

To: Secretary Owen Walsh,
Senate Legal and Constitutional Committee,
The Senate,
Parliament House,
Canberra A.C.T. 2600.
Email: LegCon.Sen@aph.gov.au

Wednesday, 9 November 2005.

From: Kendall Lovett and Mannie De Saxe,
For Lesbian & Gay Solidarity (Melbourne),
Preston South, Vic.

SUBMISSION

To Inquiry into the provisions of the Anti-Terrorism (No. 2)
Bill 2005.

Preamble

On Tuesday, 8 November 2005, we awoke to the news that nine men had been arrested in Melbourne's Northern and Western suburbs as well as seven in Sydney's Western suburbs where one young man had been shot by police and hospitalised.

Details of charges as well as names of those arrested are being suppressed according to the radio report we listened to because the federal police say if made public may hamper further anti-terrorism investigations. However, this did not happen. The arrested men were all named and each charged with being a member of a terrorist organization.

All this has been achieved without using any of these so-called improvements to existing offences which are proposed in this new 2005 Bill. The Federal Attorney-General really must prove his case for the Bill.

Therefore, we consider that our elected representatives who are involved in this Inquiry, and in both Federal Houses as well as in States and Territories parliaments, must now demand from the leaders an explanation of any real need at all for this Bill and its provisions.

Furthermore, we want the Members of this Inquiry to demand that the Federal Government set up an entirely different public inquiry:-

- * To uncover the reasons for the present intent and unrest behind the current world-wide murderous movement that has caused our government to enact anti-terrorism laws;
- * To discover alternatives to anti-terrorism laws;
- * To consider withdrawing Australian troops from Iraq and Afghanistan, closing all detention centres and releasing all asylum seekers immediately, and at the same time providing them with Centrelink support, in an effort to pave the way to re-establishing friendly relations and respect for diverse cultures and opinions.

We are disappointed that no one in any of our parliaments has shown any interest in looking at alternatives to anti-terror legislation as a means to counter the seeming religious violence world-wide.

Many respected commentators like Robert Fisk, Tariq Ali and John Pilger, ignored by our politicians, in research into the situation have documented their findings, some claiming that although appearing to be religious fanaticism it is rather "a response to foreign occupation" (Robert Pape, military historian and University of Chicago professor). Pape goes on to say that

modern suicide terrorism is best understood as an extreme strategy for national liberation against democracies with troops that pose an imminent threat to control the territory the terrorists view as their homeland.

It is also necessary to recognise the appalling circumstances forced upon these people in the Middle East and elsewhere. They see no other future for themselves. Fleeing to another country results in incarceration for years and eventual deportation or drawn-out unemployment and misery at the prejudice encountered in the chosen country.

Nevertheless, we think religious incitement does play a part in terrorism. Gays and lesbians have long been victims of incitement to violence from religious bigots be they Christian, Jewish or Islamic. Again, it's something that is well-documented.

We consider that these proposed violent provisions including control orders, tracking devices, preventative detention, secret captivity (sanctioned kidnapping) and seditious intention offences do not achieve their aim at all. Instead they breed contempt and promote revenge -hardly conducive to harmony in a secularly governed country if that's what Australia is supposed to be.

We are concerned about the vast range of serious criminal offences that has been introduced since 2001 covering every conceivable participation in, or support for, or resulting in, an act of murder which is called terrorism to engender a special kind of fear -dismay/alarm/anxiety/panic.

The latest measures are unnecessary and obviously designed for use where the intelligence agencies and police cannot produce any evidence of involvement. It leaves citizens open to containment in secret against their will. Surely this is support for a police state.

Objections to specific sections in the Bill

Schedule 3

Financing a terrorist

We object to this whole new addition 103.2 (1) and (2) because even if a person is unaware that another person is planning an act which the police may class as terrorism, whether or not it occurs, becomes liable to a penalty of imprisonment for life if that person has made a donation of money directly or indirectly to that other person. Defining the giver as reckless is hardly sufficient reason for such a penalty. There must be a limit to the amount of money donated below which no charge may be laid.

Schedule 4

Control orders and preventative detention orders

It seems that there are to be two kinds of Control Orders -an interim one and a confirmed one; and there is to be an additional Preventative Detention Order -a continued preventative detention order and the original also termed Initial --added to which there is a corresponding State Preventative Detention law meaning of a State or Territory particular provision. All very handy to grab people in various areas of Australia regardless of them being involved directly or indirectly with an act that may or may not take place or involved or associated with an organisation the federal police assume is terrorist even if it hasn't been gazetted as a terrorist organisation.

In view of what happened to the people arrested in Melbourne and Sydney on Tuesday, 8 November 2005, and who were named and appeared in court, were remanded to local prisons until their cases

are heard next year, there appears to be little need for any of these additional extreme measures to existing laws. Of course, ASIO and AFP will not be happy but like their US counterparts they will get by wielding the existing powers they already possess.

An interim control order (104.5) placed on an adult can be for as long as 12 months at a time. There are 12 separate Obligations, Prohibitions and Restrictions which are to be placed on an individual. These include (d) wear a tracking device, (e) communicating or associating with specified individuals, (f) using the internet, (h) carrying out specified activities including in respect of work or occupation, (l) requirement to participate in specified counselling and education.

