



Submission on Review of Counter-Terrorism Legislation

Background

1. The Council of Australian Governments (COAG) is undertaking a review of counter-terrorism legislation in Australia – federal and state. The legislation can be grouped into four categories – control orders, preventive detention orders, police powers, and other legislation.

2. This submission represents a Quaker approach to the principles involved in balancing an open society with the needs for security. Quakers have a spiritually-based commitment to affirming the divine and humane impulses that influence all people, and we seek to build a society where acceptance and mutual support are affirmed, and where everyone including those who are minorities can realise their hopes.

Principles

3. As a general principle, the Quaker Peace and Legislation Committee (QPLC) sees that a goal of public policy should be that individual Australians are able to enjoy the greatest possible freedoms compatible with the needs of others. Any move that reduces those freedoms needs to be examined carefully in order to ensure that it does not undermine democratic rights and responsibilities.

4. The Committee considers that the passage of more than 40 pieces of 'security legislation' since the 2001 attacks on the USA has placed significant impediments on individual freedom by giving unprecedented powers to ASIO and the Australian Federal Police. As a result, the criminal justice system has been put at risk of being subordinated to the fight against terrorism. It appears difficult for the Government to repeal legislation once it has been implemented, and this creates the environment for ongoing restrictions on liberties, regardless of how much the threat of terrorism changes. It is hard to get clear evidence that the new laws have made a real difference to the capacity of authorities to prevent terrorism.



5. Our preference would be for reductions in the threats to be matched by reductions in the range of legislation and executive power. We understand that many of the changes being proposed arise from the concerns of law enforcement and intelligence agencies. To some extent they seek to expand their own territory and skills and to make use of new technologies.

Legislation in Practice

6. The development of counter-terrorism legislation and policies in the past ten years has led to a significant increase in the potential limitations on freedom. The powers under the Criminal Code and other legislation given to ministers to proscribe organisations, and to police and intelligence agencies to detain and question people, are of concern as they create more opportunities for inappropriate treatment of people. This has been shown in several high-profile cases where substantial compensation has had to be paid from wrongful detention.

7. Several reports have raised concerns about these cases, as they reflect different aspects of national security – (a) the Clarke report on the Dr Haneef case (2008), (b) two Parliamentary committee reports on terrorism legislation (2006 and 2007), and (c) Law Reform Commission report on sedition laws (2006). These reports emphasised the need for clarification of meanings and additional safeguards in relation to law enforcement and investigative powers. The recommendations of these reports were largely accepted by the Government, whose stated aim is to balance its responsibility to protect Australia with public confidence that the means used are just and accountable.

8. The most recent provisions being introduced to respond to changing communication technologies – eg amendments to telecommunications and ASIO legislation - include stricter controls on the storage of information by internet providers, beyond what is allowable in, for example, Britain. These amendments again appear to have emerged largely from the security agencies themselves, and this gives them weight that may not be justified in the impact on citizens.

9. So long as Australia does not have a national Bill of Rights, many individuals and groups are likely to be concerned that their rights will not be adequately protected under counter-terrorism legislation. This means that, from our perspective, any legislation needs to be carefully scrutinised for its human rights impact. We notice that the 2020 Summit supported the idea of a Bill of Rights, and saw it as important for Australian policy-makers to review counter-terrorism legislation in relation to human rights. In addition the Summit felt that Australia should seek the most peace-building strategies that could be found for achieving a healthy society and good relations with our neighbours.



International Standards

10. The United Nations Global Counter-Terrorism Strategy adopted in 2006 focusses on four pillars – addressing the conditions conducive to the spread of terrorism, preventing and combating terrorism, building state capacity to counter terrorism, and defending human rights while combating terrorism. The United Nations has developed guidelines for member states to follow in responding to the threat of terrorism, and has foreshadowed an additional international treaty – a comprehensive convention on international terrorism. Already there are many international agreements on specific aspects of counter-terrorism. The Committee believes that Australia should as far as possible adopt measures that are consistent with those international standards. This would be in keeping with the Government's own stated intention of re-engaging with the United Nations system as a priority of foreign policy.

11. It is not clear how the counter-terrorism legislation meets the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory. There remains concern that the existing anti-terrorism legislation is in conflict with some aspects of the ICCPR, especially as the Australian Government does not appear to have followed the advice of the UN Special Rapporteur (2006) urging Australia "to move towards enacting federal legislation implementing the ICCPR and providing remedial mechanisms for the protection of rights and freedoms".

12. In a similar vein, it would be desirable for the Review to examine the legislation in other developed countries for some measure of the extent of variation in Australia, and the possible reasons for this. The European Union has a well-developed set of policies on anti-terrorism, with the aim of combating terrorism globally while respecting human rights. The four strands involved are – prevent people turning to terrorism (tackle root causes), protect citizens from attack (improve security measures), pursue terrorists (impede networks and funds), and respond (help prepare for terrorist event). This is a reminder that any anti-terrorism approach must be seen in a wider context than legislation and regulation, and must include programs that address causes.

13. A different perspective emerges from the USA. The National Defence Authorisation Act has been challenged because it allows the Government to detain citizens indefinitely at military facilities for posing a security risk. A Federal Court Judge has issued an injunction suspending the operation of this law because it is too open-ended and compromises accepted rights. There is likely to be an ongoing legal tussle about this, and it is an example of the delicate balance between national security concerns and the rights of citizens to freedom of expression, association etc. This could have lessons for Australia.

14. The Joint Parliamentary Committee on Intelligence and Security has recommended that there be an Independent Reviewer of Terrorism, and this seems an important way for Australians to have confidence in the provisions that are being made by the Government.



Conclusion

15. Acts of terror are unacceptable in our world, and everyone has a responsibility to reject a violent approach to life. The Government can assist best through an integrated approach similar to that of the European Union, with policies that focus on removing the causes of terrorism, protecting citizens, pursuing offenders, and assisting people to work together against any attack.

16. The criminal justice system in Australia, and the rights of individuals, have been put at risk by the wide-ranging nature of counter-terrorism laws adopted in recent years. Many of these laws have given unprecedented power to law enforcement and intelligence agencies, with insufficient oversight by Parliament. There are no sunset provisions for most of the legislation, and this increases the chance of circumstances changing for the better without laws being removed.

17. The absence of significant increases in violent crime in Australia in recent years suggests that the threat of terrorism has been overplayed in order to justify greater resources being diverted into law enforcement.

18. In the absence of a Bill of Rights, Australians will remain poorly protected from abuses of police and other authorities. The International Commission of Jurists has pointed to the need for states to reassert core values and principles of international law.

19. Australian approaches to terrorism should be guided by the framework set by the United Nations, and should pay particular attention to the UN resolutions on ensuring human rights are protected when acting against the threat of terrorist acts.

20. Ongoing Parliamentary scrutiny of counter-terrorism policies and agencies is essential.

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