The Uniting Church in Australia
Synod of Victoria and Tasmania
Justice and International Mission Unit

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Submission on the Anti-Terrorism Bill (No. 2) 2005

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia welcomes this opportunity to make submission on the proposed *Anti-Terrorism Bill (No. 2) 2005*. However, for such large and complex legislation the Unit is deeply concerned at the limited period given for community consultation and consideration. The Unit is of the view that legislation of this importance requires calm consideration in order to ensure that it represents good public policy.

The Unit recommends that, if the legislation is needed to be put in place urgently to protect community safety, that it only be put in place provisionally while proper community consultation and consideration is then allowed for.

The short timeframe offered for submission means that the following submission has been severely limited in its content and analysis by the time that has been made available for submissions.

The Unit notes the submission that has been made by the National Assembly of the Uniting Church in Australia.

The Justice and International Mission Unit is opposed to the use of terrorism wherever it occurs by anyone, regardless of the motivation of the terrorism. The Unit believes that, through the Gospels, Jesus calls on all his follows to reject the ways of violence and instead put their efforts into radical peace-making initiatives. Therefore, the Unit supports any action to deter terrorism in any form, provided such measures do not violate other basic human rights. The Unit welcomes Government and community actions to end terrorism and to remove any injustices that may motivate people to commit acts of terrorism. However, where proposed measures to combat terrorism will erode human rights and fundamental freedoms the burden of proof should be on those demonstrating the measures to be introduced are needed.

The Justice and International Mission Unit believe that all legal processes outlined in the Bill should conform to the principles of natural justice - that is:

- all parties are given the right to present their case and to be heard;
- all parties are provided with adequate notice of the allegations;
- all parties are advised of the procedures to be used; and
- all members of the decision making process are free of bias and perceived bias or other personal interest in the outcome.

Control Orders

It is the view of the Unit that a person placed on a control order should have the right to challenge that order in a court without undue delay. Review before a court needs to include:

consideration of whether the order is based on a correct understanding of the facts; whether the order is fair; whether it is reasonably necessary in the circumstances; and whether it is proportionate to the goal of protection of the community.

The Unit is concerned that in challenging an interim control order, only the person to whom the control order applies or representatives of that person may appear before the issuing court. The Unit believes that witnesses with evidence that are relevant to reasons the interim control order has been issued should also be able to appear before the court. There may be people who have evidence that they can present to the court that demonstrates that the interim control order is not appropriate or misconceived.

Further, a person should be able to appeal to a higher court against an interim control order, rather than having the issuing court as the only body to assess if the interim control order is necessary and if its terms are reasonable.

The Unit is further concerned at the low standard of proof required to obtain a control order. The court is only required to be satisfied "on the balance of probabilities" rather than proof beyond reasonable doubt as would be the normal standard for criminal conviction.

The Unit is also concerned at the ability to make successive control orders. We note that currently the Bill allows for successive control orders for a period of 10 years. We are concerned that, in extreme circumstances, a person could be confined to their home for 10 years without ever having a trial. We believe that after the first control order, a proper trial should need to occur and evidence should be required to be brought against the person, with the person having a presumption of innocence until proven guilty of being actively involved in supporting terrorist acts.

Preventative Detention Orders

The Justice and International Mission Unit is deeply concerned at the section dealing with preventative detention orders, and is especially concerned at the history of such provisions being open to abuse as has occurred in other countries where such measures have been taken.

The Unit is concerned that continuing preventative detention orders are issued by authorities appointed by the Attorney General as an executive action, not as an action by a court. The Unit is concerned that this undermines the separation of powers that requires judicial, administrative and executive arms of government to operate separate from one another to ensure the Rule of Law.

The Unit is concerned at the breadth of people that the Minister may appoint as issuing authorities for continued preventative detention orders. The Unit is concerned that the breadth of people leaves open the possibility that a future Minister could appoint people who are compliant with the Government of the day's wishes. This could result in continued preventative detention orders being issued very liberally on the flimsiest of evidence. The Unit note that the only judicial safeguard to this in the legislation appears to be appeal to a federal court.

The Unit is also not clear whether, when one issuing authority rejects the application for a continued preventative detention order, the AFP member may simply keep appealing to different issuing authorities until one of them approves the continued preventative detention order.

The Unit notes that in sections 105.8 (7) and 105.12 (7) if an order is made against a person who is under 18 years of age or incapable of managing their own affairs, then the order may provide that the period each day for which the person is entitled to have contact with another person under subsection 105.39 (2) can be greater than two hours. The Unit believes that the Bill should spell out circumstances under which a greater period of contact must be provided, rather than leaving it completely to the discretion of the issuing authority.

The Unit notes that under section 105.32 a person who is detained must be provided with a copy of the detention order and a summary of the grounds on which the order is made. It is important that a person be given access to detailed reasons for their detention in order to be able to mount a proper defence and reduce the number of innocent people who will be mistakenly detained.

