

## **Inquiry into the provisions of the Anti-Terrorism Bill (No.2) 2005: A Citizen's Submission**

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Dear Senators,

I do not dispute the possibility of terrorist acts being perpetrated against the Australian people, within Australia's borders. Nor do I deny the destruction and horror that terrorism could wreak. I make this submission, however, to exhort you to scrap this bill, or at least radically amend it, because it will inflict more damage on this society than any program of terrorism could.

Chief among my concerns is that there is no demonstrated need for the crimping of liberties this bill would bring. Terrorism involves the perpetration of a host of often horrific crimes for particular ideological ends. Criminal sanctions against conspiracy, the possession of certain items, as well as a host of other behaviours can be used with great effect to prevent the commission of terrorist acts, as indeed we might be witnessing in the aftermath of the arrests this week of suspected terrorists. With existing laws having been shown to be in concordance with aspirations of prevention, governments at both Federal and State levels have failed to argue a persuasive case for the introduction of what Mr Beatty has described as "draconian laws". Furthermore, they have also failed to demonstrate the efficacy of trampling liberty into the dust. Authoritarianism is no protection against terrorism, as we can see in contemporary Russia, and a host of Central Asian and Middle Eastern countries. A more prudent course might be to try to understand the causes of terrorism, with a view to proactively dissuading the many disillusioned from joining treacherous fanatics who are trying to recruit, brainwash and create the terrorists of tomorrow. Formulation of a less cynical and morally bereft, more just, responsible and humane foreign policy platform might also go a long way to averting terrorism in Australia. Perhaps some government resources are attending to these; if they are not then the government is in gross dereliction of its duty to protect all souls within its borders. In any case, the proposed legislation takes a superficial approach to the issue of prevention and is at best of dubious utility in securing Australia against terrorist acts.

The legislation itself is encumbered by the breadth and vagueness of its definitions. Schedules 1 and 3 would have ensnared supporters of Nelson Mandela, the ANC, and an independent East Timor and would seem to criminalise supporting legitimate ongoing independence movements such as that of the West Papuan people. Having no bearing on terrorism in Australia this is an unjustifiable incursion on the liberties of Australian people. How exactly is a terrorist organization defined? By whom? What does the process of determination entail? What protection is there against the intrusion of amoral realpolitik in this process? Unless these are defined more tightly they must be scrapped. As they stand these provisions seem geared at preventing Australian citizens from supporting all groups resisting perceived oppression, including genuine resistance movements against illegitimate invaders. Under these laws a morally feeble and opportunistic Australian government could sacrifice the rights of Australian citizens to indulge an interfering, militaristic ally. Also at issue is how information and intelligence are gathered to make an assessment about various resistance groups and the security threat each might pose. Although intelligence gathering is of a

complexity that makes errors both inevitable and understandable, the catastrophic intelligence failures leading up to both the second Iraq war and preceding the September 2001 terrorist attacks on the US indicate how this process can be hijacked by political/ideological agendas and fall victim to groupthink. Accordingly, the processes by which proscribed organizations are determined are easily corrupted, enabling ready coopting by any Federal government for its own purposes. In tandem with the proposed sedition laws these items will effectively squash dissent in Australia.

While schedule 7 offers a 'good faith' defence, both this defence and the need to defend dissent are ineffably problematic. How is good faith established? The legislation offers nothing concrete. Schedule 7 is an instrument to stifle dissent. Despite the good faith defence many people with worthwhile views would be silenced for fear that they would have to go through a costly, time consuming, and intimidating court process to defend legitimate opinions. The notion that dissent must be justified is anathema to all conceptions of healthy democratic society. Symbolically the sedition laws will render dissent abnormal and suspicious, something no government has a mandate to effect under any circumstances. The possibility that these laws could create a culture of suspicion over dissent and debate, particularly during a time of heightened anxiety and irrationality, is very real. Surely this creation of an artificial 'us' and 'them' division would be counterproductive in any attempt to thwart terrorism in this country. Confronted with such a complex and elusive potential threat the best defence is a plurality of voices and solutions, each contesting one another, being continually refined, revised, adapted. This is the Western dialogue, the very foundation of civil society in Australia. If enacted, the sedition laws would mute this vital conversation in a way that no acts of terrorism alone could. These laws seem to propose killing civil society so that the terrorists can't! The other burden bourn by the sedition laws is that they will needlessly alienate and provoke people who have a right to be heard. How can you attempt to persuade people with unpalatable views, if you don't allow these people to speak? As if they were not problematic enough, the sedition laws imply that the Australian government is officially giving up on persuasion, debate, and liberty in favour of brute force. If Australia is to remain a secure as well as a free society the proposed sedition laws must be jettisoned.

