



The Uniting Church in Australia

**Submission to Senate Legal and Constitutional Committee on:**

***Australian Security Intelligence Organisation Legislation  
Amendment (Terrorism) Bill 2002***

**From**

**National Social Responsibility and Justice**

**Uniting Church in Australia**

**and**

**The Justice and International Mission Unit**

**Uniting Church in Australia, Synod of Victoria and Tasmania**

**7 November 2002**

The Uniting Church in Australia, in its Statement to the Nation offered on the occasion of the Church's inauguration in 1977, made the following affirmations:

*We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.*

In this Statement, the Uniting Church also pledged itself to overcome injustices wherever they occur and to oppose all forms of discrimination which infringe basic rights and freedoms. It is on the basis of these affirmations and commitments, reflections of the Christian gospel, that National Social Responsibility and Justice (NSR&J) and the Justice and International Mission (J&IM) Unit of the Synod of Victoria and Tasmania offer this submission.

NSR&J and J&IM remain concerned that the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* allows for significant violations of established international civil and political rights without demonstrated precedents of how the legislation will improve the prevention of terrorist attacks in Australia.

### **Opposition to Terrorism**

NSR&J and J&IM are opposed to the use of terrorism wherever it occurs by anyone, regardless of the motivation of the terrorism. We believe that we are called, as a Church, to reject the ways of violence and instead put our efforts into radical peace-making initiatives. Therefore, NSR&J and J&IM support any action to deter terrorism in any form, provided such measures do not violate other basic human rights. The two bodies welcome government and community actions to end terrorism and to remove any injustices that may motivate people to commit acts of terrorism.

However, the two bodies are aware that the current climate in Australia is one of heightened concern with regard to terrorism and that in such a climate the suppression of civil and political rights and a heavy-handed approach to security and policing is more readily tolerated. The bodies note with concern the recent raids on homes by ASIO and the Australian Federal Police in which the use of force and weaponry involved seemed out of proportion with the purpose of the raids. It is of concern to the bodies that in the current climate few in public political life were willing to raise any concerns over the way the raids were carried out. This climate serves to heighten our concerns about increasing the powers of ASIO and the Australian Federal Police.

### **Concerns with the Bill**

The specific concerns of the two bodies with the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* are that:

- People not be detained by ASIO or the Australian Federal Police for the purposes of collecting information;
- People suspected of involvement in terrorist offences should be afforded the same rights and protections as any other person arrested for alleged offences, which should include:
  - The presumption of innocence;
  - Access to a lawyer of their choice;
  - Detention for only a reasonable time prior to being charged; and
  - The right to seek bail.

### **Access to a Lawyer**

The Bill does allow a detained person access to a lawyer approved by the Minister in some circumstances. However, the Minister is given the power to deny access to even an approved lawyer if the Minister believes that a terrorism offence is about to be committed and that it is appropriate to deny the person contact with a legal adviser. NSR&J and J&IM believe that access to a lawyer of the detainee's choice is a fundamental right. The right to a lawyer of the detainee's choice is guaranteed in Principle 1 of the *UN Basic Principles on the Role of Lawyers 1990*.

Even where access to a lawyer is permitted, any discussions between the person detained and the lawyer can be monitored by the person exercising the authority under the warrant. The right to consultations with a lawyer that "may be in sight, but not within the hearing, of law enforcement officials", is guaranteed by Principle 8 of the *UN Basic Principles on the Role of Lawyers 1990*, Principle 18(4) of the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988* and Principle 93 of the *UN Standard Minimum Rules for the Treatment of Prisoners 1977*. Further, Principle 22 of the *UN Basic Principles on the Role of Lawyers 1990* states:

*"Governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."*

The Bill also allows for the lawyer or legal adviser to be removed during questioning if the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning. This latter point is a highly subjective test.

### **Length of Detention**

It is unreasonable to detain someone for any period beyond a few hours without the person being charged with a criminal offence. The current Bill allows for continuous detention without charge for 168 hours. Further, the Bill does not specify any period before which a person may be detained again after the period of 168 hours. Therefore, presumably a person could be detained for 168 hours, released for a short period and then detained again for another 168 hours.

