

November 16, 2005

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

Dear Sir or Madam:

I would like to offer the following as a formal submission to your inquiry into the Anti-Terrorism Bill, 2005.

My submission consists of a series of questions that legislators should ask themselves when considering the Anti-Terrorism Bill and proposes some general principles that should be used to assess the Anti-Terrorism Bill.

- **Is terrorism a greater threat than Cold War communism?**

We are assured that Australia faces an unprecedented threat to its security. However less than twenty years ago Australia as a loyal follower of the United States of America faced opponents with tens of thousands of nuclear warheads. The Cuban Missile Crisis was just one of a series of close escapes from nuclear war while our troops were involved in battles with enemy forces in Malaysia, Vietnam and Korea. Espionage was understood to be commonplace during this period and the Soviet Union and China actively supported political organisations in Australia. Australians visited those countries to study revolution.

In the four decades of the Cold War Australia, like most Western countries, prided itself on maintaining its freedoms. Those who would take away our freedoms must demonstrate how the threat today is greater than it was during the Cold War.

- **How do we decide between a freedom fighter and a terrorist?**

Most people would have no difficulty in describing Osama Bin Laden as a terrorist. But the Anti-Terrorism Bill would sweep other less clear cut cases into its net if it became law. People like Nelson Mandela and Hose Ramos Horta.

Nelson Mandela is today revered around the world. He was arrested by the South African authorities on his return from Ethiopia where he had been receiving training in explosives. After sixty years of peaceful struggle the African National Congress was about to begin a campaign of sabotage. What would have happened to Nelson Mandela and the various representatives of the African National Congress and the South West African Peoples Organisation under the proposed Anti-Terrorism laws?

Hose Ramos Horta represented Fretlin to the world during East Timor's struggle for independence. He visited Australia often. He would have had valuable knowledge about the activities and movements of people engaged in violence

against Indonesia, such as Xanana Gusmao. Would he have been preventatively detained under the proposed Anti-Terrorism laws?

What would happen to all the Australians, myself included who associated with or supported people like these and their organisations?

- **Is an Anti-War Protest support for Australia's enemies?**

Hundreds of thousands of people marched against Australia's involvement in the wars against Iraq and Vietnam. Thousands of Australians wrote letters criticising the Government's decision to go war. Several Australians went to Iraq to act as human shields. Would we all be found guilty of sedition under the proposed new laws?

- **Can the Government be accountable without media freedom?**

Cornelia Rau was detained for ten months by the Immigration Department. This included months of mental illness in the Baxter Detention Centre. Vivian Alvarez was wrongfully deported to the Phillipines. In both cases bureaucratic incompetence was followed by an attempt to deny and conceal a miscarriage of justice. What would have happened to both of these women without media scrutiny? What will happen to the subjects of control orders and preventative detention if the media cannot report these events?

- **Would Pat Robertson be denied a visa?**

American tele-evangelist Pat Robertson recently called on the United States to assassinate Hugo Chavez, the President of Venezuela. Defence Secretary Rumsfeld argued that as a private individual Pat Robertson could say what he liked. What would happen to any Australian who made a statement of this type? Will Pat Robertson be denied a visa to enter Australia because of the risk that he might incite violence?

It is widely accepted, even by the Government that the Bill creates major new restrictions on the freedoms of the Australian people. I would like to propose three simple principles for our representatives when considering such important legislation.

1. Restrictive legislation must be open to scrutiny by parliament and the media

This does not mean all the details of operations conducted under Anti-Terror legislation must be released. But there is no reason why, within a specified time, information about how many people have been detained or placed under control orders and for how long, cannot be released to the media.

The annual report to parliament on the operation of the Act proposed in the Anti-Terror Bill is welcome but given the seriousness of the issues involved there should be more detail as to what the report to parliament must include.

2. There must be judicial review of decisions taken under the anti-terrorism legislation

The need for judicial review of executive action has been reinforced by the scandals surrounding Immigration in recent years. It is a fundamental safeguard against the growth of a police state mentality. Both the merits and procedures of a particular case must be subject to judicial review.

3. Extraordinary powers must be temporary and be seen to be temporary

The Anti-Terrorism Bill would give authorities extraordinary powers. Unless these powers are seen as extraordinary and temporary a police state culture will develop both amongst authorities and the people of Australia. One way to ensure everyone sees these powers as temporary would be to require an annual sunset clause under which the Act would automatically expire and the Government would have to reintroduce it.

A more detailed set of principles against which to assess this legislation is provided in the Prime Ministers guarantees to Chief Minister Stanhope about the proposed Anti-Terror Legislation as outlined in Press Release from the Chief Minister on 27 September 2005. Those guarantees were that the new laws would:

1. Be based on clear evidence that were needed in democratic society and that the desired effect cannot be achieved in less intrusive and onerous ways;
2. Be effective against terrorism;
3. Conform to the principle of proportionality
4. Comply with all of Australia's obligations under international law
5. Involve rigorous safeguards against abuse
6. Be subject to juridical review
7. Contain sunset clauses

Committee members could use this set of principles as the basis of a comprehensive analysis of the proposed Anti-Terror Legislation.

Finally I would ask members to consider how an emphasis on coercive powers and secrecy could hinder the war on terror. This could occur in three ways:

- Without checks on Government action there will be a reluctance to support new powers. I am one of hundreds of thousands feeling this reluctance.
- Without confidence that all those charged will get a fair trial there will be a reluctance to report suspicious individuals and behaviour. This could reduce the flow of intelligence from the Muslim community.
- Without openness in the administration of powers there will be a willingness to believe stories about the abuse of powers. The reaction to the 'a' and 'the' legislation suggests that millions of Australians already suspect the Prime Ministers motives. They are unlikely to have much trust in the operations of the secret police.

I trust that the Committees deliberations will be based on their deepest convictions rather than the shallowness of political strategy and positioning.

Sincerely,

David Winderlich