9.11.2005

Senator M Payne, Chair
and members of the
Senate Legal and Constitutional Legislation Committee

Submission on **Anti – Terrorism Bill (No.2) 2005**

I appreciate the opportunity to make a brief submission on this important legislation.

1. Community access
I regret that the community as a whole has not been more widely informed about the opportunity to make submissions to this Inquiry. I believe that relevant publicity was confined to one advertisement in the Weekend Australian, with submissions closing within seven days(!). It is painfully obvious that such minimal publicity is insufficient to reach a cross section of the community. I urge the Committee to lodge a protest with the Treasurer and to seek additional resources to maintain this important consultative mechanism at a meaningful level.

2. My background includes a law degree from the University of Melbourne and six years as Senator for Victoria (1990-1996). During that time I was Democrat spokesperson for the Attorney General and Justice portfolios and a member and, for a time, deputy chair of this Committee.

3. Balancing individual rights and the need to provide increased protection.
I believe that the Government, your Committee and the community generally are faced with the difficult challenge to strike a balance between the need to protect citizens against an ill defined and, for Australia, largely unprecedented threat of terrorist violence and the tradition of civil liberties and individual freedoms protected by a robust legal system which generally, although sometimes imperfectly, leant towards the protection of individual rights. It must be a matter of grave concern that with this legislation the balance is now swinging towards increased police powers in the hands of an executive government apparently unwilling to accept reasonable safeguards.

4.A second look
The Government's claims that all the measures in this bill are necessary are difficult to refute (except for three very obvious instances set out below), simply because the community finds itself in an unprecedented situation, a situation which the Government is using to trade on fears born out of uncertainty to ram through legislation which may be unnecessary, detrimental, or, at worst, destructive to Australia's democratic values and processes.

In this situation the integrity of the Government demands that the legislation is subjected to a stringent review of the measures legislated and the consequences experienced, at the earliest possible opportunity. This would be achieved, the goodwill of the community retained and the integrity of the Government regained by a sunset clause of two years, instead of the current contemptuous ten years.

5. Provisions which are outrageous, highly inappropriate or just plain silly.

There are many provisions in this bill which deserve long and searching investigation. In the circumstances I shall confine myself to three of the most obvious examples:

a) "Sedition" would now be equated with "urging disaffection" with the Government of the day:

Schedule 7- Sedition, on p. 109, adds a new subsection (b) to s 30A of the Crimes Act 1914, which includes:

"**seditious intention** means an intention to effect any of the following purposes:

(a) to bring the sovereign into hatred or contempt;

(b) to urge disaffection against the following:

(i) the Constitution;

(ii) the Government of the Commonwealth;

(iii) either house of Parliament;

(emphasis added)

(a), (b)(i) and (b)(iii) are 'merely' inimical to freedom of expression, but (bii) is outrageous. If one were disposed to be lighthearted one could wonder whether Mr Howard is so concerned about sliding polls that he wants to legislate against disaffection with his Government. However, **this is a very serious attempt to make criticism of the Government a crime under the sedition provisions of the Crimes Act – a tell tale hall mark of every totalitarian regime through the ages but not acceptable in a democracy.**

b) In amendments to s80 (treason and sedition) on p. 112 it is made an offence to urge another person to engage in conduct which assists an organisation or a country which is "(i) at war with the Commonwealth**, whether or not the existence of a state of war has been declared" –** it is submitted that this self imposed difficulty could be cured by replacing the bolded phrase with **"or engaged in armed hostilities".**

c) In s. 105.35 Contacting family members etc, "…the person being detained" may disclose that the person **"is safe, but is not able to be contacted for the time being**" however**, the person may not disclose that a preventative detention order has been made or the fact that the person is being detained.** This is just plain silly, because that assumption will be made as a consequence of the first statement ie a 'code' will be developed. In any case the purpose of the provision is unclear and it is submitted that the provision is unnecessary and unenforceable.

6. The community will accept the limitations on civil liberties experienced as a result of this and similar legislation more easily if the protection of a Bill of Rights were available as a last resort.

It is submitted that the Committee may wish to consider an Inquiry to determine the desirability of a Bill of Rights as a counter weight to legislation increasing the powers of executive government and how the interaction between a Bill of Rights and anti terrorist laws which curtail civil liberties could be structured.

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