RELIGIOUS SOCIETY OF FRIENDS (QUAKERS) IN CANBERRA

Submission to Senate Legal and Constitutional Committee concerning Anti-Terrorism Legislation

Part 1 Introduction

1.1 This submission is presented on behalf of the Canberra Meeting of the Religious Society of Friends. It reflects the religious basis upon which Quaker faith and action rest. We believe that all people are children of God and deserve respect. Our faith leads us to work actively for a peaceful society in which such respect is present equitably regardless of differences of race, religion, colour, socio-economic status, and gender.

1.2 Acts of violence by individuals and groups are rejected by Quakers as destructive of the divine source in both perpetrators and victims. Whether the violence be in the form of war or terrorism or abuse of family members or other individuals, it is inimical to personal and community peace and justice. In our view it cannot be justified under any circumstances: there are always non-violent options available. For this reason we are unable to accept any behaviour that places ends before means and uses violence against other people.

1.3 The current climate of uncertainty and fear tends to push human beings to seek ways to ensure security. At the same time it generates 'knee-jerk' reactions that are unlikely to provide what is sought. Careful attention and wide debate are needed when considering appropriate measures to respond to acts or threats of violence. As a species we are capable of more creative ways of looking for underlying causes and building a society that reduces the risks of violence.

1.4 True security is based on mutual confidence among citizens, built through commitment to respect and acceptance, rather than suspicion and apprehension. In such a society, secrecy and rebelliousness are less likely, and threats are met by a co-operative spirit. People accept responsibility jointly to protect and defend their communities.

1.5 This submission reflects a deep concern among Canberra Quakers that the proposed anti-terrorism legislation goes too far too quickly in seeking to put in place excessively strong measures. We will draw attention to several of the detailed concerns in Part 2 of the submission, and will then in Part 3 make some general comments on the way such legislation is being handled. Part 4 contains our conclusions.

Part 2 The Legislation

2.1 The legislation - called the Anti-Terrorism Bill (no.2) 2005 - has been amended in a number of ways since being mooted following the meeting of the Council of Australian Governments (COAG). These amendments reflect some of the objections raised by legal, religious and human rights groups. Despite the changes, we remain convinced that the legislation is far from acceptable, and the following paragraphs will identify particular areas of anxiety.

2.2 An overriding concern is that the proponents of the legislation have failed to make a strong case for the need for additional powers. Journalist Brian Toohey pointed out in an article in *The Canberra Times* on 31 July 2005 that "the Federal Government has enacted 19 pieces of anti-terrorism legislation and seven other related laws in less than four years". There are already laws that give powers to authorities in relation to threats or acts of violence against the community. It is hard to understand the need for even more powers when it seems the existing ones are more than sufficient.

2.3 An atmosphere of crisis has been developed this year, partly through public comments by political leaders and partly through media coverage of incidents in various parts of the world. The precise risks facing Australians have rarely been identified. An example of the way issues are being aired in the public domain is the recent attempt by the Government to get extra pre-emptive powers under existing laws, and to legislate for greater call-up powers for the defence forces to be used in emergencies like terrorism. There has also been public speculation by the Foreign Minister that an attack on a cruise liner by pirates might have been an act of terrorism, with no apparent evidence to support such a claim.

2.4 The Anti-Terrorism Bill still gives too much power to officials, with limited opportunity for those affected to object or seek legal redress. This is alarming, given recent memory of the abuse of power by officials dealing with immigration detainees, the secrecy surrounding the deportation of Scott Parkin the American peace activist, and the demonstrated failure of security agencies to achieve accurate results (eg re WMD in Iraq).

2.5 In this context it is worth quoting from a letter from Robert Dunstone *to The Canberra Times* on 7 November 2005 which draws attention to the experience of dictatorships around the world that have relied on arrest without charge and great secrecy. "If you study these historic cases you come to the following conclusions: secret services that carried out the arrests and questioning without transparent supervision became corrupted by their uninhibited powers and went from extreme to extreme….the public could not challenge the laws once they were in place because of threat of arrest…(and) the laws were not very effective in stopping the activities of the terrorists".

2.6 The provisions for arbitrary detention, limited judicial review, and no

presumption of innocence, appear to place the legislation in conflict with the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory. Whilst some amendments will allow greater judicial review and greater access by the detained person to information about reasons for their situation, the Government has made little attempt to explain how the proposed law is being made consistent with the ICCPR, or with the resolutions of the UN Commission on Human Rights on the need to ensure that counter-terrorism policies have due regard to protecting human rights.

