SUBMISSION

TO THE SENATE LEGAL AND CONSTITUTIONAL COMMITTEE ON THE *INQUIRY INTO THE PROVISIONS OF THE ANTI-TERRORISM BILL*

Submitted by

Social Justice Committee
Conference of Leaders of Religious Institutes (NSW)
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INTRODUCTION

This submission is presented on behalf of The Conference of Leaders of Religious Institutes in New South Wales (hereafter referred to as CLRI (NSW). CLRI (NSW) represents 3,500 religious women and men and their associates, and promotes the life, mission and concerns of religious congregations in the Church and in our society. The congregations and their associates have a long history of involvement with those most marginalised in the community (particularly families and children) in the areas of education, health and welfare. Today, CLRI (NSW), in its work with those pushed to the margins of our society, supports structures that maximise fullness of life for the earth and its peoples. At the same time it raises its corporate voice to challenge structures of injustice in our community, our state, our country and our world.

This submission will focus on concerns with both the content of the proposed Anti-terrorism Legislation and on the processes being used to facilitate the passing of this bill.

- We argue that that urgency with which the legislation is being processed undermines the role and importance of the democratic process in Australia.
- We are concerned that this legislation poses a significant threat to civil liberties and human rights.
- We believe that existing laws are entirely adequate to allow for pre-emptive action against a potential terrorist attack.
- We question the effectiveness of the proposed legislation in providing greater security for Australians.

Our concerns are derived from our own experiences with communities and families:

- in both the city, and in communities in remote and rural areas
- in primary, secondary and tertiary education
- in pastoral work in parishes and local communities
- in health centres, social welfare and crisis centres across Australia
- in migrant and refugee centres, in advocacy and legal centres.

We acknowledge that Anti-terrorism Legislation is but one aspect of a highly complex situation. Informed opinion in the community points to the need for

- effective leadership, especially at national level,
- a strong system of checks and balances
- recognition of the rights of individuals and communities that must underpin all legislation,
- resistance to short-term, quick-fix and politically motivated legislation, in favour of long-term mandated objectives and strategies, supported by monitoring powers and real accountability,
- recognition of the need for ongoing judicial oversight.

Much of the current debate is motivated by fear, a fear engendered by political debate, hearsay evidence and the media. There has been a clear attempt to stifle discussion and to avoid engaging in proper scrutiny of the Bill. Significant and complex issues have been oversimplified and sensationalised with simplistic and questionable solutions being offered as serious options. Media publicity and the resultant fear and adverse public opinion (reinforced by political point-scoring) have resulted in a political and social situation which stands condemned by its own exploitation of events, its own political agenda, and indeed, by its own inhumanity.

We commend the Senate Legal and Constitutional Committee for the establishment of this Inquiry. It is hoped, that in addressing the issues named, the Committee may be in a favourable position from which it can provide the Government, the community and the media with a more informed basis from which just decisions may be taken.

UNDERPINNING PRINCIPLES

The principles outlined below are drawn from the long tradition of Catholic social teaching and human rights principles, as well as from the breadth of our experiences in working with families and communities throughout Australia. It is our belief that these principles must underpin all legislation.

- A robust democracy, underpinned by respect for human rights and good public policy, requires free and accurate information, and informed, public, honest and rigorous debate.

- In a liberal democracy, every citizen has the right to comment on public policy. Dissenting opinion and public acts of dissent are essential aspects of public debate.

- Civil society, including non-government organisations (NGOs), community and church groups, provides the platform for debate on public policy and the means to share information and opinions that would otherwise not be heard. By scrutinising public policy, civil society helps to keep governments accountable to the wider community.

- Church leaders have the added pastoral duty to inform, but not bind, the consciences of their constituents on issues of human rights.

- A freely functioning, critical and responsible civil society requires strong legal frameworks, within which citizens can operate in a spirit of partnership and participation, free from threats.

- Governments that are open to criticism and public expression of dissent enhance their own legitimacy, strengthening their democratic reputation and moral authority in the eyes of the international community.

These principles are supported by the **Universal Declaration of Human Rights**, which proclaims a number of fundamental premises:

- Recognition of the inherent dignity and equal rights of all members of the human family is the foundation of freedom, justice and world peace.
- Member States have pledged to promote universal respect for, and observance of, human rights and fundamental freedoms.
- A common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge.
- Everyone has the right to life, liberty and security of person.
- Everyone has the right to recognition everywhere as a person before the law.
- No one shall be subjected to arbitrary arrest, detention or exile.
- Everyone has the right to seek and enjoy in other countries asylum from persecution.
- National governments are responsible to protect these rights for all people under their jurisdiction.

By signing the UN Conventions, which clarify these rights, Australia has undertaken

- to abide by the standards set by these Conventions,
- to allow its citizens access to UN bodies,
- to accept from such bodies constructive criticism of our human rights practice.

While acknowledging the changed circumstances of global society at this time, and the growing fears of terrorism, it is the belief of CLRI (NSW) that the proposed legislation will not contribute further to the diminishment of terrorism, nor allow for the robust system of checks and balances that such legislation demands.

