

Liberty Victoria – Victorian Council for Civil Liberties

**Submission to the Senate Legal and Constitutional  
Affairs Legislation Committee**

**Security Legislation Amendment  
(Terrorism) Bill 2002  
Submission No.1**

The Secretary  
Senate Legal and Constitutional Committee  
Parliament House  
Canberra ACT 2600

**1. Introduction**

- 1.1 The Victorian Council for Civil Liberties Inc – Liberty Victoria (Liberty) is an independent non-government organisation which traces its history back to the first civil liberties body established in Melbourne in 1936. Liberty is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognised by international law. Liberty's contribution is well known to Senate and House committees we have campaigned extensively in the past on issues concerning democratic processes, government accountability, transparency in decision-making and open government.
- 1.2 Before directly addressing the provisions of the *Security Legislation Amendment (Terrorism) Bill 2002*, we wish to make a number of preliminary comments. The first is to inform the Senate Committee that this submission will only be addressing one Bill. Liberty will forward a supplementary submission on the other terrorist related bills during the course of next week. As the Committee is aware, the timeframes in which to respond to these bills, along with other unrelated Bills including 13 proposed international treaties, is extremely short as a result we have been unable to examine all the terrorist related bills. We draw the Committee's attention to the fact that short timeframes are essentially undemocratic, they severely curtail public participation and consultation. Liberty hopes that this situation will be remedied in the new future to allow proper scrutiny of bills. We also wish to inform the Committee that Liberty Victoria desires to appear before the Senate Committee when it is in Melbourne on the 17/18 April.
- 1.3 Secondly, whilst Liberty abhors the murder of innocent people for political ends wherever it occurs, we believe that the Government has failed to establish a case for the necessity for a new offence of terrorism. The Government currently has sufficient means/laws at its disposal to deal with terrorist threats. There is existing legislation covering murder, conspiracy, aiding and abetting, kidnapping, conduct likely to involve serious risk of loss of life, personal injury, damage to property, all involving heavy penalties. It

is intellectually dishonest to exploit public fears and anxieties about terrorism by introducing laws for which no justification has been or could be made. Existing laws adequately deal with any crimes that could reasonably or sensibly be described as terrorism.

- 1.4 Thirdly, we wish to point out that the term ‘terrorist’ and ‘terrorism’ is not value-neutral. Due the linking of refugees with notions of ‘illegality’, ‘criminality’ and ‘possible terrorists’, by the Howard Government during the last federal election, and the failure of the Opposition to counteract that linkage, the term ‘terrorist’ is now inextricably linked with people from Arabic or Middle-Eastern background or with people of the Muslim faith. Political expediency has ensured that the term has heavy undertones of racial and religious stereotypes, with prejudice rather than commonsense often underlying political and public discourse on terrorism.
- 1.5 Fourthly, and closely related to the third point, Liberty wishes to highlight how prejudice and ill-conceived laws contribute to injustice. We note that the definition of ‘terrorism’ in the bill is almost word for word of that in the *Terrorism Act 2000* (UK), a bill whose precursor was the *Prevention of Terrorism Act 1974* (UK) which contained the same definition. Need we remind the Committee of the Guilford Four, the Birmingham Six and the McGuire Seven, amongst others of Irish extraction, who were convicted under that Act and at later trials subsequently acquitted. Part of the reason for those convictions was the surrounding political context which at that time too often equated ‘Irishness’ with ‘terrorist’, irrespective of evidence to the contrary. Indeed, Gerry Conlon (Guilford Four) was one of the first people detained under that Act, an Act that like the proposed amendments to ASIO powers, allowed the indefinite detention of persons without access to a legal representative. It was during that indefinite detention that the evidence was produced which convicted Conlon, evidence that was later proven to be false. Injustice is often the result of hastily and ill-conceived laws implemented in a conflictual or prejudiced climate, Governments need to exercise caution in such a climate. History has demonstrated greater powers invariably lead to greater abuse. The types of power envisaged should only be given in situations of demonstrated necessity. There is no evidence that the additional powers are required indeed their existence would not have prevented the tragic events of September 11. Why then are they required?
- 1.6 Finally, we wish to draw the Committee’s attention to longstanding conventions of the rule of law in respect of criminal offences:
- (a) The rule of law requires that all persons be protected from arbitrary power.
  - (b) Everyone is to be presumed innocent until proven guilty according to the law.
  - (c) Any person arrested or detained on a criminal charge, or indeed suspected of criminal activity, will have the right to a lawyer and to be brought promptly before a Judge or other officer authorised by the law to decide the lawfulness of the arrest or detention.
  - (d) All persons are equal before the law and are entitled without discrimination to equal protection of the law.
  - (e) The government and designated authorities have a duty to comply with

- (f) Everyone should have an effective means of redress against government administrative and executive decisions.
  - (g) The independence of the legal profession and the judiciary must be protected; and
  - (h) Any domestic legislation must comply with international laws relating to human rights and fundamental freedoms, including thought, freedom of expression, conscience and religion, right of peaceful assembly and demonstrations, and the right of freedom of association.
- 1.7 Under no circumstances should the values outlined in 1.6 be undermined. They are essential values underpinning democratic governance and the rule of law. The Government has not provided any urgent evidence for derogation from these principles.

