

9 February 2009

Submission to the  
Senate Standing Committee on Foreign Affairs, Defence and Trade  
Concerning its inquiry into the  
Defence Legislation (Miscellaneous Amendments) Bill 2008

Dear friends,

Apologies for this late submission. I hope you are able to take it into consideration.

This submission goes to the proposed amendments to the Defence (Special Undertakings) Act 1952 that are contained within Schedule 3 of the Bill.

### Introduction

I am one of the four Australians who was charged with offences under the Special Undertakings) Act (DSU) in 2005. Along with Jim Dowling, Adele Goldie and Donna Mulhearn I was tried and convicted for these offences in the Northern Territory Supreme Court in June 2007. We were all subsequently acquitted on appeal to the Northern Territory Court of Criminal Appeal in February 2008. We call ourselves Christians Against ALL Terrorism.

The Court of Criminal Appeal found that under the DSU as it was, any person charged as we were was entitled to challenge at trial whether or not the declaration of a “prohibited area” was in fact necessary for the purposes of the defence of Australia. This issue was held to be a matter of fact to be argued before and determined by a jury.

The Secretary of the Department of Defence had earlier sought and obtained leave from the trial judge to argue against this proposition. Senior Counsel was engaged to argue that upon determination by the Minister for Defence the status of a prohibited area was fully and finally settled, and that all the Crown need produce at trial was a certificate declaring that the Minister had so determined the matter. The trial judge accepted these arguments, and during the trial her rulings on the matter produced a miscarriage of justice that was corrected on appeal.

There were a number of related issues ventilated during the trial and appeal that were not finally determined by any Court. These included the nature of the Defence Power in the Australian Constitution, the meaning of “international aggression”, and the rights of discovery in criminal prosecutions under Northern Territory Supreme Court rules.

These matters are clearly seen by the Minister for Defence as difficulties to be overcome, and Schedule 3 of the Defence Legislation (Miscellaneous Amendments) Bill 2008 is an attempt to take the matters away from the Courts, and away from any potential jury, by changing the legislation and using Parliamentary authority to declare that the Joint Defence Facility Pine Gap (JDFPG) is both a prohibited area and a special defence undertaking.

I submit that such a course is inappropriate because:

1/ Parliament has not determined, nor has it considered any argument, that JDFPG is necessary for the defence of Australia or any other country.

In 1999 the Joint Standing Committee on Treaties was denied an opportunity to inspect JDFPG, or to receive a detailed briefing on its functions by the Department of Defence. That Committee sought evidence from independent experts, including Professor Des Ball of the ANU who has published extensively on Pine Gap and other US bases. Report 26 of the Joint Standing Committee on Treaties sets out the findings of that inquiry, and complains bitterly about the constraints it was obliged to operate under. If anything transparency has deteriorated since then.

All the Parliament has before it now is a set of unsupported assertions by the Minister for Defence that JDFPG is a vitally important defence base. The actual functioning of the base is kept secret from the members of Parliament, and this secrecy is justified by nebulous and non-specific “security” requirements.

Moreover the Minister for Defence, in arriving at these bare assertions, has failed to consult or meet with any person who might argue that JDFPG is NOT required for the defence of Australia.

In March 2008 I sent the Minister a letter in which I detailed allegations that JDFPG had been instrumental in the commission of war crimes in Iraq. The allegations referred to investigations by Human Rights Watch concerning the so-called “decapitation strikes” made in March and April 2003 against Saddam Hussein and his lieutenants. These strikes were based on information received and processed at JDFPG. They failed to achieve any military objectives, yet they killed dozens of Iraqi civilians.

I confirmed by telephone that the Minister’s office had received my correspondence, but I received no written acknowledgement, no reply, and certainly no opportunity to discuss with the Minister or any DOD official whether or not JDFPG was engaged in activities amounting to war crimes under international law.

2/ This inability to engage decision-makers in meaningful discussion was a key reason that Christians Against ALL Terrorism committed civil disobedience and entered the prohibited area of JDFPG in 2005.

You ought remember that a majority of Australians in 2003 were opposed to the invasion and occupation of Iraq. Mass public expressions of this opposition were derided, misrepresented and ridiculed by then Prime Minister Howard and his Cabinet.

At the same time there was a slew of “anti-terrorism” legislation and activity whereby the Howard government sought to expand the state’s powers of detention with or without arrest, and its powers to surveil, control and limit a citizen’s political organisation and expression.

By December 2005 it was clear to me and my colleagues that the “war on terror” and the war in Iraq were failing in all political objectives at a huge cost to the life and property of Iraqis and other civilians. Indeed we called the US and Australian government’s involvement in these wars criminal terrorism. We determined to take nonviolent direct action.

This failure in civil communication, and the failure to engage in meaningful debate, constitutes a flaw in Australian democracy. Schedule 3 of the Defence Legislation (Miscellaneous Amendments) Bill 2008 seeks to perpetuate such failure.

3/ Should the opportunity exist, I would be happy to argue that JDFPG is not at all required for the defence of Australia.

I would argue that the Missile Defence Shield it supports is a weapon of aggression more likely to cause a war than prevent one, and that the electronic intelligence it collects would be more useful in combatting terrorism and promoting security if it were under the international control of police forces and the United Nations than it is as part of the US military arsenal.

I do not say these things lightly or out of ignorance. I have been a peace activist for more than 30 years, and I studied for and obtained a degree in international relations and strategic studies to complement my activist work.

I can cite with approval British Prime Minister Margaret Thatcher who said, in relation to the bombing campaign of the IRA, that terrorist bombing was not political behaviour, but criminal behaviour – and the proper response to it was criminal investigation and prosecution.

In 1952 when the DSU was drafted and proclaimed, the global strategic context was the cold war, an accelerating nuclear arms race, and a slew of proxy conventional wars.

The same situation pertained in 1967 when JDFPG was first established. At that time space-based electronic intelligence was little known and there were some security advantages to be maintained.

In 2009 there is no cold war, and no sane person wants to see the re-emergence of nuclear arms races, or space weapons races. Once those issues are acknowledged and resolved the intelligence and information able to be collected by JDFPG could be of inestimable value in arms control verification and international confidence building, as well as the policing of arms races.

Such a goal, however, will not be achieved by sealing up all information about what JDFPG does, and using a heavy handed approach towards nonviolent peace activists like Christians Against ALL Terrorism. Schedule 3 of the Defence Legislation (Miscellaneous Amendments) Bill 2008 is a bad piece of legislation which ought be returned to the Minister for Defence for further and better consideration.

A full Parliamentary inquiry into the role and function of Pine Gap would be nice.

Yours sincerely

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