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Senator Marise Payne (Chair)
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600

4 May 2004

Dear Senator Payne

Supplementary Submission to the Inquiry into the Anti-Terrorism Bill 2004

Further to our appearance before the Committee on Friday 30 April 2004 in Sydney, the Public Interest Advocacy Centre (PIAC) would like to clarify certain aspects raised by the Committee and further seeks to make a supplementary submission to our submission lodged with the Committee's on DATE April 2004.

This submission focuses on proposed amendments to the *Crimes Act 1914* (Cth). However, PIAC's concerns relating to other amendments detailed in our existing submission, still stand.

Section 23CA and 23DA of the Anti-Terrorism Bill 2004

As stated in our previous submission and before the Committee, PIAC contends that the proposed Section 23DA would have the effect of adding a potential maximum of 20 hours interrogation time to *all* terrorism offence suspects, including people under 18 years and Indigenous people.

Following the Committee's question on our interpretation of this provision, we sought Senior Counsel's advice and confirm that their interpretation with this section concurs with that of PIAC's.

Section 23CA(4) specifically states that the investigation period begins with arrest, ends at a time thereafter that is "reasonable," but does not exceed 2 hours for someone who is under 18 or Indigenous, or 4 hours in all other cases "unless the period is extended under Section 23DA."

Sections 23C and 23D the *Crimes Act 1914* (Cth) extend the interrogation time by up to 8 hours for *all* suspects of serious offences, including people under 18 years and Indigenous people. As per PIAC's previous submission and Senior Counsel's subsequent endorsement, our view remains that the proposed amendments in 23DA would operate in the same way.

Together with the possible “dead time”, including the proposed different time zone dead time, the extended investigation time would total 22 hours for people under 18 and Indigenous people. PIAC believes that this is an excessive and unjustified interrogation period in particular for such vulnerable groups such as children and young people and Indigenous people.

If it is not the intention of the legislature that people under 18 years and Indigenous people suspected of a terrorism offence should be interrogated for the initial 2 hours *plus* a maximum extended period of 20 hours, then, in our view, the Bill should specifically indicate that this consequence is not intended.

Accordingly, PIAC reiterates our recommendation that the current maximum extended investigation period in the case of terrorism offences remain at 8 hours (as it stands in cases of serious offences) for people under 18 years and Indigenous people.

Procedural safeguards

Further to PIAC’s existing submission, we reiterate our position that legislation such as the Anti-Terrorism Bill 2004, must seek to balance potential harm to the public with the erosion of individual civil liberties. In this context, we argue that it is essential that sufficient procedural safeguards and review mechanisms should be incorporated into the legislation. This would ensure that the ensuing powers are utilised in a manner that is consistent with the fundamental values of a democratic and just society.

Examples of procedural safeguards could include provisions for legal and/or medical experts being available to check on a detainee’s state of mind, comprehension the issues being put before him/her and their state of health. In relation to the latter, we would recommend that the legislation contain a requirement that detainees be afforded intermittent breaks from interrogation eg every two hours for at least 15 minutes.

PIAC reiterates our recommendation that in providing adequate procedural fairness during the process of interrogation, it is essential that an absolute limit be set for the detention of people suspected of terrorism offences. With so many possibilities for extension, suspension and delay of the interrogation period, PIAC reinforces our recommendations that an absolute limit be set for detention without charge of suspects of terrorism offences.

Finally, PIAC believes that a procedural review mechanism should be incorporated in the legislation to allow for an investigation of the ongoing necessity for such measures and their impact. Any such review should be reported on annually by the Attorney-General against specified criteria, such as:

- Total number of terrorism offence arrests
- Total number of charges resulting from terrorism offence arrests
- Total number of prosecutions resulting from terrorism offence arrests
- Number of instances when the time zone “dead time” is used (including multiple use during a single investigation)
- Average length of each interrogation period

- Profile of detainees disaggregated according to gender, race, ethnicity and religion
- Impact on intelligence gathering; and
- Expenditure of implementation of the legislation.

We trust that this additional information will assist the Committee in its deliberations regarding this Bill. Should you have any questions arising from this submission, please do not hesitate to contact Annie Pettitt, Policy Officer.

Yours sincerely
Public Interest Advocacy Centre

Annie Pettitt
Policy Officer