## **2 Definition of Terrorism**

- 2.1 Liberty believes that the definition of terrorism is defined too broadly and is too vague and unwieldy. Given the broad powers in the bill and the overturning of traditional conventions, specifically reversal of the burden of proof, the definition needs to be as precise as possible. Liberty is concerned that despite the fact that 'lawful advocacy, protest or dissent, or industrial action' is not included in the definition, because of the imprecise nature of the definition and the political or ideological positions of changing governments this definition can and may be interpreted through a political lens which will see political activity such as public demonstrations or unplanned industrial activity, which is clearly not terrorist activity, caught within the provisions.
- 2.2 Two examples illustrate this possibility. The nurses union goes on strike for better pay and conditions, subsequently this strike results in the partial shutdown of beds and certain machinery in public hospitals. This action could fall within s101.1(2)(d) 'creates a serious risk to the health or safety of the public or a section of the public', yet this is clearly not terrorist activity. If the nurses union is caught within this section various legal consequences then occur such as the union may be listed as a proscribed organisation which then has further consequences in terms of its financial assets and indeed the membership of the nurses union.
- 2.3 Another example is provided by reference to human rights NGOs like Amnesty International who may issue an alert to its membership and like-minded organizations to fax or email a government to condemn or protest about the impending execution of a prisoner of conscience. This activity may bring such an organisation within the provisions of s101.1(2)(e) 'seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to (i) an information system; (ii) a telecommunications system, etc.
- 2.4 Liberty wants assurances that this type of legitimate industrial or protest activity will not be caught within the provisions of this Act. In addition, we wish to point out that debate and protest are not antithetical to democracy but are an essential element of a thriving democracy. The lack of precise language gives Liberty great cause for concern that groups that do not fit in with a governments political persuasion or political agenda may find themselves targeted under this legislation.

- 3.1 Liberty believes that this bill gives too much power to the Attorney-General to list organizations as a proscribed group. We note that there does not appear any provision requiring the Attorney-General to make a case against an organisation before a Judge in order to proscribe it. An organisation can be proscribed without proof of any wrongdoing. We further note that the Attorney-General can revoke a declaration if he is satisfied on reasonable grounds that none of the paragraphs in s101.2(1) apply, however, the offence is one of strict liability where the burden of proof is reversed. We believe that the Executive Government has too much power in relation to the proscription process and that this **clearly contravenes the doctrine of the separation of powers.** Liberty opposes this section under all circumstances; groups should not be rendered illegal via a process which in itself is highly questionable in relation to the principles of the rule of law.
- 3.2 In addition Liberty believes that some form of compensatory damages should be applicable in the event that due to a wrongful listing an organisation suffers damage to its reputation or suffers financial loss. The inclusion of compensatory provisions are consistent with the principles of natural justice.
- 3.3 We advise the Committee to instruct its researchers to look at Lord Avebury's comments in relation to the similar proscription provisions in the UK Act. Lord Avebury quite rightly objected to the broad powers of the Home Secretary to proscribe organizations pointing out that organizations which supported Nelson Mandela during the apartheid era, and the post 1975 East Timorese resistance movement, amongst others, would all be considered terrorist and listed as proscribed organizations. Further, a look at the proscribed groups under the original UK Act one notices that only Irish pro-republican and pro-loyalists groups are listed, under the new act this list has been up-dated to include almost exclusively Islamic organizations. Recent political history is full of terrorist activity initiated by groups outside of these two groupings. The propensity to target specific religious and racial groups is demonstrated in the selectivity of the groups listed under the UK provisions.

#### 4. Additional Comments

- 4.1 Liberty has further concerns in relation to the reversal of the burden of proof, the creation of strict and absolute liability offences in respect of penalties which involve imprisonment, the broadness of terms such as 'likely to endanger the security or integrity of the Commonwealth or another country', and we wish to examine constitutional aspects of this bill vis-à-vis the Menzies' Government *Communist Party Dissolution Act*.
- 4.2 These issues plus the amendments to the ASIO powers will be forwarded in a subsequent submission to this Committee and the Committee inquiring into the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* by Friday 12 April.

**Liberty Victoria**  
**Level 4,**  
**360 Little Bourke Street**  
**Melbourne Vic 3000**

**Ph: 9670 6422**  
**Fax: 9670 6433**

Email: [vccl@iosphere.net.au](mailto:vccl@iosphere.net.au)

5 April 2002