

QUAKER PEACE AND LEGISLATION COMMITTEE

Submission on Counter-Terrorism (Foreign Fighters) Legislation 2014



Background

1. This is a response to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 currently before Parliament.
2. This submission, from a national committee of Quakers, represents a Quaker approach to the issues 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 it as a goal of public policy 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 is at risk of being subordinated to the fight against terrorism. It is hard to get clear evidence that new laws have made a real difference to the capacity of authorities to prevent terrorism. Also, administering such a plethora of legislation is a challenge for those entrusted with its enforcement.
5. It is of concern to us that the recently-retired Independent Monitor of National Security Legislation, Bret Walker SC, said recently (*The Canberra Times*, 23 Sept article by Michaela Whitbourn) that the existing preventive detention laws were useless as they did not allow someone detained to be questioned, whereas there was already a power to detain for questioning someone suspected of

terrorism. In the same article, George Williams (UNSW) said that the government's intention to extend the preventive detention orders provisions came as a surprise, and Ben Saul (University of Sydney) spoke of the 'creeping expansion' of laws allowing people to be detained without the same safeguards or scrutiny of people following an arrest and charge.

New Legislation

6. The National Security Legislation Amendment Bill that has been passed by Parliament this week, gives greater protection to ASIO to disrupt computers, and its officers immunity from prosecution in special intelligence operations. It also imposes long imprisonment on anyone who discloses information about such operations. We have considerable reservations about the powers given under this legislation, especially as they may apply to journalists. We agree with the reported comments of Tim Wilson, Human Rights Commissioner with special concern for freedom of expression, who told *Fairfax Media* (29 September) that the law was too broad and could lead to ASIO being unaccountable for even botched operations.

7. The current legislation, the 'Foreign Fighters' Bill, seeks to proscribe travel to certain areas of conflict overseas, and will have the effect of requiring anyone travelling there to show cause why they should not be seen as engaging in terrorism. It will also enable control orders (such as were imposed on David Hicks) to be easier to get for monitoring people returning from such conflict zones. We are concerned that this will reverse the onus of proof, and provide little opportunity for returning fighters who come to regret their involvement to be helped to a different path.

8. It seems that the Government is responding to the publicity surrounding recent barbarous acts in Iraq and Syria, and the potential recruitment of Australians to fight with such groups as ISIL. It also seems that the advice of the intelligence agencies is being given more weight than concern about how to build community harmony and support initiatives for seeking and removing the causes for the recruitment of fighters. In this we see danger to the mutual acceptance of diversity upon which our society depends for peace.

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 such counter-terrorism legislation. This means that, from our perspective, any legislation needs to be more carefully scrutinised for its human rights impact.

International Standards

10. The United Nations has developed guidelines for member states to follow in responding to the threat of terrorism, and is seeking 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. In a statement in New York on 30 September 2014, Jeffrey Feltman, UN Under-Secretary General for Political Affairs, emphasized the need “to avoid responses to terrorism that are carried out in a way that exacerbates the problem – when efforts are not sufficiently targeted and entire communities feel victimised by human rights abuses committed in the name of counter-terrorism”.

11. Despite the claims of the Attorney-General, 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. E remain concerned 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, we would like to see the government 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.

Conclusion

13. 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, with policies that focus on removing the causes of terrorism, protecting citizens, pursuing offenders, and assisting people to work together against any attack. The proposed legislation appears to be an overreaction to recent events in Iraq and Syria and their impact within Australia.

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

15. We applaud the government's decision to allocate significant funds towards community engagement programs. We believe such an approach has greater potential to interrupt the flow of people seeking to identify with, and fight for, foreign terrorist groups.

16. Our view is that the Foreign Fighters Bill is not required, and poses significant risks to freedom of individuals. It also has the potential to cause further divisions in the Australian community.

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2 October 2014