2.7 The impact of the legislation on people who are innocent and people who are vulnerable is likely to be devastating. There is already a perception among particular minority groups in our community that they are targeted by police and other authorities and harassed unnecessarily. This legislation will increase the chances of such harassment as authorities respond to unsubstantiated rumours and claims of wrongdoing. This will increase rather than reduce the sense of fear and division, resulting in more of an 'us' and 'them' mentality.

2.8 The absence of a bill of rights or its equivalent in legislation means that Australia is susceptible to the loss of significant democratic freedoms without adequate recourse to redress mechanisms. This legislation could, in the name of protecting the majority, undermine the very freedoms that differentiate our society from those seen as undemocratic and autocratic.

2.9 The accountability of public officials is part of a democratic society. This legislation, through increasing the secrecy surrounding their activities, will tend to make such officials resistant to accountability and transparency. The comments by the Government indicate an attempt to blur the separation of powers between executive and judiciary by co-opting retired judges to enforce orders under the legislation.

2.10 The new definitions of sedition, although intended to be clearer than the previous definitions, still seem to open a potential for repressive measures against individuals or groups that disagree with government policy, and against media people who seek to research and analyse public policy issues. Journalists appear to be especially at risk under these provisions.

Part 3 The Process

3.1 The way in which the draft legislation came to public attention was unfortunate. The decision of the ACT Chief Minister to place the draft on his website was regarded by the Commonwealth Government as a breach of confidentiality, yet it was the way in which many people were able to get some idea of what was being contemplated, and it illustrated the dangerous precedent of rushing the legislation. Even the Attorney-General Philip Ruddock later appeared to claim that the time the legislation had been

available included the time created by the ACT Chief Minister's decision - a rather perverse compliment.

3.2 The way in which this legislation is being handled is against the traditions of the Australian Parliament. The Clerk of the Senate, Harry Evans, was quoted in *The Canberra Times* on 6 November as saying that “the decision to rush such controversial legislation through Parliament was unprecedented”. He called for a more active citizenry to scrutinize what he described as the ‘degenerated’ parliamentary system.

3.3 The Australian people deserve a more thorough opportunity for legislation to be considered before being passed. Stages need to be more clearly defined and separated, committee examination of legislation encouraged, and Parliamentary debate allowed more time for complex issues to be discussed.

3.4 There has been a tradition in some jurisdictions of a Green Paper to introduce a concept, followed later by a White Paper with the proposed legislation, This allows more opportunity for full understanding and debate.

3.5 The increasing tendency for governments to say that legislation is urgent is a recipe for bad legislation and has far-reaching implications for our democratic processes.

Part 4 Conclusions

4.1 The Anti-Terrorism legislation is in our view not justified in terms of the threats facing Australia. The threat of global terrorism is less than that of global poverty and disease in terms of lives claimed and societies destabilised.

4.2 There are already more than sufficient laws to enable police and security services to take action against real threats. This legislation tips the balance too far in favour of the state and against individual rights and freedom.

4.3 The legislation is likely to increase suspicion and fear in the community, and to place particular strains on minority and vulnerable groups.

4.4 The legislation appears to be in conflict with significant provisions of the International Covenant on Civil and Political Rights, especially in relation to access to justice by those arrested or detained.

4.5 The protections provided against arbitrary action by officials are inadequate and need strengthening if the legislation goes ahead.

4.6 If the legislation is to proceed, we ask that detailed views of those with international and constitutional law knowledge be sought by the committee.

We draw attention to the advice given to the ACT Chief Minister by Hilary Charlesworth (ANU), principal author of the ACT Human Rights Act, in relation to the gaps between the legislation and the ICCPR; and to the views of the Chair of the HREOC, John van Doussa QC, about changes that would be needed to meet existing Australian human rights provisions. We leave it to the State-Commonwealth discussion to decide what changes are needed to meet the Constitution's requirements.

4.7 The question of the ongoing review of any legislation of this kind warrants attention. There is a clause that provides for a review by COAG after 5 years, and even this sounds too long to us. There could also be provision for review of the legislation by Parliament through one of its committees, or by the Australian Law Reform Commission. The advisory groups to the Government from ethnic and religious communities could give feedback about the impact of the legislation.

4.8 The kind of society we wish to see is one in which issues are openly debated and people feel free to participate fully. The growth of fear and the strengthening of legislation and law enforcement suggests to us that this ideal is being eroded.

Canberra, November 2005

O'Connor ACT