

Submission to:

Committee Secretary, Senate Legal and Constitutional Committee, Department of the Senate, Parliament House

FROM: Tony Kevin, Forrest , ACT

11 November 2005

Dear Senators,

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

I make this submission to the Senate inquiry into the proposed counter-terrorism laws in the public interest. At the outset I declare that I do not trust the Howard Government in respect of its conduct of Australia's national security and international affairs. It is of course my right in a democracy to hold that view of the Howard Government. Many on the Opposition benches hold similar views. These are not extreme minority views.

My mistrust of the Howard government's national security conduct does not flow from any particular political ideology or preference on my part. My view is an informed one, that I believe is soundly based in a factual examination of this government's record in the conduct of national security affairs over the past nine years. I believe its conduct has been frequently reckless of the security of Australian citizens, in breach of our obligations to non-citizens under international agreements we have signed, and at times in significant breach of the criminal law of Australia.

I am concerned that under the proposed sedition laws included in the proposed laws, I will be constrained in my ability to express such critical views of the Howard government's national security conduct in public speeches, on the Internet, or in print. I am concerned that newspaper and journal editors, website editors, and potential employers ( I am a part-time university lecturer) may be inhibited by these sedition laws if passed from publishing my written work or employing me as a university lecturer.

I request these proposed sedition laws be rejected by this Committee. This is the main area of my submission. I will also comment briefly at the end on other aspects of the legislation.

I am an Australian citizen and a retired former Australian public servant and diplomat (1968-1998). My most senior posts were as Ambassador of Australia to Poland and to Cambodia. I live in Canberra and have been a Visiting Fellow at the Research School of Pacific and Asian Studies in the Australian National University since 1998. I am a published author, a part-time lecturer in graduate courses at the Universities of Melbourne and Wollongong, and an independent commentator on various public issues of interest to me. I have previously testified in an independent capacity in two Senate Committee inquiries (into Australian policy in the 1999 East Timor transition, and in the CMI Committee inquiry into the sinking of SIEV X). I am the author of "A Certain Maritime Incident: the sinking of SIEV X " (Scribe, 2004) which won a Premier's Award at the 2005 Sydney Writers Festival, in the Community Relations Commission Award category, and was short-listed for awards in the Brisbane and Melbourne Writers' Festivals in 2005. I am a writer of public standing.

Let me give an example to illustrate my concern about the proposed sedition laws.

In the "Sydney Morning Herald" today 11 November , there is a news article "Fringe group radicalised Baladjam, friends say", by Ben Cubby, Les Kennedy and Tom Allard,

<http://www.smh.com.au/news/national/fringe-group-radicalised-baladjam-friends-say/2005/11/10/1131578172869.html>

which begins as follows:

"Friends of the wounded terrorism suspect Omar Baladjam have said he became "more radical" since he began to attend an Islamic youth group in Liverpool three years ago.

One man, who did not want to be named, said Baladjam, 28, was 'angered by the involvement of Australian troops in the occupation of Iraq."

I have said and written many times since March 2003 that I also am "angered by the involvement of Australian troops in the occupation of Iraq". I would never have anything to do with any person or group I thought might have any possible inclinations to acts of terrorism. But in expressing my view that the involvement of Australian troops in the occupation of Iraq is illegal, and that it is an act of the Howard government that distresses and angers me, am I possibly inciting people whom I do not know to commit terrorist acts?

It seems that under the proposed sedition law I could be accused of this; and that it will be for the Attorney-General of the day to decide whether I had expressed my critical views "in good faith" or not. I maintain that everything I say or write is in good faith, but an Attorney-General might not agree, especially in times of political stress. With any Attorney-General - and especially in my view the present one, but my point is a general one that looks beyond the time of the present government - that is a very flimsy defence.

If an Attorney-General chose to take the view that I was not acting in good faith in expressing such views, I could either go quietly to jail or be financially broken by legal costs of defending myself in court.

What would be my defence if someone accused of a terrorist crime were allegedly to say by way of explanation: " I was in part inspired by an article Tony Kevin wrote in a newspaper, that criticised the involvement of Australian troops in the occupation of Iraq"?

The same defence could be offered by an accused terrorist in respect of many things that have been written over the past 2 ½ years by, for example, John Pilger, or Philip Adams, or Robert Manne, or Mike Carlton, or David Marr, or Geoffrey Barker. What would these writers then be expected to do if such a situation arose - recant their views? Such things used to happen regularly in totalitarian states.

That is an example of why I think this sedition law is unnecessary, inappropriate to a democracy, and dangerous to our cherished freedom of speech. My case is only one among many tens of thousands of politically vocal Australians, whose right to criticise government actions will be seriously compromised by this proposed law.

It is amazing that I have to spell this all out. Because I thought we had dealt with these questions 200 or 300 years ago, in building the British laws and values on which our Australian democracy is based. Now it seems we must re-invent the wheel.

