

Secretary
Senate Legal and Constitutional Legislation Committee

Dear Madam/Sir

Submission to inquiry into the provisions of the Anti-Terrorism Bill 2004

I refer to the Committee's present inquiry into the Anti-Terrorism Bill 2004 ('the Bill'). I hereby provide a submission to assist the Committee in its inquiry. I am also prepared to appear before the Committee to give oral evidence if that should assist the Committee's inquiry.

My submission is unequivocally opposed to the Bill. I will deal below with the key changes proposed by the Bill and my reasons for opposing them.

Proposal to increase the maximum detention/questioning time for persons suspected of 'terrorism' offences to 24 hours

Sections 23C of the Crimes Act 1914 (Cth) presently empowers the police to detain arrested persons under the age of 18 years and those of Aboriginal and Torres Straits Islander background for a maximum of two hours, and all other arrested persons for a maximum of four hours. The Act also provides for an extension of the period of detention/questioning by a maximum of eight hours for serious offences if the police are able to satisfy a judicial officer that such an extension is necessary and the questioning is being conducted without undue delay. The Bill proposes to make an extension of questioning time of up to 20 hours permissible in the case of 'terrorism' offences.

It is important to stress that 'terrorism' offences reach far beyond acts like bombing and hijackings; acts which were already punishable by severe penalties before September 11. For example, a 'terrorism' offence is committed by merely possessing a thing in connection with engagement in a 'terrorist act' (Criminal Code Act 1995 (Cth) s 101.4). 'Terrorist act', in turn, embraces certain acts of industrial action like picketing by nurses. Thus, a person holding a leaflet promoting picketing by nurses is, arguably, committing a 'terrorism' offence.

As it currently stands, the Crimes Act accords with the fundamental principle that any deprivation of personal liberty should be kept to a minimum. No serious justification has been offered for extending the possible detention time, with only vague references to being 'tough on terror'. More than this, it is difficult to see why there should be an extension of this nature when the Australian Security Intelligence Organisation, in conjunction with the Australian Federal Police, can now detain and compulsorily question persons suspected of having information related to a 'terrorism' offence for rolling periods of seven-days under the Australian Security Intelligence Organization Act 1979 (Cth). Such persons can be questioned for up to 24 hours, or 48 hours if an interpreter is used. During such questioning, such persons have no right

to silence and have only a highly circumscribed right to legal representation. Moreover, if detained, they are detained incommunicado, and can be subject to body and strip searches. As things currently stand, if a Madrid-style bombing occurred in Australia, ASIO with the AFP could detain persons are not suspected of any criminal wrongdoing and interrogate them for at least 24 hours.

These unprecedented powers already in existence make the present proposal absolutely unnecessary. This aspect of the Anti-Terrorism Bill appears to be a mere grab for power. It should be rejected, as it has not been justified and is unnecessary.

Proposal to broaden the scope of liability under the Crimes (Foreign Incursions and Recruitment Act)

Currently, the Crimes (Foreign Incursions and Recruitment Act 1978 (Cth) exempts from criminal liability Australian citizens and residents who fight with the armed forces of foreign countries. The government's proposed amendments to the Act would make it an offence to fight with the armed forces of a foreign state while a member of an organisation prescribed by the Attorney-General under that act, or proscribed pursuant to the Criminal Code terrorist organisation provisions (which were recently broadened to allow the Attorney-General to proscribe organisations which have not been listed by the United Nations). Given the breadth of the definition of 'terrorist act' in the Criminal Code Act 1995 (Cth), any armed force is apt to be declared a terrorist organisation, regardless of whether or not it attacks civilians. This proposed amendment would therefore make the legality of the conduct of Australians fighting with foreign armed forces entirely subject to the political whims of the Australian government, as it is entirely up to the government whether a foreign armed force, or its associated organisations, are listed or not. The imposition of serious criminal liability based on the whim of the executive is entirely contrary to the rule of law.

Proposal to broaden the scope of the Proceeds of Crime Act

At present, the Proceeds of Crime Act 2002 (Cth) permits assets to be confiscated if they are the result of a 'foreign indictable offence,' an offence committed abroad that would be a crime in Australia. The Anti-Terrorism Bill would include, as foreign indictable offences, offences tried by United States military commissions. This proposal would thus recognise and legitimate in Australian law the system of military commissions established by the United States government to try Guantanamo Bay inmates, despite the condemnation of that system by numerous eminent jurists, including retired High Court Justice Mary Gaudron and a serving member of the House of Lords, Lord Steyn.

I thank you for taking the time to read my submission.

Yours sincerely

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