

The Legal and Constitutional Affairs Committee

Thank you for the opportunity to make a submission, which the government originally intended should be denied us.

1.

Let us start with Malcolm Knox, Sydney Morning Herald journalist and author of Secrets of the Jury Room, from which this quote comes:

"The State can do what it likes to any of us, and our ultimate defence is what we are allowed to say in the courts. The rights of the defendant, even if those rights are abused by the guilty, are all that stands between us and an ocean of state power. Who'd give away those rights, or let them be whittled away? Only, a far as I can see, comfortable people in their comfortable lounge rooms who'd never think they'd ever need to exercise their democratic rights, and the politicians, driven by a deep weariness with democracy's tribulations, who pander to this audience-jury".

(from p. 148-9)"

2. The sunset period in S 105.48 should be one year as it is in the UK.

3. The bill should be accompanied by a bill of rights. The UK is bound by the European Convention on Human Rights, Canada, NZ , and South Africa have such bills and India and ironically the new Iraq have the rights in their constitutions.

Such a bill already sits before the Australian Parliament. It is not enough that the Teoh case may give the International Covenant on Civil and Political Rights domestic application.

4. S 105.47 barring proceedings for a remedy should go if states and territories have the power to detain for up to two weeks.

5. S 80.2 and 80.3 are too fuzzy round the edges in the Crimes Act and should not just be lifted for this bill. Would we be allowed to criticise future decisions to go to war if this bill passes? It could be sedition to say that the government is in breach of international law. If an attack based on WMD becomes an attack based on regime change becomes an attack based on the war on terror, if you oppose the war the government could take you into detention on the basis that you support terror.

6. S 105.18(2) setting up justices divorced from courts is unacceptable and offends the principles of Ch III of the Constitution.

7. S 105.23 - what is in place to prevent misunderstandings due to language difficulties?

8. S 105.28 (5) - how then does the person avoid breaching the prohibited contact order?

9. What compensation exists for legal and other costs incurred if the detention was unsubstantiated?

10. Does S 105.30 prevent rendition to interrogators (foreign government or private contractor) who are not constrained by the section?

11. The explanatory notes need to be released so that all the changes to other acts can be understood fully.

12. Does the proposed IR law protect a person from unfair dismissal in a firm of less than 100 if they are detained under a preventive detention order and don't turn up for work?

Geoff Taylor, Perth

I would also suggest we pass as part of the package the bill already introduced to provide for parliamentary control of military intervention (other than in an immediate emergency), as with the US Congress.

This could help prevent in the future exacerbating or enlarging an existing terror threat, based on the AFP Commissioner's analysis last year.

Geoff Taylor, Perth.