



# PolMin

**Australian Political Ministry Network Ltd**

*Influencing public policy for the common good*

## Senate Legal and Constitutional Committee

### Inquiry into the Provisions of the Anti- Terrorism (No.2) Bill 2005

November 2005

## **Introduction**

1. The Australian Political Ministry Network (PolMin) welcomes the opportunity to submit its views on the Anti-Terrorism Bill 2005 (“the Bill”). PolMin is an independent membership organization which is committed to affecting change in public policy in accordance with Catholic Social Teaching. This body of teaching has evolved through the authoritative declarations of consecutive Pope’s.
2. PolMin deplores the killing of innocent civilians and condemns the crime of mass murder. PolMin believes, first and foremost, the appropriate response to terrorism is to understand what provokes it. We urge the Australian Government to continue to explore the question of what conditions give rise to the terrorist threat in Australia. PolMin questions whether a proper review of our foreign policy and approach to the ‘war on terror’ might help to better respond to the terrorist threat than the divisive and potentially damaging anti-terror legislation currently being proposed in Australia.
3. Having said that, PolMin supports the government’s right and duty to prevent a terrorist attack on our shores. However, we believe the risk of a terrorist attack must be balanced with the risk the legislation poses to our civil liberties, including freedom of arbitrary arrest, interference with a person’s liberty, security and freedom of association, speech and religion. PolMin believes that the proposals pose serious threats to these fundamental principles of our liberal democracy. We also express concern that the government has not adequately justified the necessity of these proposals; that it has not clarified why current anti-terrorism laws are insufficient to deal with such a threat nor how these proposals, which run the risk of infringing on our rights and freedoms, are proportionate to the terrorist threat posed.
4. PolMin strongly objects to the lack of time allowed for meaningful public and parliamentary debate of the Bill. This Bill involves momentous changes to Australian law and runs over a hundred pages. That the government is rushing through the passage of this Bill is a gross misuse of power.

## **The Proposed Changes**

5. The government has invoked the July London bombings as a reason for these new proposals. Yet the Federal Government's own National Counter-Terrorism Alert Level has remained unchanged at 'medium' since those bombings. Indeed, this has been the threat level since the attacks on 11 September 2001 which means a 'terrorist attack *could* occur'.<sup>1</sup> Moreover, the London bombings clearly cannot justify copying UK measures in place *before* the London bombings, i.e. control and preventive detention orders; measures that presumably failed to prevent those bombings.
  
6. PolMin believes the government has failed to explain the purpose for which the powers are sought, how they would contribute to the fight against terrorism, and why they are needed. Equally, the government has failed to adequately demonstrate why the current anti-terror laws are insufficient. As it stands, these laws provide for sweeping executive powers and a means of responding to a broad range of criminal offences. These unanswered questions are further highlighted by the recent raids and arrests of terror suspects in Sydney and Melbourne. Existing criminal laws and procedures have been used to arrest and charge the suspects with existing offences. PolMin questions why then the need for the preventive detention, control orders and new sedition laws. Without substantiating the need for these new proposals, in the light of already effective laws, PolMin believes these laws should not be passed.

## **Guilty until proven innocent?**

7. PolMin is concerned that control orders and preventive detention measures will allow innocent Australians, those who have not been charged with or convicted of any crime, to be detained. Control orders will allow for house-detention with 24 hours surveillance even if there is no suspicion that the jailed person is about to commit a crime. This can be done without the need for proper proof. Instead of

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<sup>1</sup> See National Counter-Terrorism Committee Communiqué: 8 July 2005. Available online: <http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurityHome.nsf/Page/RWP94CAF198B3B53A9ACA257038001A4861>; at 15 September 2005).

requiring the police to prove the necessity of detention to an independent authority, the Bill allows police to authorise the preventive detention of someone for up to 24 hours. State premiers have agreed to pass laws allowing for the continuation of this detention for up to 14 days. PolMin is concerned that the preventive detention orders allowing detention by the Executive, rather than a court, poses serious Constitutional problems.