A cluster of problems infects the provisions relating to preventative detention and control orders. First, these abolish the presumption of innocence at the very heart of a functioning free society. Once again, this is a possibly fatal wound on civil society that no acts of terrorism could inflict on Australia's body politic. Revoking the presumption of innocence paves the way for all manner of arbitrary abuses of power and acts of intimidation. Given the character assassinations a host of dissenters (e.g Sir Ronald Wilson, Andrew Wilkie, Tony Kevin, Lance Collins and Mick Keelty, for starters) have had to endure at the hands of the Howard Government, the Federal Government has not earned the trust necessary for the public to accept that these provisions would not be abused. State governments also have an inglorious history of vilifying dissenters, and groups identifiable as an 'Other'. The example most readily springing to mind is the Carr government's vilification of Muslims in the lead up to the August 2001 by- election for the state lower house seat of Auburn. Along with earlier, contemporaneous and subsequent dehumanising of Asylum Seekers these demonstrate that recent Australian governments of either persuasion have not acted with sufficient regard for human dignity and liberty to be seen as anything but too delinquent to be trusted with the powers outlined in this bill. Moreover, the restrictions on contact for those arrested are unacceptable for a free society. Logistically, such arrests probably require some restrictions on contact, but both the notion that only one family member can be legally informed of detention and the proposed punishment for any recipient of information about a detainee who

then passes on information about this detention is indefensibly harsh and ludicrously unenforceable anyway. Returning to the effective abolition of the presumption of innocence; perhaps the gravest impact of this on the broader society would be the culture of suspicion that this would create and nourish. The strength of multiculturalism as practiced in Australia is that it has aimed to break down power and seemingly natural but nonetheless artificial barriers of nation and ethnicity while enabling cultural diversity and distinctiveness to live and breathe. Given that the terrorist threat comes from a readily identifiable set of subcultures of particular religious and ethnic groups, the culture of suspicion that overturning the presumption of innocence is likely to produce will erect barriers that will unjustly alienate much wider sections of Australian society from the rest. Not only might this imperil social harmony in Australia, it could plausibly increase the numbers motivated to commit terrorist acts within Australia and might also cut off information flows about proposed terrorist actions to sections of the wider community and then to the government. Apart from being unjustifiable, the provisions relating to control orders and preventative detention could prove counterproductive in the effort to prevent heinous acts of terrorism within Australia and against Australian people. They must not become law.

Perhaps the last problem with this bill is the haste with which it is being rammed through parliament. The 1960 Sedition laws alone were researched, debated, and refined over a period of 2 1/2 months in a process that involved widespread and very public consultation. The government has not properly informed the public of the contents of this bill and its implications for every stakeholder in Australian society. Genuine public debate has not taken place. What contempt for the people! With the government's eagerness to get this flawed and dangerous bill through parliament it is hard not to think that this act is in no small part a blueprint for a more tightly controlled society from which the government will not even swerve. As a citizen, I demand a bona fide public consultation process. Not an expensive propaganda campaign, genuine debate and discussion. Don't forget, the fact that government now needs to attend to security concerns does not release it from its higher duty to help facilitate the cultural, intellectual, economic, and workaday enrichment of those it has been elected to lead.

If enacted into law, these proposals will indeed inflict more damage on Australian society than any acts of terrorism could. The struggle against those who, most prejudicially, would sooner have us dead, is fought by better means than by this blunt and self-wounding instrument. Please, do not make them law.

Many Thanks,  
Christian O'Brien.