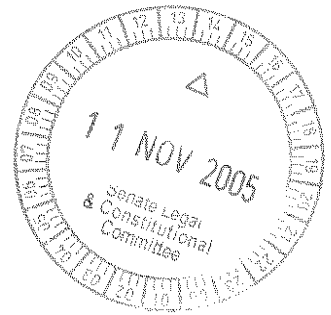


## Anti-Terror Legislation

Submission to Senate Legal and Constitutional Committee



I wish to make the following submission to the inquiry you are currently holding into new anti-terrorist legislation. I trust that you will give this submission due consideration and recommend accordingly.

From John McLaren  
Emeritus Professor, Faculty of Arts, Victoria University, Melbourne

Electoral address:

9 November 2005

A handwritten signature in cursive script, appearing to read "John McLaren".

There are two major objections to the anti-terrorist legislation at present before the Parliament. The first is that it infringes the liberties of individual citizens. The second is that it weakens the ability of the state to defend itself against future acts of terror. Although the second of these is, in my opinion, the stronger, it has been insufficiently canvassed in public and parliamentary discussion.

The strong case for freedom was made fifty years ago by Walter Lippmann, in *Essays in the Public Philosophy* (Boston, 1955). Lippman, writing at the height of the Cold War, contended that attempts to reduce the freedom of discussion in the interests of national security undermined the great advantage that this freedom gives democracies have over dictatorship. A dictator, such as Stalin or, now, Saddam Hussein, can only recognise a mistake from its outcome. Democratic governments may believe that their ability to take swift and effective action is inhibited by the time for due consideration made necessary by full public debate and parliamentary and judicial processes. On the contrary, these processes strengthen the effectiveness of eventual action, and reduce the likelihood of catastrophic error, by ensuring that all options have been fully canvassed and all outcomes considered.

Had this philosophy been applied to the war on terror generally, and the Iraq war in particular, although the coalition may still have decided to invade Iraq, its actions would have been better considered, its preparations for control of the country after the invasion would have been properly planned, and an exit strategy would have been in place. Instead, public debate was inhibited by suppression of relevant facts and distortion of others, and the allies now find themselves in the midst of a thoroughly avoidable mess.

The antiterrorist legislation threatens to do exactly the same for efforts to keep Australia safe from terrorist acts.

It is not sufficient to argue that many of its provisions are already in place, or that the Attorney-General will review the legislation in six months' time. If the measures were already effective in law, new legislation would not be needed. Sedition has always been a political crime. It would be preferable to repeal most provisions of the present sedition acts, rather than update and extend them.

The danger of the proposed law is not only that some people will suffer from its implementation, but that it will inhibit many from stating their mind. This will apply to writers, actors, journalists, public commentators, and academics. The defence of "good faith" is too vague to be of use to most of those who could come within the scope of the legislation, and who, unless they are employed by a large company, are unlikely to have the resources to mount it successfully.

A full public debate depends on the work of writers, artists and academics who provoke thought, as they attempt to understand the world around them. Their work may include giving voice to unpopular, strident, even inflammatory opinions. For example, in trying to understand Robert Burns—himself a victim of sedition laws—and his importance to contemporary Scottish nationalists, I may wish to quote his opinion on the forebears of the present royal family, whom he famously described as "an alien race, to honour lost—who know them best, despise them most." Or, in trying to understand the Irish in Australia, I may wish to discuss Vincent Buckley, who wrote a fine sequence of poems praising the IRA hunger strikers. Or I might wish to examine verse from all of Australia's wars, with its suggestions that governments have usually been in the wrong. Even more pertinent is my study and teaching of literature from Asia and the Pacific, and particularly the development of nation states in these regions. This requires me to consider reasons for social, ethnic and religious divisions in these states, and to understand the causes that can lead to the development of the most extreme positions. Each of these actions could, in certain circumstances, be considered inflammatory actions. Recent controversy in Australia shows that people in public positions all too easily condemn as sympathisers those who seek to understand, and to read support for unpopular political positions as incitement to unlawful action. Neither I nor my colleagues can rely on the goodwill of government not to prosecute if a student or a member of the public complains, and we cannot know the results of a prosecution until a verdict is given. It is easier to remain quiet, to stay with the bland and innocuous of literature, the orthodoxy of politics or the national certitudes of official history.

There are already sufficient legislative provisions against writing or speech that stirs up hatred against particular groups. The present proposals, by extending such legislation to governments and government policies, threaten individual freedom and weaken democratic protection.

The provisions in the legislation for secrecy, and for proscription of organisations and detention and control of individuals on the basis of their beliefs, are similarly offensive. Secrecy will not deter would-be terrorists, who will know when a colleague has disappeared and take action accordingly. It will jeopardise the innocent, whose fate will be concealed from the public, who will be denied information of official errors, and from those who might remedy it. Proscription will drive organisations underground while denying peaceful dissidents the opportunity to come together for lawful purposes. It will silence public dissent at the cost of social division.

The proposed legislation appears very similar to measures in force in Northern Ireland over the past thirty years. Although these had no effect in preventing acts of terror in the United Kingdom,

*A*

they did result in gross injustices, while exacerbating social divisions and prolonging the violence. The legislation before the Senate threatens to do the same to Australia. It should either be rejected or substantially amended. The minimal effective amendments would be to eliminate the extension of subversion, to allow full reporting of government actions, as opposed to intelligence information, and to impose a sunset clause of not more than three years.

9 November 2005

*John Howard*