

Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

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Dear Secretary,

**RE: ANTI-TERRORISM BILL (NO. 2) 2005**

As an Australian citizen and someone who values our deep commitment to democratic values and the rule of law on which it is based, I would like to raise what I consider to be some very serious issues that I, as an admitted legal practitioner on the role of the New South Wales Supreme Court, consider need to be brought forcefully to the attention of the Committee concerning the proposed Anti-Terrorism Bill (No. 2) 2005.

I am by no means unique in the concerns that I have over the proposed legislation, and am supported in my views by a wide cross section of Australian society, including colleagues in both my legal and academic circles. I pray that the Committee pays them their due regard.

**Muslim community fears and concerns**

As an Australian Muslim, I, along with the Muslim community here in Australia, of course realise that the community that will be most adversely affected by the introduction of laws that increase Executive powers while marginalising the power of the courts is the Muslim community who have many times publicly and forcefully denounced the murder of innocent civilians as not only of course illegal but thoroughly unjustifiable under Islamic law, and as contrary to the fundamental teachings of Islam. Despite the un-newsworthy status of this denunciation, ordinary everyday Australian Muslims will bear the brunt of arbitrary detention without safeguards of the legal system set up in order to separate the three arms of government. The draconian measures sought in order to limit the rights of Australians who come under suspicion also attack areas jealously guarded by our legal system for hundreds of years, as seen, for example, in the abolition of lawyer-client confidentiality. This, and other fundamental rights, will be completely eroded under the new legislation and ought to be opposed on legal, moral and historical grounds, as an unacceptable increase in the unchecked power of the Executive.

**The sufficiency of existing anti-terror laws**

The events of the last few days have shown that existing laws are more than adequate to invoke in combating any perceived threat to the Australian nation. The Government has failed to put forward any compelling argument to warrant the introduction of the new legislation, and has played on the fear and suspicion of the unknown "other" in order to terrify the populace into believing that these new laws are necessary. I do not believe the Government has put forward a compelling case as to why these new measures are necessary, and the introduction of any new legislation ought to await a thorough review of the adequacy of current law to meet the perceived need to do away with fundamental rights and freedoms integral to the stability of Australian democracy.

### **No time for meaningful consultation and debate**

The sense of urgency invoked by the current Government seeks to undermine and undervalue the need for time to properly consider the vast changes that are sought to be introduced with the new Bill. This need is underscored as it attacks fundamental freedoms such as the right to freedom of speech on government and political matters as implied in the Australian Constitution; the presumption of innocence — seen in the recent events of the past few days where the media and governmental figures have already done away with the presumption of innocence. This in turn affects all Australian's rights to due process under the law and the consequent right to a fair trial. All this against the background of inadequate time for proper discussion and debate before these draconian measures become law.

Australians surely deserve better than this, and under the accountability of the Executive through Parliament, are entitled to have the proposed legislation examined with the detail that the seriousness of the legislation warrants.

### **Impact of control orders**

The imposition of measures (house arrest, tracking devices, and limitations on other communications) that severely curtail the rights of all Australians to move about and communicate freely — all on a civil standard of proof — are procedurally unwarranted and legally unjustifiable. The application of the civil standard into the criminal law too sees the imposition of criminal punishment on a standard which offends and erodes one of the cornerstones of our legal system. The potential for these laws to adversely impact those in the community who will fall within the racist practice of racial stereotyping based on national origin and religion is so great that it will be almost inevitable that innocent people will be caught up in these laws and, stripped of fundamental rights and freedoms, will not be able to effectively defend themselves. We cannot stand by and watch such a situation develop here in Australia that would not only allow but encourage this to happen.

The proposed retrospective criminalisation of some acts too is offensive to the criminal law which demands that for a crime to be committed, not only is mens rea required, but the act must be illegal as at the time of the commission of the relevant act. This unfairly targets, again, those who were part of Islamic organisations which have since been outlawed. Perhaps this is a catchall for those people who cannot be caught under the current crime of "training with a terrorist organisation", and will be an easy way for an unchecked Executive to detain and curtail, without Court supervision, the rights and freedoms of people who are seen as undesirable Australians.

