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Senate Legal and Constitutional Committee  
Department of the Senate  
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Dear Secretary,

**Submission in relation to Anti-Terrorism Bill 2005 (Cth)**

I refer to the Anti-Terrorism Bill 2005 (Cth) ('the Bill'), a draft of which was posted on ACT Chief Minister Jon Stanhope's website ([http://www.chiefminister.act.gov.au/docs/B05PG201\\_v281.pdf](http://www.chiefminister.act.gov.au/docs/B05PG201_v281.pdf)).

I understand that the Committee will be inquiring into this Bill and tender this letter as a submission to assist the Committee's inquiry.

At the outset, I object to the lack of time allowed for meaningful debate of the Bill. This Bill involves momentous changes to Australian law and runs over a hundred pages. Yet the government is rushing through the passage of this Bill. As the Australian Labor Party's spokesman on homeland security, Arch Bevis, has said:

To give the premiers and states one week to look at it, to give the Federal Parliament one week to deal with the whole thing, to give the Senate one day to deal with it is just heavy-handed.<sup>1</sup>

The government's actions speak not only of contempt for Australian citizens but also for their democratically elected representatives.

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<sup>1</sup> Arch Bevis quoted in Joseph Kerr, 'Mum's the word in terrorist purge', *Sydney Morning Herald*, October 22, 2005 (available at <http://www.smh.com.au/news/national/mums-the-word-in-terrorist-purge/2005/10/21/1129775959888.html>).

This Bill should be rejected. Safe communities need measures that effectively prevent political and religious violence. The government has, however, failed to demonstrate why this Bill is necessary. Safe communities also need safe laws. This Bill, however, will, expose Australians to dangerous laws. It will allow innocent people to be jailed. People can be punished without proof and some will be treated as guilty until proven innocent. If passed, this Bill will also allow Australians to be targeted on the basis of their religious and political beliefs. Far from promoting the security of Australians, the Bill, if enacted, will inflict insecurity on the community.

### **Lack of necessity**

Very little justification has been given for the far-reaching measures contained in the Bill. The Prime Minister, John Howard, has said the Bill will ‘enable us to better deter, prevent, detect and prosecute acts of terrorism’.<sup>2</sup> There is, however, no explanation of how they will actually do this: What is the specific threat that these proposals meet? In what way do they actually deter or prevent those threats?

The government has also invoked the July London bombings as a reason for these new proposals. Yet the Federal Government’s own National Counter-Terrorism Alert Level has remained unchanged at ‘medium’ since those bombings. Indeed, this has been the threat level since the attacks on 11 September 2001 which means a ‘terrorist attack *could* occur’.<sup>3</sup> Moreover, the London bombings clearly cannot justify copying UK measures in place *before* the London bombings, i.e. control and preventive detention orders; measures that presumably failed to prevent those bombings.

The government has also failed to demonstrate why the existing counter-terrorism laws are insufficient. As it stands, these laws provide for broad criminal offences and sweeping executive powers. The ‘terrorism’ offences criminalise conduct that travels far beyond acts like bombings and hijackings while the panoply of sweeping executive powers means that Australia now has a detention without trial regime with respect to ‘terrorism’ offences.

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<sup>2</sup> John Howard, Prime Minister, ‘Counter-Terrorism Laws Strengthened’ (Press Release, 8 September 2005) 1.

<sup>3</sup> See National Counter-Terrorism Committee Communiqué: 8 July 2005. Available online: <http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurityHome.nsf/Page/RWP94CAF198B3B53A9ACA257038001A4861>; at 15 September 2005).

**Innocent people should not be jailed**

The Bill, if passed, will allow innocent Australians, those who have not been charged with or convicted of any crime, to be detained. The proposed control orders, for instance, will allow house-detention with 24 hours surveillance even if there is no suspicion that the jailed person is about to commit a crime. In the United Kingdom, preventive detention orders have been used against persons who have been found innocent by juries after a seven-month long criminal trial.<sup>4</sup> Jailing innocent people is not only a travesty of justice but also does nothing to improve the safety of Australians.

**Proof before punishment and coercion**

The Bill will permit severe restrictions of freedom without the need for proper proof. Instead of requiring the police to prove the necessity of detention to an independent authority, the Bill allows police to authorise the preventive detention of someone for up to 24 hours. They can also have authority, in some situations, to force Australians to produce documents and answer questions. Giving the police such free rein, with no effective check on the legality of their exercise of power, opens the door to mistakes and abuse. It threatens to undermine the balance between legal power and institutional culture that is at the heart of policing

**Innocent until proven guilty**

Not only does the Bill allow for unprecedented police powers without the need for proper proof before an independent authority, it also lowers the threshold of proof when an independent authority is involved. Control and preventive detention orders can be issued if the requirements are satisfied on the balance of probabilities.

So instead of Australians being innocent until proven guilty beyond reasonable doubt, they can now be incarcerated with much lesser proof. This raises the real danger that mere suspicion of guilt by police is sufficient for the exercise of these extraordinary powers. ‘Guilt by suspicion’ threatens to prevail and for groups suspected by the

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<sup>4</sup> Derek Brown, ‘Jurors speak out over terror laws’, *Guardian Weekly*, 14-20 October 2005, 9.

police of committing terrorist acts, notably some Muslim communities, the rule might very well be 'guilty until proven innocent'.

**People should not be targeted because of their religious or political beliefs**

Freedom of religion is a key principle of Australian society and is expressly recognised by section 116 of the Constitution. Also, a hall mark of a democracy is a rich diversity of political views. The Bill, however, poses a grave threat to the freedoms of religion and political expression because it increases the likelihood of police targeting Australians based on their religious or political views.

This stems from the fact that 'terrorism' offences depend upon a person's political and/or religious motive.<sup>5</sup> By allowing police to exercise power without proper proof, it is quite possible that evidence of the person's political or religious beliefs alone would suffice. This raises the spectre of *thought-crimes*. This is an especially real danger for 'suspect' persons, whether they be Muslims, political activists or those who oppose the government's political positions.

In conclusion, I urge the Committee to reject this Bill. It is a dangerous law that does little to improve the security of Australians.

Yours sincerely,

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<sup>5</sup> See definition of 'terrorist act' in section 100.1 of the *Criminal Code Act* (Cth).