8. The proposals also seek to extend “stop, question and search” powers where “there *might* be reasonable grounds that a person *might* have just committed, *might* be committing, or *might* be about to commit a terrorism offence”<sup>2</sup>. Both State and Federal police already wield extensive powers to stop, search and question in relation to terrorism offences. The proposals if adopted clearly mean that a much wider range of people may be subject to detention, restrictions on movement and compulsory questioning. Giving the police such free rein to use coercive powers when there is only a *possibility* of an offence, opens the door to mistakes and abuse. The grave Rau and Alvarez affairs, should serve as a stark reminder of the wide margin for error in a heated political climate. That a further 220 people were potentially wrongfully detained in immigration detention does little to enlist trust in government departments. That the proposed anti-terror powers are to be backed by extraordinary secrecy powers, will only add to the anxiety and insecurity for some parts of the Australian community and to a heightened climate of fear for the whole community. Given proposed sedition clauses, PolMin is concerned that the public right to know will be lost, and ‘mistakes’ will continue unabated.
9. Mistakes are one thing. Systemic abuse within a system is quite another. Associate Professor David Phillips, department of history, University of Melbourne warns us that Australia may well be treading the path of the South African experience. In that case, laws such as banning ‘communist’ organizations, detention without trial, and offences of ‘sabotage’ and ‘terrorism’ – all justified as part of the ‘war on

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<sup>2</sup>Prime Minister John Howard, “Counter-Terrorism Laws Strengthened”, Press Release, 8 September, 2005, (emphasis added)

communism and terrorism’ – enabled police to exercise gross human rights abuse, within the powers deemed to them from government ministers. As Phillips says, “the South African experience showed very clearly...that police, once given such powers, will demand more and more, and will demand less and less accountability to courts, parliament, government and the public at large”. (“Remember South Africa – and the fear of law”, *The Age*, October 25, 2005). Without exaggerating the proposed legislation, PolMin is concerned at the potential it creates for discrimination and abuse of power.

10. Not only does the Bill allow for unprecedented police powers without the need for proper proof before an independent authority, it also lowers the threshold of proof when an independent authority is involved. Control and preventive detention orders can be issued if the requirements are satisfied on the balance of probabilities. So instead of Australians being innocent until proven guilty beyond reasonable doubt, they can now be incarcerated with much lesser proof. This raises the real danger that mere suspicion of guilt by police is sufficient for the exercise of these extraordinary powers. ‘Guilt by suspicion’ threatens to prevail, and for groups suspected by the police of committing terrorist acts, the rule might very well be ‘guilty until proven innocent’. The detention of people on the basis of suspicion in a highly charged political climate of a “war against terror” is worrying.
11. PolMin suggests that the proposal appears to breach Article 9.1, 9.3 and 9.4 of the International Covenant on Civil and Political Rights (ICCPR), which Australia ratified in 1975 and states:

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention... (Art.9.1.)*

*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or another officer authorized by law to exercise judicial power and shall be entitled to a trial with a reasonable time or to a release.... (Art.9.3.)*

*Anyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without*

*delay on the lawfulness of his detention and order his release if the detention is not lawful. (Art.9.4.)*

12. PolMin is concerned that by treating people as if they had committed an offence, by subjecting them to detention and limiting their personal freedoms, the presumption of innocence is violated. PolMin is concerned that these proposals may in fact be counterproductive: the heavy handed use of police powers easily leads to the alienation of members of the community; many Muslims already report being targeted due to racial profiling.

### **The right to freedom of speech and association**

13. PolMin is concerned that the Bill poses a grave threat to the freedoms of political expression and association. These fundamental principles are well established tenants of international law and are hallmarks of our democracy. PolMin is concerned with the sedition section of the legislation and believes much greater public and parliamentary scrutiny is urgently required. That the legislation is to be pushed through without this due process speaks of contempt for our democratic processes. PolMin questions the insufficiency of existing sedition legislation and believes that a broadening of the basis for prosecuting political speech is a matter of grave concern. If this legislation is passed, we may see a greater ability to silence political debate and criticism. This legislation cuts at the heart of democratic values all Australians must hold dear. It must be rejected.

14. The Media Entertainment and Arts Alliance believes the sedition provisions “will unreasonably erode freedom of speech and artistic expression. A journalist who reports a story or publishes comment against the actions of the government, police or judiciary, could be charged under this sedition law”. In light of a lack of transparency and accountability surrounding the anti-terror proposals, PolMin believes the role of the media as the ‘fourth estate’ is all the more critical. Any proposals which undermine its proper functioning should be dismissed.

## **Conclusion**

PolMin believes that significant and effective anti-terror laws exist to deal with the terrorist threat in Australia. The government has little justified the inadequacy of these laws, and for the need for further legislative reform. Given the significance of these laws to our liberal democracy, far too little public consultation and discussion has been entered into. With this lack of transparency and information, the government has enabled a climate of fear to ensure its safe passage through Parliament. PolMin believes this legislation must be rejected until a full and proper public and parliamentary debate can occur, so that the need to prevent terrorism will be duly balanced with the obligation to protect the civil and political rights and freedoms of all Australians.