

TO: the Senate Legal and Constitutional Committee

This proposed legislation is anti-democratic. It is unnecessary, opportunistic, ill-defined, and unjust. It proposes, in the strict sense of these words, laws appropriate to those of mid-20th century Communist-style bureaucracies and contemporary fundamentalist religious states. Why? Because it insists state interests (and not the freedom, protection or security of the populace) take absolute precedence over individual belief and freedom of speech, not to mention other human rights. It takes this position to an extreme, one unworthy of the Australian democratic tradition.

The legislation is unnecessary: both State and Federal law already forbid inciting criminal activity, membership of criminal or terrorist organisations, etc. To the extent that the new legislation is directed against local terrorist threats, it is redundant. Where it is not redundant, it will seriously damage Australian democracy.

The legislation is opportunistic: it gives undue weight to an alleged "terrorist threat," without providing the slightest evidence (outside of unverifiable and patently politically-motivated claims of "threats to national security," etc.); it is without any concern for possible abuses of the legislation and without any eye to the historical record (e.g. major Australian state functions such as the Department of Immigration have been shown to be riddled with a culture of carelessness and corruption), etc. This legislation is for unelected and unrepresentative secret elites, not the good of the people. The historical record shows that such secret provisions and their attendant personnel have NEVER effectively served their charter or the people they purportedly protect; much to the contrary, such provisions lead directly to self-interested and corrupt behaviour on the part of their beneficiaries who, acting beyond any social or judicial grasp, line their own coffers and promote their own narrow interests. To say "oh, that's silly, something like that could never happen in Australia" is either wilfully naive or a flagrant lie. We already have abundant evidence, both local and international, of serious abuses of anti-terrorist fervour (e.g., from the non-existence of WMD to the shooting of the Brazilian electrician in Great Britain).

The legislation is ill-defined: the very secrecy and haste with which the legislation has been framed and is being rushed through parliament has no doubt contributed to a dangerous lack of clarity about executive, information-gathering, and police powers, as well as the real sense of terms such as "disaffection," "dangerous," "national security." This clumsy if not incoherent phrasing threatens all forms of open speech. In China or Iran today, journalists and writers are routinely jailed for long periods for direct and indirect criticism of the regime, on precisely the grounds of "sedition" (e.g., Mohsen Kadivar, Akbar Ganji, Emadeddin Baghi, who offered the most moderate criticisms of the Iranian regime).

The legislation is unjust: to think that a person could be taken from their family without notice, and without any ability to inform their family, friends or boss what has happened, is horrific. Not to have access to a lawyer of one's choice, to be subject to an extraordinary judicial process in which your faceless accusers are at once litigants, judges and jurors, is unspeakable. To think this is possible in 21st century Australia is an abomination; if possible, it is exacerbated by the fact that there will be little or no recourse for those arrested on the basis of what may be unproven, anonymous

and malicious allegations. That this legislation effectively reverses the burden of proof means that it thereby also overthrows the very principles of democratic law.

This proposed legislation goes against the letter and the spirit of existing Australian law, contravening what has been great - genuinely great - in our democratic history. The proposed legislation must be rejected or, at the least, severely modified if it is to become part of Australian law without damaging the roots of our democracy. Otherwise, what we see today in fundamentalist states will inexorably follow here. All the evidence (historical, structural, psychological) demonstrates this. In fact, the situation is this: whoever votes for this legislation votes to turn Australia into a criminal state.

Yours sincerely,

Dr Justin Clemens