AREAS OF CONCERN

LACK OF OPEN DEBATE:

The changes introduced by the Government are drastic and far-reaching. However, there has been little opportunity for the public to gain information and make comment on the proposed legislation. The input of human rights and constitutional experts, as well as the contributions of the general public and those with day to day experience of law enforcement, can only serve to ensure that the legislation contains all the appropriate safeguards.

The Government's lack of candour has been criticised as reminiscent of governments of repressive regimes. It has not allowed for sufficient time to evaluate exactly why the proposed powers are needed, how they would contribute to the fight against terrorism, and how they would support laws already in place. Until this is known, it is difficult to judge whether the benefits of the new laws outweigh the costs.

To push for the approval of the Bill before Christmas will undermine proper Parliamentary review and rule out the possibility of adequate public input.

HUMAN RIGHTS CONCERNS:

There is no reference in the Bill to Australia's obligations under the International Covenant for Civil and Political Rights. The ICCPR sets basic standards for the circumstances of detention, and treatment of detainees. Any restrictions on rights in the bill should be read in accordance with the treaty provisions.

The laws will give police and the security agencies in Australia unprecedented peacetime powers . They will override a number of essential rights, such as the prohibition on detention without charge, which distinguish Australia from countries with neither democratic traditions nor safeguards. The laws will also provide for the imprisonment of those who support insurgents, for the detention of juveniles, house arrest, the wearing of tracking devices, further restrictions on the media, and enhanced sedition offences.

SEDITION LAWS

The sedition provisions in the new legislation (Schedule 7) have been rightly criticised as ‘lazily drafted’. It seems that the provisions have the potential to restrict freedom of speech far beyond explicit incitements to violence or property damage. Critics argue that the new provisions will seriously impinge on the freedoms of media commentators, publishers, artists and protesters.

Under the first draft of the bill, the definition of seditious intent is vague and broad. It includes matters that, in a free and open society, any newspaper should feel free to publish, whether by way of factual reporting or opinion. For instance, it is seen as seditious to publish articles that intend to bring the Sovereign into "hatred or contempt". Nor may one "urge disaffection" against the constitution, government or either house of Parliament. In this context, a newspaper columnist's call to scrap the monarchy could lead to charges of sedition.

In the current political climate of lack of accountability or transparency, the role of the media becomes even more critical and must be protected. Unlike other countries such as the United States, where freedom of the press is enshrined in the Constitution, Australia’s legislature can undermine press freedom. There is also risk of abuse by law-enforcement bodies.

Freedom of speech, freedom of expression, and freedom of communication have always been taken as givens in Western democratic society. These basic human rights appear to be threatened by the current legislation.

CONTROL ORDERS AND PREVENTATIVE DETENTION

Control orders impose very serious restrictions on the liberty of a person - who has not actually committed a criminal act - for up to 12 months. They involve serious inroads into fundamental human rights. They are unprecedented in Australian law and prohibited by international law.

Preventative detention orders create a regime of detention without charge or trial, which could amount to arbitrary detention. In addition, the prohibition against all but the most basic of communication with one family member amounts to secret detention, even more so when the persons detained cannot communicate that they are in fact detained and the reasons for their detainment. Control orders of 12 months or more for adults and 3 months or more for 16-18 year olds impose severe restrictions on the right to liberty.

Additionally, there is inadequate provisions in the proposed legislation for a proper review of control and preventative detention orders. The presumption of innocence is fundamentally eroded and the role of judges and lawyers as the protectors of rights is undermined

SUNSET CLAUSES

The use of a 10 year sunset clause means that the proposed provisions, which seriously impinge personal freedoms, could potentially be law for ten years with no further debate. Such a long period before the expiration of the provisions assumes that terrorist threats will remain significant. A shorter period would be more appropriate. Additionally, CLRI(NSW) notes with concern that the sunset clause does not extend to all provisions in the proposed bill. Furthermore the proposed 5 year review is meaningless without guaranteeing its form in legislation.

ADEQUACY OF CURRENT LEGISLATION

Federal authorities already have extensive powers to counter possible terrorist threats. Recent raids, arrests and charges were all conducted under the existing criminal code. It would appear that these dramatic raids have done nothing to justify the need for the 137 pages of the Anti-Terrorism Bill (no.2) 2005, and its 116-page explanatory memorandum, currently before the Federal Parliament.

If anything, the arrests appear to demonstrate that the existing laws are entirely adequate to allow pre-emptive action against a potential terrorist attack. If the authorities can move effectively to head off an attack under

present laws, why are draconian new measures of secret preventative detention and control orders needed?

CONCLUSION

CLRI (NSW) recognises the need for, and importance of, effective protection for Australians from the threat of terrorist attack. We argue, however, that the Australian Government's legislative response to potential threat must be measured and proportionate. It is important that Anti-terror legislation does not place onerous or unjust restrictions on civil liberties. There must be robust and open discussion on how to protect Australia from terrorism. All Australians have a stake in that discussion and have a fundamental right to participate more fully in contributing to its outcome.

Legislative protection is an important strategy, but is of limited use without other measures. The Government's current approach is creating a climate of confusion and suspicion in the community. Terrorism feeds off feelings of alienation and isolation. The government needs to attempt to engage more meaningfully with those communities most likely to be affected by these laws. An open discussion of the proposed Anti-terror Legislation would be the first step in assuring all Australians that the Government is committed to safeguarding their liberty.