

## The Senate Legal and Constitutional Legislation Committee – Inquiry into the Anti-Terrorism Bill 2005

Given the time frame for making submissions to this Inquiry, I will only be able to address some of the more important issues raised by the proposed legislation. It is disturbing that legislation of this importance is being progressed with such haste through the parliamentary process. The issues raised by the legislation are fundamental to Australia's democratic system. This legislation should be given thorough scrutiny by the public and all parliamentarians. The appropriate level of consideration is not possible in the time frame that has been set by Government.

The Government has not demonstrated the need for this legislation. Terrorists commit, or plan to commit crimes, and should be dealt with under existing criminal legislation. Police should use their investigative techniques, such as intelligence gathering and surveillance to prevent acts of terrorism. The arrests of several people this week suspected of planning terrorism and for being members of terrorist organisation demonstrates that there are already significant powers to deal with terrorists in Australia.

### Preventative detention orders

It should be a fundamental right in Australia that a person not be arbitrarily deprived of their liberty. The process for making a preventative detention order undermines this right. The applicant for the order does not have to prove that an order should be made based on evidence, instead the Bill provides for the issuing authority to take "into account relevant information". The process is *ex parte*, so that the person who is to be subject to the order is not even given an opportunity to disprove any of the allegations.

There is no opportunity for the person to appeal to a court the decision to make the order.

### Control orders

The control orders allow for significant deprivation of a person's liberties. The standard of proof required for making such an order should be a criminal standard.

The person is not required to be provided with the evidence considered by the issuing court when an interim order was made, or any evidence to be provided when the order is to be confirmed. A person should have a right to know on what basis, including evidence, such an order is made. If the applicant can demonstrate that some evidence should not be provided to the person because there are matters of security, there should be provision for that evidence to be shown to a lawyer acting on behalf of the person.

The grounds for making the order may not even be sufficiently connected to terrorism. One of the grounds is that a person has provided training to or received

training from, a listed terrorist organisation. There is no requirement that the organisation had to be listed as a terrorist organisation at the time the person either provided or received training from the organisation. The organisation may have been receiving assistance from Australia or an ally of Australia at the time the person was connected with the organisation. The training that the person was involved in does not have to be training for a terrorist purpose.

### Separation of powers

The separation of power between the executive and the judiciary is an important lynchpin of our democratic system. The proposed legislation undermines this separation of power and has the effect of bringing the judiciary into disrepute.

Applications for preventative detention orders are made to individually nominated judges and Federal Magistrates, rather than to the Federal Court and Federal Magistrates Service.

As an issuing authority, a judge or magistrate may extend an initial preventative detention order "if satisfied that detaining the person .. is reasonably necessary for the purpose for which the order is made". The issuing authority does not make this decision based on evidence. Similarly the issuing authority makes a continued preventative detention order based on "information". The issuing authority does not hear from the person who is to be subject to the order. These aspects of the process indicate that the issuing authority is not acting judicially.

It seems that the mechanism of appointing individual judges and magistrates has been used in an attempt to avoid the Constitutional requirement that Federal courts act judicially. But using this mechanism when the process is not a judicial process adds to the perception that the judges and magistrates are being asked to do something improper, thereby bringing them personally into disrepute, and also the institutions that they represent.

### Sedition

The provisions about sedition should not be contained in this legislation. There is no evidence that these provisions would prevent any acts of terrorism. They undermine a right to free speech. They are anti-democratic. Criticism of the Government, the Constitution, and laws of the Parliament should be tolerated. In a democratic society we should be able to engage in controversies about our political system, not drive disaffected people "underground", where they are more likely to feel alienated and perhaps consider "real" terrorism. These laws are outdated. It seems that they are going to be reviewed next year, so it would seem premature to include them in this legislation.

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This submission is made on a personal basis.