

DISSENTING REPORT

BY GREENS SENATORS

BOB BROWN AND KERRY NETTLE

Key Points

The Greens Senators recommend this bill be opposed.

The bill undermines fundamental rights and freedoms intrinsic to democracy

1.1 The amendments recommended in the majority committee report, while improving safeguards in the bill, do not address the fundamental problem at the heart of the legislation which is detention without charge or trial. Even with the amendments proposed by the committee the new powers and offences contained in the bill would unnecessarily undermine fundamental rights and freedoms intrinsic to democracy.

There is no adequate case for the introduction of these laws

1.2 The government, ASIO and the Australian Federal Police have not made a case for why these laws are necessary to protect Australia from terrorism and have failed to demonstrate why the current laws and powers are inadequate. In contrast the overwhelming evidence to the committee was that these laws were not necessary, would breach international human rights law and, in some cases, would undermine efforts to address the causes of terrorism.

The bill breaches Australia's commitment to the International Covenant on Civil and Political Rights

1.3 Numerous submissions to the committee outlined how the legislation would violate Australia's commitments to the International Covenant on Civil and Political Rights (ICCPR). In response, assertions by the Attorney-General's Department that the bill did not breach the ICCPR rested entirely on a general claim that confidential legal advice to government that this was the case were not convincing.

The bill creates a parallel criminal system of law without existing safeguards

1.4 Since 2002, 28 pieces of legislation have been introduced to address terrorism creating a parallel criminal system of law in which many of the ordinary protections, standards and processes have been removed or modified. Central to this new system of law is a broad definition of a terrorist act which could encompass many political activities throughout the world. The Australian Greens remain concerned that these laws, along with the existing terrorism laws, could be used to suppress and criminalise

protest movements and freedom struggles, including national liberation movements such as the ANC or Fretilin in East Timor.

1.5 Some forms of civil disobedience and protest could also be covered by the definition. The recent case of American peace activist, Scott Parkin, highlights the potential dangers inherent in these laws. Parkin was deported because ASIO claimed he was a threat to national security, yet this decision was made in secret, without conventional legal protections or processes. His case as have other recent events, show the manner in which the Federal and State governments have used the fear of terrorism as a political tool.

The Greens Senators recognise the danger that terrorism poses to Australian society

1.6 However, our view is that such dangers can be addressed within the framework of our existing criminal law. Undermining our fundamental freedoms, as this bill does, is not only unnecessary but also threatens to destroy the democracy that we wish to defend.

Specific Concerns

Schedule 1—Definition of terrorist organisation etc.

1.7 The Greens Senators believe that the expanded criteria used by the Attorney-General to list an organisation as terrorist is dangerous and unnecessary. It threatens to criminalise speech which may be unpopular but is legitimate in a democracy.

1.8 The broad definition of a terrorist act and the universal jurisdiction applied in the legislation means that, for example, a person praising a protest which becomes violent, such as some recent trade summit protests, could result in the banning of their organisation. Those who express support for self-determination movements in Iraq or West Papua could fall within the definition.

1.9 Evidence to the committee highlighted the dangers in criminalising and alienating further sections of the Arab and Muslim communities that express support for Palestinian self-determination.¹

1.10 Existing laws against incitement of violence are adequate to prosecute anyone for encouraging genuine acts of terrorism.

Schedule 3—Financing terrorism

1.11 The Greens Senators share the concerns expressed by the finance industry and other submissions that broadening the offence of financing terrorism to encompass recklessness is not justified.

¹ AMCRAN, Submission to Inquiry on Anti-Terrorism Bill (No.2) 2005 (*Submission 157*), Senate Legal and Constitutional Committee, November 2005, p. 13.

1.12 This provision creates potential uncertainty for people donating to charities or those involved in the finance industry about their legal position, if their financial involvement inadvertently or indirectly results in funding to a 'banned organisation'.

Schedule 4—Control orders and preventative detention orders

1.13 The Greens Senators believe that detention for reasons other than the prosecution and penalty for a criminal offence cannot be justified except for extraordinary reasons. The government is yet to make the case that such a situation in Australia exists at this time.

1.14 The experience of immigration detention in Australia has highlighted the dangers of detaining people without a requirement to prove before a court that the person may have committed a crime.

1.15 Evidence from the legal community, in particular the Law Council of Australia, strongly asserted that preventative detention and control orders should not be enacted.

1.16 The Law Council made the following important points which emphasise there is no case for the new powers:

- The 17 arrests made in a joint task force of federal and state police and ASIO, which have resulted in charges being laid for terrorist related offences, demonstrate the effectiveness of existing law to anticipate alleged terrorist acts;
- The current ASIO powers to detain and question suspects up to 7 days have not been used to date;
- Dennis Richardson (Former Head of ASIO) commented in May 2005 to the Parliamentary Committee reviewing ASIOs questioning and detention powers that the laws which were enacted have worked well;
- The 7 July 2005 London bombings occurred despite the existence the preventative detention orders and control orders;
- Comments by Head of Police, for example, Commissioner Moroney (NSW Police) that the lessons learned from Bali, Madrid and London are that government effort should focus on ensuring that the law enforcement agencies and intelligence authorities are properly resourced and organised to deal with terrorist activity.²

² Law Council of Australia, Supplementary Information (*Submission 140A*), Anti-Terrorism Bill (No.2) 2005, Senate Legal and Constitutional Committee, 23 November 2005, p. 3.

Schedule 6—Power to obtain information and documents

1.17 The Greens Senators recommend that the universal concerns expressed by media organisations regarding these proposals should be heeded. The broad sweeping violations of privacy that the provisions in this schedule would allow can not be justified on the grounds of efficiency.

1.18 The safeguards and protections in the existing regime for search warrants should remain.

Schedule 7—Sedition

1.19 The Greens Senators believe that a democracy should be able to withstand rigorous and robust debate even if it involves a critique that the majority disapproves.

1.20 Evidence to the committee was strongly against sedition laws in our modern democracy.

1.21 We therefore support the recommendation of the committee that Schedule 7 be removed from the bill in its entirety and we further recommend that the existing sedition laws should be repealed.

Schedule 10—ASIO powers etc.

1.22 The Greens Senators believe that the existing requirements for ASIO to obtain permission to use their extraordinary search and surveillance powers are sufficient and should remain. We recommend that ASIO should not be given additional powers to enable it to embark on fishing expeditions. The misuse of intelligence to justify the invasion of Iraq, the deportation of peace activist Scott Parkin and bungled police raids relying on ASIO advice reinforce the need for proper regulation of the intelligence agencies.

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