A preventative detention order (105.1) allows a person over 16 to be detained apparently to prevent an imminent terrorist act occurring or preserve evidence of, or relating to, a recent terrorist act. It is meant to last for up to 48 hours under federal legislation and up to 14 days under corresponding state and territory laws -hence the need to have the states and territories agree some weeks ago to the legislation. Could the legislation have been challenged in the federal court on constitutional grounds if the States hadn't agreed?

We object to the whole of Schedule 4 in this Bill because it is wholly unnecessary in view of the arrests made in Melbourne and Sydney on Tuesday, 8 Nov. 2005 on the basis of the previous anti-terrorism legislation and Criminal Code. As for safeguards, there really aren't any. A sunset provision of 10 years is not acceptable. Review after two years may have been acceptable.

Schedule 5 Powers to stop, question and search persons in relation to terrorist acts

These powers in the existing criminal law are sufficient to cover possible terrorist activity. Again we quote the 8 November arrests and that of Jack Thomas and earlier of Jack Roche as examples that prove how unnecessary these additional provisions are. We object to the whole of Schedule 5 as totally unnecessary.

Schedule 6 Power to obtain information and documents

Surely this power already exists for Australian Customs Officers so why is it necessary for a separate power to be provided for AFP officers? Again it seems to us that Schedule 6 is equally unnecessary. This power would authorise the AFP officer to obtain on demand information and documents from operators of aircraft and ships which the officer believes on reasonable grounds is relevant to a terrorism matter being investigated. The document may even relate to non-terrorism offences. In that case, though, he must obtain a notice from a federal magistrate. The magistrate has to be satisfied on the balance of probabilities that a person has the relevant documents sought. There are at least 15 confidential items of information covered in documents required from an operator. This surely breaches the privacy and confidentiality of the operator's business. Failure to comply, or to disclose existence or nature of the notice, are punishable offences. On the basis of breaching privacy on the AFP officer's belief on reasonable grounds, we object to the whole of Schedule 6 as unnecessary.

Schedule 7

Sedition

It is of serious concern to us that these new seditious intention charges being proposed are a real threat to our freedom of speech and our freedom to discuss and talk with one another as a group. We use the internet to publish our views. We issue hard copy newsletters as well to express our views on political matters which we believe are wrongly regarded by our governments and we seek to make our views known in the various forms of the media.

It seems to us that, for instance, Urging a person to assist the enemy (80.2/7) whether or not a state of war has been declared really means that if we advocate any kind of support for 'the enemy' we could be charged with an offence carrying a prison sentence of 7 years, the enemy being defined as individuals or organisations in a state of conflict with Australian forces outside Australia. Proving your support for the enemy was 'in good faith' would be mighty difficult if not impossible in the present climate of fear. Such could be said to apply equally to the media in their reporting on security issues like secret detentions of people. We would have the situation where the media and the public forced to rely on 'leaked spin of the security agencies.' We saw this illustrated in the Iraq war when the US forces controlled all the news to come out about the war.

Some Australian commentators say that existing sedition laws have been in place since the fifties without being misused. Oh, really? And, it is not governments that prosecute alleged offenders, but police. We say: the police are the means of executing the laws made by the politicians of the government. When you have had experience with police as so many gays and lesbians have had, you become fully aware of how they use the powers provided by the governments of our time.

If the existing laws are so good and have been used so wisely, why add these new and extreme measures. We don't believe the laws need updating because of the 'war on terror' which is a misnomer anyway. It is a 'war of revenge' -a means of forcing other countries to adopt a different lifestyle.

Such measures as those being proposed in Schedule 7 have been used in other countries to suppress political dissent and the power accorded the Attorney-General is far too broad. If these seditious intention proposals are passed into law they surely must cause many humanitarian judges great concern to have to hear and interpret.

We object to the whole of Schedule 7 as unnecessary and unacceptable.

Schedule 8 Optical surveillance devices at airports and on board aircraft

These devices are already in use at airports and on board aircraft. There does not appear to be any need for the Attorney-General to regulate and authorise their use with a specific code (74K) to safeguard Commonwealth interests. Far too wide in application, scrap Schedule 8.

Schedule 9 Financial transaction reporting We consider that our objection to Schedule 6 applies to Schedule 9 equally, an invasion of privacy and unnecessary.

IN CONCLUSION

We consider the Anti-Terrorism (No.2) Bill 2005 to be completely unnecessary and a threat to freedom of speech. The provisions and powers proposed in this Bill to improve those existing in other laws create and sustain the climate of fear and apprehension in the minds of the citizens of this country. They undermine our freedom of association.

The sunset provisions of ten years are a farce. We consider the government to be cynical about its promise that it will review the Bill next year if it is passed this year.

Equally, we think it has been cynical in its decision to have this Inquiry into the provisions of the Bill because everyone knows that with the help of the Labor Opposition it will be passed through the Senate within the time limit the Government has allowed. Like the Industrial Relations Bill the government will not accept any major amendments to this Bill.

If this Inquiry decides that an inquiry into alternatives to anti-terrorism legislation, as we have suggested in our preamble, is worth recommending to the Federal Government, then we will feel that spending time on this submission hasn't been altogether a cynical exercise or a waste of time.

Signed: Kendall Lovett and Mannie De Saxe,
for Lesbian & Gay Solidarity (Melbourne).