Under Section 105.35 the Unit believes that a person should have the right to contact their family and employer and let both of these know that they are in detention and the length of the detention. If the person being detained really is involved in terrorist activities with others it seems extremely likely that those involved with the detained person will quickly work out that the person has been taken into detention, even if the person's family and employer are not informed. Given the significant likelihood that innocent people will be mistakenly placed into preventative detention, given the ease with which continued preventative detention orders can be issued, the Unit regards it as very important that the suffering inflicted on their families is minimised by knowing where the detained person is and for how long they will be detained. Also, the current legislation will have a high likelihood that an innocent person detained will be fired from their employment, as they will not be able to explain to their employer that they were placed into detention. The ability to explain the situation to an employer therefore seems vital. Also, the view of the Unit is that there needs to be some safeguard against an employer being able to fire an employee because they have been taken into preventative detention, especially as it is likely that innocent people will be mistakenly detained.

The Unit believes that Section 105.41 should be removed from the legislation, for the reasons outlined above. For real terrorist groups, the disappearance of one of their members will almost certainly be detected quickly and they will respond accordingly. Thus, the non-disclosure offences seem to serve little practical purpose and have the potential to impose long terms of imprisonment for an innocent person, or their family members, mistakenly taken into detention, even if they make an inadvertent slip. Further, the Unit believes it vital that the use of the preventative detention provisions be open to public scrutiny as one of the safeguards against their misuse.

It is the view of the Unit that a person placed in preventative detention should have the right to challenge that detention in a court without undue delay. Review before a court needs to include: consideration of whether the detention is based on a correct understanding of the facts; whether the detention is fair; whether it is reasonably necessary in the circumstances; and whether it is proportionate to the goal of protection the community.

The Unit believes that the Sunset provision (105.53) is set as being too long, with the current sunset clause coming into operation only after 10 years. The Unit would prefer a period of three years to the sunset clause, believing that this is an adequate time frame to assess if the preventative detention provisions are necessary at all and if they have been misused.

Sedition

The Unit is deeply concerned at the breadth given to 'seditious intention' in the amendments to the *Crimes Act 1914.* The Unit believes that it is a very low bar to argue that 'seditious intention' is to 'urge disaffection' against the Constitution, the Government of the Commonwealth or either House of Parliament. The Unit believes that 'disaffection' should be replaced with 'violent hatred' or something close to this, to indicate extreme activity.

Again, to suggest that 'seditious intention' involves 'to urge another person to attempt to procure a change, otherwise than by lawful means, to any matter established by law of the Commonwealth' would mean that holding a sit-in or picket as a form of protest could be captured as 'seditious intention'. Again the bar should be much higher, such as attempting to change a matter established by law through violence against people.

Finally, again it seems a very low bar to define that 'seditious intention' as promoting 'feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth' should be increased to promoting 'hatred or severe revulsion between different groups so as to threaten the peace, order and good government of the Commonwealth.'

In the *Criminal Code* section on sedition, the bar again appears to be set too low. Under 80.2 (3), the Unit believes that 'by force' should be removed leaving only 'violence'. Under the way the offence is currently structured a person that held a sit-in at a polling booth during a Federal election could face up to seven years imprisonment, which seems extreme. The Unit believes that it should be an offence to hold a sit-in at a polling booth, but not as a sedition offence and not carrying up to seven years imprisonment as the penalty.

The same recommendation applies to 80.2 (5), where 'force' should be removed leaving only 'violence', as force could include a range of non-violent actions. While the urging of the use of 'force' is most likely undesirable, it may already be captured by other laws and a penalty of up to seven years imprisonment seems extreme for the offence.

Under section 80.2 (7) the Unit is concerned that a person could commit an offence by assisting an organisation that the Commonwealth is at war with, where no state of war has been declared. This clause should require that the person reasonably should have known that the Commonwealth was at war with the organisation in question.

Under section 80.2 (7) and 80.2 (8) the Unit is concerned that to be opposed to a war or armed conflict that the Commonwealth is involved in or that Australian Defence Forces are fighting in could be interpreted as assisting 'by any means whatever' the organisation or country that Australia is at war with or in armed conflict with. The Unit notes that a defence against such a prosecution could be mounted under section 80.3 by arguing that the opposition to the war was in good faith and for the purposes of pointing out to the Commonwealth the pursuit of the war or armed conflict was a mistake. Nevertheless, the Bill carries the risk that all those that hold pacifist views and seek to express such views are criminalised for the expression of such views when Australia is at war. The Unit believes that sections 80.2 (7) and 80.2 (8) should be modified to only include 'direct, tangible and intentional' assistance to countries and organisations at war with Australia or in an armed conflict with ADF personnel, given the severe penalty of up to seven years imprisonment.

The Unit is concerned that section 80.5 requires the Attorney-General's consent before a prosecution may proceed. The Unit's concern is that this opens the legislation being used by a Government against certain groups, while other groups that are politically aligned to the Government of the day may be able to commit sedition offences with impunity. The Unit believes that it would be better if the decision to prosecute rested with a body independent of the Government.

Charter of Human Rights

It is the view of the Unit that if these new anti-terrorism laws are to be introduced then the Government should also introduce a Charter of Human Rights as a further safeguard against the misuse of the legislation and to ensure the basic human rights of all Australians are protected. The Unit notes that one of the safeguards with regard to United Kingdom anti-terrorism legislation is that the UK *Human Rights Act 2000*.

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