

ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

'Terrorist crime, serious as it is, does not threaten our institutions of government or the existence as a civil community. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism, but from laws such as these. That is the true measure of what terrorism may achieve. It is for parliament to decide whether to give the terrorists such a victory.'¹

1.1 The Australian Greens submitted the Anti-Terrorism Laws Reform Bill to the scrutiny of the Senate and its Legal and Constitutional Committee as a means of reforming the most egregious of the hastily enacted laws that seriously curtail human rights and fair trials in the years after the attacks on September 11, 2001. These laws urgently need to be reviewed to determine which merit retention and modernisation, and which should be struck from our statutes as embarrassing and offensive mistakes.

1.2 We acknowledge the impending debate on the establishment of the National Security Legislation Monitor who will undertake this reviewing role. The proposals in the Anti-Terrorism Laws Reform Bill are those which we believe lack the merits of even being deserving of review by this busy office.

1.3 The Greens join others on the Committee in hoping that the expertise and debate generated by this inquiry will feed into the government's discussion paper process on the anti-terrorism laws.

1.4 The government should note the high degree of agreement among the submitting parties in supporting the direction of this Bill, and that legal experts and organisations making submissions to the Attorney's discussion paper process have also commended the approaches taken in this Bill.

1.5 A close comparative reading of the Anti-Terrorism Laws Reform Bill and the Government's discussion paper and Exposure Draft reveals less common ground than has been suggested. The key points of divergence are outlined below.

- **The government's paper extensively broadens rather than narrows the definition of a terrorist act despite the advice of the Sheller Committee:** The Greens bill very carefully considers the statutory definition of a 'terrorist act' and brings it into line with internationally accepted definitions. Some of the terminology used within the Criminal Code in relation to terrorism offences is inadequately defined and vague. Treating the definition of terrorism in legislation as a broad-brush policy manifesto enlivens far

1 Lord Hoffman, A v Secretary of State for the Home Department.

reaching and heavily punishable offences in Division 101-103 of the Criminal Code.

- **The government exposure draft leaves broad ranging sedition offences in place, giving them the new name of 'urging violence'.** Sedition, or offences formerly known as sedition, are not necessary when incitement or other public order offences already exist on our statutes. They remain unacceptable in societies where the right of citizens to criticise their government is viewed, indeed celebrated, as an essential component of democratic life.
- **The government exposure draft proposes an increase in the intrusion of the Attorney into the judicial system under the National Security Information Act.** The Greens strenuously oppose this Act because it breaches the doctrine of separation of powers and requires security clearance for lawyers while providing no justification. Requiring security clearance for lawyers threatens the right to a fair trial and limits the pool of lawyers permitted to act in cases. It also threatens the independence of the legal profession by allowing the executive arm of government to effectively 'vet' and limit the class of lawyers who are able to act in matters which might involve sensitive information.

By undermining the independence of the legal profession, the right to an impartial and independent trial with legal representation of one's choosing is undermined. This Act permits for closed court proceedings in certain circumstances for terrorism cases, and provisions relating to the designation of evidence as 'secret'. Accused persons can have evidence led against them without the ability of their counsel to evaluate the evidence. Even in the absence of such practices, the threat of their invocation hangs over legal proceedings for as long as the NSI Act remains in force.

- **The government exposure draft proposes a seven day 'dead time' limit whereas this Bill proposes 24 hours** as reasonable time to overcome delays associated with communicating with different time zones to verify information. Other legal experts providing evidence to the inquiry contend that 48 hours should be the maximum.
- **As the Committee notes in its report, the Attorney's Exposure Draft leaves ASIO's enhanced powers untouched.** Australians continue to be very concerned about the coercive, investigatory, police-like powers granted to an intelligence agency that does not have the same accountability or publicity as a properly constituted police force.
- **The Attorney's exposure draft does not address the myriad of problems revealed by the current process used to proscribe an organisation or individual,** which was universally condemned through this Inquiry, and the suggestion of an Advisory Committee universally supported. In fact, the government's Bill extends the duration of each listing, thus reducing the frequency of review.

1.6 Since the implementation of the controversial counter terrorism laws there have been several rigorous inquiries and detailed reports providing specific recommendations for reform.

1.7 While the Australian Greens were disappointed that it deepens rather than reverses aspects of the Howard-Ruddock terror laws, we commended the Attorney General for providing an opportunity for public comment on the 448-page National Security Legislation Discussion Paper and encouraged community engagement.

1.8 The Greens have also supported the speedy establishment of the promised reviewer of terrorism laws – indeed, we supported the passage of such an office, in stronger form, through the Senate in late 2008. This person is yet to be appointed, and the proposal that it be a part time position supported by two staff is absurd given the huge expectation on this office, and the daunting backlog of poorly drafted, draconian legislation that this office will confront.

1.9 Australia's parliament and community did not get an opportunity to hold a thorough and considered debate over the terrorism laws when they were introduced; nor did they consent to the substantial reallocation of resources away from healthcare, environmental protection and education to carelessly defined security imperatives and the entrenchment of a massive internal surveillance effort.

1.10 Now is the time for this thorough and considered debate about methods for reducing the risk of terrorist violence while strengthening our democracy and upholding the values which these laws were supposed to defend. We commend this bill as an important part of furthering this debate.

1.11 Finally, I wish to record my thanks to the Committee and its hard working secretariat for the constructive way in which all members engaged in this inquiry.

Senator Scott Ludlam
Australian Greens

