



10 November 2005

**SUBMISSION TO Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005**

**Summary:**

- 1. TasCCL contends that the proposed laws seriously damage the civil rights and freedoms of all Australians, and will give rise to an atmosphere of divisiveness and mistrust without gaining any significant advantage to police investigation.*
- 2. TasCCL believes that the protocol of judicial review provides insufficient oversight of the exercise of these new powers, because it does not allow proper examination and testing of the evidence which lead the police to ask for control or preventative detention orders. Additional oversight by the Ombudsman the Attorney General and bureaucrats suffer, we believe, from the same problem.*
- 3. The sedition provisions, TasCCL believes, are far too broad and will have a chilling effect on free speech.*
- 4. TasCCL believes that the secrecy provisions, especially when combined with preventative detention orders, are likely to become a weapon of intimidation by the police against certain communities in Australia, and constitute an affront to the free and open society to which we aspire.*
- 5. Finally the control orders, TasCCL believes, are unnecessarily severe and long lasting considering that they are imposed on a person who has committed no crime.*

It has taken western democracies hundreds of years to acquire a political system that protects civil liberties such as habeas corpus and free speech. Despite the recent terrorist outrages, the Tasmanian Council for Civil Liberties believes strongly that this achievement should not be abandoned lightly. Also, we believe that giving the police draconian powers as is being proposed is neither necessary nor helpful in combating the terrorist threat, because it leads to an atmosphere of divisiveness and mistrust. Gaining cooperation and support from all sectors of society is our strongest weapon against terrorists. Police rely on information from the public, and conversely terrorists thrive among the disaffected and alienated. There has been no convincing case made to the public that these laws will be of significant advantage in countering terrorism, and our politicians pass rather quickly over the considerable costs to our freedoms and to a just society, which we incur by enacting them. We may be forced to gaze into the abyss, but we must resist becoming what we see.

The process of judicial review, backed up by oversight from the ombudsman in some cases, has a major flaw in that it is a review of the evidence presented by the security services, but it is not an investigative review, so it is unable to seek its own evidence or form a picture of the situation other than that presented by the security services. The dangers of this approach are demonstrated by the assessments provided to western governments in the lead-up to the recent invasion of Iraq. Many "sources" turned out to be embittered Iraqi expatriates with their own reasons for wanting to make a case for the existence of weapons of mass destruction. Other information was not properly checked because the agencies had formed their own opinion and were looking for reasons to back it up rather than reasons to question it. Governments in this situation were unable to place themselves in a position of being unbiased and properly sceptical. Judges will have the same difficulty, and like the western powers, will be being told over a period of time of a series of possibilities, each unlikely in itself but bearing such terrible consequences as to be hard to discount. In this way the judges who perform this oversight will be drawn into the same culture of paranoia in which the security services

must perforce exist. In fact the legislation being proposed seems to cast the net wider than simply judges, to ex-judges and others, perhaps because it is becoming clear that serving judges may not wish to accept such a rôle. This further weakens any perception that the system is either fair or just.

There has been no coherent argument put forward for the widening of the current laws on sedition. TasCCL believes that this is because there is no good justification for so doing. The cost to free speech of the new proposals is beyond question, however. Without open debate, free press, and the right to express one's point of view without the threat of prison there is no democracy in Australia. Current laws make it a crime to incite others to commit a crime: TasCCL argues strongly that this is enough.

The preventative detention provision: the police would have the power to detain people for up to two weeks without evidence of a crime. They need not explain to the person why he or she is being detained, and it may be illegal for the person to tell others where he or she has been once released. In press releases the Prime Minister has talked of this power being used "in a terrorism situation", but in fact the proposed legislation does not require an existing and immediate threat. TasCCL is concerned that the combination of the secrecy and preventative detention provisions are easily used as a means of intimidation by the police against a community. Even with the best intentions this is a dangerous path to travel, both in practical terms and because of the damage to civil liberties. It should be remembered that in Northern Ireland heavy handed use of powers to detain people without trial, which the police believed they were using in order to gain information from potential terrorists and prevent them from communicating with one another, in fact united the Catholic community against the Ulster Constabulary, and handed the IRA its only significant victory.

Finally TasCCL believes that the system of control orders is unnecessarily onerous and severe. A person may effectively be under house arrest, or forbidden to attend prayer meetings, for very long periods of time without even the chance to see and answer the evidence against him.

The definition of a police state, as much as our Attorney General ridicules the use of the term, is a state where the police exercise power on behalf of the executive, and the conduct of the police cannot be effectively challenged. These provisions clearly move Australia a great distance in that direction. Judicial review of these police powers is cursory and limited, and public review is hampered or prevented by secrecy. Free speech is replaced by fear and mistrust. The Tasmanian Council on Civil Liberties calls on the Senate to resist the scare tactics and provide a voice of reason. Although the threat of terrorism is undoubtedly real, so is the threat to our freedom.

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