### **Impact of an unchecked Executive and preventative detention**

One of my major concerns is the ability of the Executive, through the police force, to arbitrarily detain Australian citizens without the immediate intervention of the courts. Aside from offending the principle that no custodial sentence ought to be imposed with the commission of a crime, this will unfairly target Australians who happen to be Muslim, while the police take a better safe than sorry approach to preserving evidence that merely suspect might materialise if suspects are arbitrarily detained - again the danger of racial and religious stereotyping is apparent.

Let us not follow the pathway of the US in dismantling freedoms on which our respective countries were built, which guarantee freedom of worship and belief, and enshrine the ideal that all Australians ought to be free to live according to their consciences, even if we disagree with one another from time to time.

### **Random impact of police stop and search powers**

The random stop and search powers of the police who can, on the merest suspicion that you "might have just committed, might be committing, or might be about to commit a terrorist act" far exceed any proportionate response to the perceived threat of terrorism in Australia. Even this, however, grows even more unacceptable in light of the power of the Attorney General to declare an area a security zone, on the grounds of "preventing a terrorist act occurring", or "in responding to a terrorist act that has occurred. Thus the police, under such circumstances, need not even reach the very low threshold of suspecting that a terrorist act "might" be committed: the scope for widespread abuse of those seen as suspect here too will be most acutely felt by those seen as terrorists, and the danger of racial and religious stereotyping again raises its ugly head.

This in turn will widen the gulf between Muslims and other sections of Australian society as Muslims are forced to become the feared "other": this will inevitably lead to a backlash against ordinary Muslims personally who will be seen as the cause of the current problems Australia is currently touted as suffering from. At particular risk are Muslim women who are visibly Muslim and who will inevitably be subjected to the indignity of a bodily search which requires the headscarf to be removed to be searched in public - there is currently no provision which requires the search to take place in private. Again this will further alienate the Muslim community and serve to marginalise even moderate Muslims.

### **Impact of Incitement, Sedition and "Advocating Terrorism"**

The "banning" of organisations on the basis that a worldview it propounds is antithetical to another worldview is an impermissible stricture on the freedom to live as one sees fit according to the dictates of an individual's conscience. On this basis, I personally oppose the proposed legislative provisions concerning incitement, sedition, and the new criteria for banning organisations on the basis that they "advocate" terrorism.

We must jealously guard our right to speak up against injustices as they occur around the world no matter by whom they are perpetrated, including the government of the day. Our commitment to representative democracy demands no less than this.

### **Impact on Islamic Charities**

The impact of anti-terror laws have had the perhaps unforeseen consequence that funds given to legitimate charitable organisations have been seized on the mere suspicion that they are being used to fund terrorist activities. The legitimate donating of money to such organisations has not only decreased, but those who are supposed to benefit from these funds are not receiving the much needed help that they receive through these charities. The current climate of fear and paranoia has yet again takes its toll on the weak and vulnerable - Australia must be mature enough not to allow this to happen, and it is unjustifiable that those of us who are philanthropic should suffer and be imprisoned for the innocent mistake of having made a donation to a "suspect" organisation.

### **Impact on privacy**

Long considered as something to be guarded under the common law, the right to privacy all Australians should enjoy will be severely curtailed by the proposed police random stop and search powers, the ability to tap telephones without the current legal safeguards of requiring a warrant, and allowing police and ASIO access to personal information. All of these things constitute an unwarranted intrusion into the private lives of Australians, who do not, for the time being, live under the constant threat posed by a paranoid and nervous police state.

## **Conclusion**

On the basis of the arguments outlined above, I urge the Senate Legal and Constitutional Committee to reject the Bill in its entirety. The mischief it seeks to address will only be exacerbated by the introduction of laws the need for which remains unproven, and whose introduction will be dangerous, in their current form, for the people of Australia.

Australia is built on certain individual fundamental rights and freedoms one of which is to be free of arbitrary Executive intrusion into our daily lives and to live under the rule of law based on the separation of the three arms of government. These unjustified laws will erode these freedoms, to the detriment of all Australians.

Yours sincerely,

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