beings are created in the image of God and that every person is of worth and entitled to live with dignity. We believe that Christians are called to love their neighbour as they love themselves and to extend that love even to enemies. It is the love of God in Christ Jesus which motivates us to live out this calling by working for peace with justice in our church, our communities and the world. The recognition of human rights is an affirmation of the dignity of all people and essential for achieving peace with justice.

As the Human Rights and Equal Opportunity Commission has pointed out to the Sheller Inquiry, human rights obligations are not a luxury that can be simply cast aside when they seem inconvenient to the government. Human rights are indivisible, universal and inalienable.

However we also recognise that terrorism is itself a threat to the human right to life, liberty and security of person. Terrorism can never be justified. Terrorist acts involve a denial of the only sort of values and visions that might define a worthwhile end: they destroy human dignity, human rights, and human life. States have a right to restrict some liberties in response to the threat of terrorism, so long as this response is proportionate to the threat and involves the least restriction possible.

The Security Legislation Review Committee Report ("Sheller Report")

The Uniting Church was invited to make a submission to the SLRC Inquiry in December 2005, and as mentioned two agencies did so. Furthermore, Dr Mark Zirnsak of the Justice & International Mission Unit of the Synod of Victoria and Tasmania appeared at a hearing of the Committee in Melbourne on 7 February 2006.

We believe the quality of the Sheller Report reflects very positively on the decision to appoint an independent committee made up of eminent legal experts and those with specific statutory responsibilities related to the various pieces of legislation. To that end we welcome the decision by the Parliamentary Joint Committee to modify its own planned review to consider the recommendations of the Sheller Inquiry with, we hope, a view to enacting them in legislation and government policy.

Comments on the Recommendations

1. Further Review
We support the recommendation of continuing review of the security legislation by an independent body, such as the SLRC, to take place within the next three years. We believe that while ultimate decisions must remain with the parliament, independent reviews allow members of parliament access to the best advice, free from political partisanship and the pressures to be "seen to be doing something".

2. Community education
We strongly support this recommendation. Through our inter-faith partners, we are aware of significant concern, fear and even distrust of the government's security legislation. We believe that resources spent on education, but also on seriously *listening* to these concerns, will be repaid many times over in improved social cohesion. This in turn will in fact reduce the dangers of members of the community feeling so alienated from society that they consider committing terrorist acts. Social cohesion is the single most important defence against home-grown terrorism.

3 and 4. Reform of the process of proscription
We support the suggested improvements to the process of proscription. Having read the very informative discussion in the report concerning the advantages and drawbacks of each approach, we consider that while suggestion (i) is a significant improvement on the current situation, a judicial process (ii) is more appropriate. Considering the consequences of proscription, we believe the process must be both fair and as transparent as possible – and furthermore to be seen as such by the community.

6. Definition of 'terrorist act'
While we agree with the SLRC that 'serious psychological harm' should be included in the definition, we remain quite concerned that the definition of 'terrorist act' continues to be far too broad.

While the legislation must clearly specify the full range of activities it wishes to catch, the definition as it stands bears little resemblance to the common community understanding of 'terrorism'. For example, a cyber-attack on the Melbourne telephone exchange is a serious crime, but very few people would call it 'terrorism', even if the other criteria regarding intention to intimidate and political, religious or ideological motive applied.

Furthermore, the definition makes no distinction between attacks on civilians and attacks on military targets, effectively making all armed conflict by non-state actors 'terrorism' (when combined with the extended geographical jurisdiction clause), regardless of the context of oppression and violence that might be motivating the act.

Paradoxically, DFAT has confirmed in briefings that it does not consider any acts of recognised governments to be 'terrorist acts', regardless of any other criteria being met. This means that tyrants such as Saddam Hussein, Augusto Pinochet and even Joseph Stalin were not terrorists, even though it is widely agreed that they engaged in daily acts of violence against their own civilian populations in order to intimidate ('terrorise') them. The irony is that 'le terror' is a concept coined by the French revolutionary government to describe their suppression of dissent after taking power.

Thus under the definition the Shiite uprising against the Iraqi government after the first Gulf War was an act of terrorism, but Saddam Hussein's brutal repression that

followed was not. We believe this is widely inconsistent with the community's understanding of terrorism involving attacks on civilian targets.