Because according to an article about the sedition laws in today's SMH, "Sedition divides the Parliament", by Louise Dodson and Joseph Kerr:

"The Prime Minister, John Howard, said Australians would be 'embroiled in this struggle for years' and that they had to accept their lives would change in some respects."

I cannot accept that my right of free speech should be constrained as under these sedition laws at a time when our country is not at war with any other state. The analogy Mr Ruddock has used, that in practice our right of free speech is often constrained, e.g., by defamation laws, is an analogy I reject: because the right to criticise the conduct of one's government is an absolutely vital core value in our democracy, that cannot be compromised by any claimed emergency, short of a formally declared war against another nation.

I have written publicly in the journal 'Green Left Weekly' and on my website [www.tonykevin.com](http://www.tonykevin.com), and I write again here, that if these sedition laws are passed I will consciously defy them, by continuing to speak and write as I do. And if I have to go to jail for that, so be it.

If we give this right away in peacetime we become a police state. I am not going to allow the so-called "War on Terror" - which I believe has come into existence mainly as a result of John Howard's grievous and sustained misjudgements in the areas of foreign affairs and national security - to take away this core value of my country. As Mr Howard himself often claims, the "War on Terror" may go on for years. I do not want my society to pay this price. At the end of the day, we would have lost what we sought to defend.

To show that the issue of the involvement of Australian troops in the occupation of Iraq" is not an isolated example of my criticisms of the Howard Government's national security or foreign policy actions, I list here the main issues on which I have written and published in recent years, that could, if the proposed sedition law were applied to them, bring my continued liberty into question:

. Asking questions, that are well-based in evidence, as to whether the sinking of SIEV X on 19 October 2001, which killed 353 innocent asylum-seekers mostly women and children, might have involved Australian government agencies that were at the time supporting criminal and life-threatening covert disruption operations in Indonesia - and asking whether facts of state criminality may have been deliberately covered up since then.

. Condemning the coalition decision to invade Iraq in 2003, outside the rules-based UN Security Council system, and the dire consequences that the unlawful coalition decision has had for Iraq and its people, and for Australia and its people.

. Condemning the SAS secret commencement of invasive warfare inside Iraq, over 30 hours before John Howard announced we were at war, as an illegal launch of war under the international laws of war.

. Condemning Australia's military involvement as a coalition partner in the great war crime and crime against humanity that was the coalition forces' methodical destruction of the Iraqi city of Fallujah in October 2004, when thousands of civilians were killed and 200,000 rendered homeless, in a city that originally had a population of 250,000.- Fallujah is now a destroyed ghost city.

. Condemning Australian government participation in the cover-up of crimes of torture and illegal prisoner abuse in Abu Ghraib prison in Iraq.

. Condemning the Australian government's failure to defend the rights of US military prisoners, Australian citizens David Hicks and Mamdouh Habib.

. Condemning the Australian government's failure to pass on to Australian holidaymakers relevant threat intelligence that could have saved Australian lives, before the 2002 Bali bombings.

. Condemning the Australian government's betrayal of the Australian people's economic and social interests in pushing through parliament an unequal, exploitative and unnecessary FTA with the USA, that I believe will damage the lives and prospects of ordinary Australians.

. Condemning ongoing examples of anti-Islamic prejudice and cruelty in Australia eg the Bishop-Panopoulos campaign to ban teenage Muslim girls from wearing headscarves to school.

. Urging a greater public understanding and addressing of the political root causes of the present wave of global terrorism involving small numbers of enraged Muslims, (while at no time do I support any such acts of terrorism).

I note that Mr Ruddock has said the sedition laws might be reviewed later. That makes it a nonsense to pass them now, as Nicola Roxon MP has said.

I call upon your Committee to recommend that the sedition laws be removed from the proposed counter-terrorism laws.

In respect of other parts of the laws, I say this briefly:

In respect of the "A -The" amendment to existing laws passed last week, I am persuaded by the argument of lawyer Richard Ackland (in the 'Sydney Morning Herald' today - "Indefinite or not - charges could be laid") that

"The idea put about that the raids and subsequent arrests of Tuesday were dependent on those amendments, changing "the" to "a", is nonsense ...

The press conference and the urgent legislative change remains precisely what it always was - a piece of pantomime with no bearing on securing the conviction of anyone charged this week."

In respect of the control orders and the preventative detention laws, I support the view of Malcolm Fraser. Jon Stanhope, and many of Australia's best jurists that these laws are unnecessary, threatening to our democracy, and should not have been put forward. I realise now that, given the Labor Party's declared position, some form of these laws will inevitably be passed. I record my protest that responsible, expert views were overridden by the two major parties. I fear we will live to regret it.

I put the policy emphasis of this submission on the need to reject the sedition laws in the package. That is still achievable. I believe this should be Labor Party policy as well as the policy of all true liberals in the Coalition.

I respectfully urge parliamentarians of all parties to consider this submission's arguments.

Yours sincerely

Tony Kevin