

Submission to the Senate Legal and Constitutional Legislation Committee

The counter-terrorism laws proposed by the Government pose a grave challenge to democracy and freedom in this country, to cultural and religious diversity, and above all to the peace of our nation, the region and the world.

First, a few words about some of the key features of the legislation:

- We find no reference in the proposed legislation to the general principle that human rights restrictions must be consistent with Australia's obligations under the International Covenant for Civil and Political Rights. If such restrictions are envisaged, then the Government must justify them.

To say that we need strong laws to combat terrorism is not adequate justification. The Government is required to demonstrate that the laws, and each of the provisions they contain, have a valid objective, that they are likely to achieve this objective, that there are not other or better ways to do this, that they will entail minimal violence to fundamental rights, and that strong safeguards will be introduced to prevent any abuse of the extraordinary powers granted to ministers and the police.

No such justification has been offered.

- As it happens, the laws, in particular the provision for initial and continued preventative detention (for up to two weeks) of people who have not committed any offence is a grave encroachment of fundamental rights, not least the right to liberty and the presumption of innocence.
- Especially worrying is the provision that for an initial preventative order the Australian Federal Police (AFP) is both the applicant for the orders and the authority that grants and extends the orders.
- Continuing preventative orders, and extensions of these orders, are made by a Federal Magistrate or Judge who is appointed by the Minister – this is less than satisfactory arrangement, given the potential abuse of power which it implies.
- There is no specific procedure within the present wording of the legislation which indicates that anyone deprived of her/his liberty by these laws, which would provide for the detention order to be reviewed by a court.
- The laws provide for the use of lethal force against a detainee, on the grounds that it may protect life, in ways that are disturbingly similar to the UK's "shoot to kill" policy.
- The Bill allows a detained person to contact a lawyer. However:
 - a) such contact will be monitored by the police;
 - b) the lawyer may not disclose the fact that a person has been detained to anyone else;
 - c) the AFP may in certain circumstances prevent the detainee from contacting a particular lawyer, leaving the person little option but to choose a security-cleared lawyer.
- On the grounds of obtaining information needed to combat terrorism, a court may issue a control order which may restrict or prohibit the person going to specific places, leaving the country, communicating with certain people, carrying out particular work, using the telephone or internet, and possessing or using otherwise legal materials. Such orders may also require the person to remain at home or at another location, to wear a tracking device, to report regularly, to be photographed and fingerprinted to monitor compliance. Such orders may be made for a period of

12 months, but successive orders may be made against the same person. Contravening a control order carries a penalty of up to five years' imprisonment.

In addition, to the several violations of human rights and fundamental freedoms outlined above, the legislation, and the way it has been presented to the public and to the Parliament, gives rise to a number of additional concerns.

The Government has thus far sought to introduce these laws with relatively little time or opportunity for extended debate within the Parliament or in the community at large. In such a debate, the Government and its senior Ministers would have the responsibility to provide detailed answers to the following questions:

- a) What is the specific purpose of each of these measures?
- b) How will each measure help to counter terrorist activity?
- c) Why is it that in order to protect the Australian public against terrorist attacks it is necessary to violate human rights?

Unless extensive public debate around these questions is allowed to take place, many will form the judgment that debate is being restricted for fear of exposing a hidden political agenda.

It is worth noting in this context that reasonably similar laws existed in the UK prior to the London bombings but did nothing to prevent terrorist attacks.

An increasing number of experts as well as informed members of the community appear to be forming the judgment that the proposed legislation is concerned as much to advance political objectives as it is to protect Australians against terrorists. This may be an inaccurate or unfair assessment of the situation. But this makes it all the more important that the Government and the Parliament as a whole encourage – and be seen to encourage – the widest possible debate around the legislation, and give – and be seen to give – the most serious consideration to the numerous concerns and criticisms that have already been expressed.

The legislation, as it stands, is likely to strengthen the misleading and dangerous impression, which has already gained wide currency, that the problem of terrorism is primarily an Islamic problem. Though this is not explicitly stated anywhere, it is generally understood that it is the Muslim community which will be disproportionately affected by these laws. Unless we take much greater care than this legislation appears to do, there is every possibility that Muslims will be made the scapegoat for a problem which has far deeper roots, a problem which the Australian government and the Parliament generally have yet to approach with the depth of analysis and insight that is urgently called for.

There is one other aspect of the situation which merits serious attention. The proposed legislation cannot be viewed in isolation. It must be situated within the larger context of the government's participation in the US-led war on terror. We have over the last three or more years seen a raft of policies – military intervention in Afghanistan, participation in the illegal war in Iraq, failure to abide by the decisions of the United Nations, refusal to condemn the gross violations of human rights by US forces in Iraq and Afghanistan, steadfast refusal to uphold the rights of Australian citizens wrongfully detained at Guantanamo Bay. There is every possibility that anti-terrorism legislation that is not drafted with the utmost care, and with the clear intent of protecting human rights, will be widely seen in Australia and internationally, as a further deviation from respect for the international rule of law.

Contrary to stated intentions, there is a real prospect that the legislation, as it stands, will result in higher levels of global insecurity and higher levels of mistrust and suspicion between the West and the Islamic world.

In Australia, the legislation might mean a serious setback in our long-term efforts to forge a harmonious and tolerant multicultural society and to engage constructively with our Asian neighbours.

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