The above discussion, it is hoped, demonstrates the weakness of the current definition of 'terrorist act' – it exonerates many who are guilty while punishing many whom we would consider justified. Because so many offences relate back to this definition, it is imperative that the parliament continue to review it.

One way of improving the definition along the lines discussed here would be to remove the reference to 'intimidating the government' in (c)(i) of the definition of 'terrorist act' in section 100.1 of the Criminal Code. Attacks on government personnel or property would still constitute a 'terrorist act' if done with the intention of intimidating the public or a section of the public. The legislation itself is already able to encapsulate state terrorism, so this would require only a shift in interpretation and policy on the part of the government.

Lastly, we wish to strongly affirm the SLRC finding that reference to 'the intention of advancing a political, religious or ideological cause' should be retained in the definition. The argument of the Attorney-General's department in its submission to the SLRC was flawed, as the motive for the act is a constituent part of what distinguishes terrorism from other offences, such as murder. The A-G suggestion is the equivalent of suggesting that motive not need to be proved for a 'hate crime' conviction, which makes no sense.

9. Definition of 'advocates'

We support the recommendation that paragraph (c) of section 101.2 (1A) be removed from the definition of 'advocates' as its reach is far too broad and it unduly restricts freedom of expression, especially in the context of such a broad definition of a 'terrorist organisation' (see comments on recommendation 10 below).

10. Definition of 'terrorist organisation'

We support the recommendation that paragraph (a) of the definition be deleted so that proscription is the only method of an organisation being declared a terrorist organisation.

The key problem with paragraph (a) as it stands is that the definition is far too broad, and thus capable of catching too many organisations in its net. At the SLRC hearing on 7 February, Dr Zirnsak (representing the Uniting Church) noted the problem that most organisations involved in liberation struggles contain both armed and unarmed wings. He specifically drew on the examples of the African National Congress during the apartheid era in South Africa and FRETILIN during Indonesian occupation of Timor Leste. Many Australians provided moral, political and financial support to both these organisations and yet if the current definitions had applied at the time, they would have been guilty of supporting and/or financing terrorism – even if they were supporting the nonviolent struggle that predominated in both countries.

In their submission to the SLRC, AMCRAN also mentioned the problem of defining when a person's actions became the organisation's actions. They suggested clearer criteria be provided, such as 'official communications', 'statements by a recognised leader', 'failure to dissociate with a spokesperson's statement', etc. The SLRC seemed content to leave this question to the courts. This means that the ambiguity will remain for some time, during which people may be 'guilty' of supporting, associating with, or financing the 'terrorist organisation'. We do not believe this meets basic standards of fairness.

Another concern with the whole concept of 'terrorist organisations' is that by labelling an organisation a 'terrorist organisation', it becomes politically and legally impossible to enter into negotiations with that group when seeking to end a conflict. An example of this might be the Tamil Tigers in Sri Lanka. Some of the actions of this group could quite clearly be seen as 'terrorism' under this definition, and yet it is clear to every person working to end the decades-old conflict in Sri Lanka that a negotiated peace is the only possible solution. The same situation exists for southern Sudan, the Democratic Republic of Congo, and Israel/Palestine.

12. Training or receiving training from a terrorist organisation

We support the recommendation, but we believe the amendments should go further to make it clear that legal briefings are not covered by this offence.

An example of when this might occur would be a legal briefing provided to a radical environmental group that is considering direct action of various kinds against, say, old-growth logging. It is quite normal for activists to receive legal briefings on their rights, and what to expect if they break the law, in advance of these actions. If the group was considering a violent act such as spiking trees (which endanger the lives of the forestry workers, and which we want to make clear we do not support), the legal briefing might mention the possibility of terrorism charges being laid, and the implications of this. Under the proposed amended definition, this could still be construed as 'providing training that prepares the organisation for a terrorist act'.

13. Getting funds to, from or for a terrorist organisation

We support the recommendation but suggest other activities be exempted. At present, selling sandwiches to a terrorist organisation is an offence. We suggest the offence be reworded to make clear that the funds transfer is in some way related to the preparing for, assisting with or doing of a terrorist act.