### **Incommunicado Detention**

Section 34F 'Detention of Persons' continues to allow for the possibility of incommunicado detention. Incommunicado detention would appear to be a violation of:

- Principles 7 and 8 of the *UN Basic Principles on the Role of Lawyers (1990)*;
- Principles 16, 17, 18 and 19 of the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)*; and
- Principles 91, 92, 93 and 95 of the *UN Standard Minimum Rules for the Treatment of Prisoners (1977)*.

### **Humane Treatment**

The two bodies welcome the inclusion of section 34J 'Humane treatment of person specified in warrant' and provisions for judicial review of detention as safeguards into the Bill. NSR&J and J&IM also welcome the fact that knowingly contravening section 34J carries a penalty of up to two years imprisonment. However, NSR&J and J&IM remain concerned at the lack of detail with regard to the standards of what would constitute humane treatment. For example, would a detainee be granted access to any necessary medical treatment? Would they have any say over who the medical professional treating them while in detention would be?

NSR&J and J&IM note that the Parliamentary Joint Committee on ASIO, ASIS and DSD in their "*An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*" recommended that protocols be developed in relation to the Bill on issues such as custody, detention, interview duration periods and breaks required during detention. The Committee recommended that the Bill not commence until the protocols are developed and in place. To our knowledge these protocols are yet to be developed and there is nothing in the Bill that would delay its applicability until these protocols were in place.

### **Detention of Children**

NSR&J and J&IM are concerned that the recommendation by the Parliamentary Joint Committee on ASIO, ASIS and DSD in their "*An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*" that the power to detain and question a person under 18 be struck from the Bill has been ignored.

### **Right to Silence**

NSR&J and J&IM also remain concerned at the blanket removal of the right to silence in section 34G. Such a provision could be used in an attempt to compel professionals such as doctors and lawyers to answer questions that would cause them to breach their ethical obligations of confidentiality. This could result in violations of:

- Principle 16 of the *UN Basic Principles on the Role of Lawyers 1990*, which states that governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution

for any action taken in accordance with recognised professional duties, standards and ethics; and

- Principle 22 of the *UN Basic Principles on the Role of Lawyers 1990*.

### **Detention of Foreigners**

In the case where the person detained is a foreigner, the Bill does not guarantee the person the ability to promptly communicate by appropriate means with a consular post or the diplomatic mission of the State of which they are a national, as guaranteed in the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988*.

### **Existing ASIO and Police Powers**

It is the understanding of NSR&J and J&IM that ASIO and State, Territory and Federal Police already have access to warrants to tap telephones, intercept mail and intercept internet activity, in the search for information concerning possible terrorist threats. ASIO has access to warrants to enter premises and search them secretly. In the opinion of NSR&J and J&IM these existing powers reduce the need for additional legislation granting even further powers.

It is not necessary for the Australian Federal Police to gain additional powers to detain or question people suspected of offences related to terrorism. Currently the Australian Federal Police and State Police have the power to arrest, detain and question someone suspected of terrorist offences (Part1AA, Crimes Act 1914). Anyone who is suspected of conspiring to commit terrorist offence on reasonable grounds is extremely unlikely to obtain bail and therefore would be extremely likely to be held in custody.

### **Recommendation**

For the concerns outlined above, National Social Responsibility and Justice and the Justice and International Mission Unit believe that the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* should be rejected.

Rev David Pargeter  
Director  
Justice and International Mission Unit  
Synod of Victoria and Tasmania  
Uniting Church in Australia  
130 Little Collins St  
Melbourne, Victoria, 3000  
Phone: (03) 9251 5271  
Fax: (03) 9650 4490  
E-mail: david.pargeter@vic.uca.org.au

Rev. Elenie Poulos  
National Director  
Social Responsibility and Justice  
Uniting Church in Australia  
PO Box A2266  
Sydney South, NSW, 1235  
Phone: (02) 8267 4239  
Fax: (02) 8267 4222  
E-mail: eleniep@nat.uca.org.au