

Liberty Victoria – Victorian Council for Civil Liberties

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

**Security Legislation Amendment
(Terrorism) Bill 2002
Supplementary Submission**

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

1. Introduction

- 1.1 As foreshadowed in our first submission, due to the short timeframes allotted to examine the anti-terrorist bills, Liberty makes this supplementary submission to expand more fully on the issues raised in our first submission.
- 1.2 We commence by reiterating that Liberty believes that the Terrorist Bill is unnecessary. The offences are sufficiently covered by existing law and the Government has made no case for the creation of any new offence.

2. Strict and Absolute Liability

- 2.1 There is a longstanding presumption that the prosecution should bear the onus of proving intent. Proof of guilt for most criminal offences requires proof, not only that the prohibited action was committed, but also that the action was committed with intent (i.e. guilty mind), or with recklessness or negligence.
- 2.2 The Government has reversed this longstanding presumption by creating offences of strict and/or absolute liability in ss 101 and 102. Notwithstanding that ss 101.2(2), 101.4(2), 101.5(2), 101.6 and 101.1 require proof of intention, the penalties range from imprisonment for 25 years up to life imprisonment, a penalty which can be imposed even if the ‘terrorist act’ did not occur.

- 2.3 Offences of strict liability have hitherto been confined to offences such as speeding, and offences of absolute liability have been confined to offences (generally revenue offences such as making a false entry under the *Customs Act*) which have monetary “penalties” attached and which carry no suggestion of moral turpitude. To extend such concepts to offences carrying imprisonment for an extensive period is a fundamental – and unwarranted – alteration to our system of law.
- 2.4 While all these offences carry life imprisonment, the offences which have the greatest potential to involve persons innocently caught up in a terrorist plan – because they possess, collect or make something or train someone – are made offences of absolute liability.
- 2.5 The range of innocent people who could be charged is enormous – for example, the push-bike courier who collects an electrical switch and delivers it to the home of an Irian Jaya activist with a bumper sticker saying “Support Irian Jaya Independence Movement Against Indonesian and Australian Imperialists” on the front door. The bike courier does not stop to think about the possibility that this light switch could be part of a bomb to be smuggled into Irian Jaya (see s.101.1(3)(b)). Yet he would have to prove he was not reckless with respect to the possibility that the light switch might be used in preparation for a terrorist act.
- 2.6 The bomb maker – who does not face a reverse onus – faces the same penalty. The courier could be convicted even though the alleged bomb maker was not.
- 2.7 Liberty considers that strict or absolute liability has no place in relation to criminal offences. In a free and democratic society, wherever criminal charges carry the possibility of loss of liberty the prosecution must bear the burden of proof. It is completely inappropriate to subject to the criminal process citizens who are not at fault.
- 2.8 The use of strict and absolute liability in this legislation offends **Article 11(1)** of the ***Universal Declaration of Human Rights***, which states as follows:
- “(1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

- 2.9 We have previously urged the Committee to reject these offences. In the alternative, the Committee must ensure that the offences are created in accordance with established criminal law principles.

3 Treason

- 3.1 Section 80.1(3) states that a proceeding against treason must not be commenced without the Attorney-General's written consent. This will inevitably politicise the prosecution process. The fact that this procedure is used in other legislation (such as found in s16(1) of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990 (Cth)*) provides no justification for making the same provision in relation to treason.

- 3.2 Section 80.1(2)(b) makes it an offence not to inform the authorities of a possible act of treason. In relation to s80.1(1)(f), the scope for political use or abuse of this provision can be highlighted by reference to Irian Jaya, East Timor, and Bouganville. For example, an Opposition politician trying to negotiate a peaceful outcome with guerrilla independence forces - an outcome which would be implemented upon a change of government - would be caught within these provisions. Likewise in Sri Lanka, where the former Opposition (now Government) negotiated directly with the guerrilla Tamils prior to the election. This approach proved successful, with a subsequent cease-fire in place, but the negotiators would have been at risk under a provisions like s.80.1(2)(b).

4 Additional comments on the definition of Terrorism and the Proscription of Organisations

- 4.1 Writing in the *Australian* (10/04/02), Professor George Williams, of the Gilbert and Tobin Centre of Public Law, University of NSW, argued that s 102 should be dropped from this legislation. He pointed to the disturbing similarities between this Bill and the Communist Party Dissolution Act passed by Federal Parliament in 1950. Liberty Victoria shares that concern.

- 4.2 As Professor Williams said, the Communist Party bill "gave the Governor-General an unfettered, and unreviewable, power to declare communist organizations to be illegal". Whilst there would be scope for judicial review of decisions under s.102, to empower a member of the Government to ban an organisation on political grounds remains quite unacceptable. It conflicts

with the separation of powers, by conferring an adjudication function on a member of the executive government.

- 4.2 The definition of “terrorism” means that pacifist followers of the Dalai Lama might well be caught within the definition, and might be declared a proscribed organisation. groups. This is simply unacceptable.
- 4.3 This legislation is capable of being used, and indeed is likely to be used, against environmentalists and others who are working towards changing aspects of our society which they believe cause injustice. In recent years there has been a sustained attack on non-violent environmental groups, often labelled as ‘eco-terrorist’ by sections of the media. In one case in Victoria, a person was placed on a list of suspected terrorists by the Counter-Terrorism Intelligence Group of the Victoria Police, for no reason other than that he had complained to the local health surveyor about the quality of his water supply – in an area subject to logging.
- 4.3 Of deeper concern is the political and social perspective which underpins this legislation. Liberty highlighted some of these concerns in section 1.2 to 1.6 of the first submission. However, further comment is warranted.
- 4.4 In the past few years there appears to have been a concerted effort by the Federal Government and its supporters to undermine essential institutions underlying Australian democracy. Attacks on the High Court and the politicisation of the defence forces are just two examples. We refer also to -
- the pejorative use of the label ‘elitist’ to disparage those holding views different from the prevailing political, social or economic orthodoxy;
 - the contemptuous attitude of Ministers towards ‘academics’ or ‘intellectuals’;
 - repeated attacks on unions, and the vilification of refugees and Muslims.
- 4.5 These events bear a disturbing resemblance, not just to the period of anti-communist hysteria in Australia in the 1950s but also to the politics that emerged in parts of Europe during the 1920s.
- 4.6 International human rights institutions have also come under sustained and

UN human rights bodies need to be "updated" and "reformed" sound hollow when it is the Government's own appalling human rights record which has attracted UN attention in the first place.

5. Concluding Remarks

Legislation of this kind will reduce respect for the rule of law generally. It will do this because of the inevitable injustice it will cause, and because it has the capacity to render illegal things which many people think to be right. Once, legislation of this kind would have been rejected out of hand, as similar legislation was rejected at the height of the Cold War in 1952. It should be rejected again today.

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