



As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

*In response to concern about the dangers posed by extremism and terrorism, the Federal Government has plans to introduce several pieces of legislation, including one to amend the Criminal Code so that the Australian Defence Force can target a broader range of IS combatants, and another to provide for preventive detention of high risk offenders in Australia.*

### The Context

On 1 September 2016 the Prime Minister, Malcolm Turnbull MP, addressed the House of Representatives on national security along the following lines:

- ! In the past year there have been 40 Islamist terrorist attacks, leading to the deaths of over 700 people globally.
- ! Daesh (IS) is the major threat, and Australia's threat level has been raised to 'probable'.
- ! The military contribution by Australia (400 from the Australian Defence Force) has helped reduce Daesh-controlled territory by half in Iraq and over 20% in Syria, and the training given to local forces is building a capacity for achieving a stable peace.
- ! The Australian Government plans to amend the Criminal Code to bring our laws on war crimes more into line with international humanitarian law and give the ADF the capacity to "target and kill a broader range of Daesh combatants".
- ! The Government is presenting legislation to Parliament to (a) provide for post-sentence preventative detention for high-risk offenders, and (b) stronger control order provisions.

### Suggested Action

*There are three pieces of legislation before Parliament – listed below. We support moves to restrict the trafficking of firearms. We are cautious about extending sentences beyond the normal limits without significant checks and balances. We are concerned to ensure that changing the definition of war crimes may lead to Australian forces engaging in areas where civilian casualties are more likely.*

*We encourage you to ask Members and Senators about the details of the legislation and their implications, to ensure that human rights are fully protected in accordance with international standards. Contact details for MPs and Senators are on the website [www.aph.gov.au](http://www.aph.gov.au)*

## The Legislation

The Criminal Code Amendment (Firearms Trafficking) Bill 2016 was introduced into the Senate on 15 September 2016 and provides for a mandatory minimum sentence and increased maximum penalties for the offences of trafficking firearms within Australia, and into and out of Australia. The Bill is assessed as compatible with human rights.

The Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 was introduced into the Senate on 15 September 2016. It establishes a scheme for the continuing detention of high-risk offenders who are considered by a judge in civil proceedings to present an unacceptable risk to the community at the conclusion of their custodial sentences. The Bill is assessed as human rights compatible. The Joint Committee on Intelligence and Security has held an enquiry into the Bill and is due to report shortly.

The Criminal Code Amendment (War Crimes) Bill 2016 was introduced to the House of Representatives on 12 October 2016. The Bill amends the *Criminal Code Act 1995* to ensure consistency between Australian domestic law and international law with respect to the treatment of members of organised armed groups in non-international armed conflicts. It is assessed as compatible with human rights. The Bill has been referred to the Joint Committee on Intelligence and Security.

Full details of the legislation can be found in the Bills and Committee sections of the Parliament website – [www.aph.gov.au](http://www.aph.gov.au)

The War Crimes Bill is being considered at a time when a Supreme Court judge is investigating allegations of war crimes committed by Australian soldiers during the war in Afghanistan. According to an *ABC News* item (13 October 2016) Commando Kevin Frost said he helped hide “the unlawful execution of a captured enemy fighter”, and that he believed there were other similar incidents that should come to light. The Defence Department has confirmed that the allegations are being investigated. *A useful reference on war crimes is [https://en.wikipedia.org/wiki/War\\_crime](https://en.wikipedia.org/wiki/War_crime)*

Kevin Boreham (International Law, ANU) made the following points about this Bill in an article in *The Conversation* on 30 September 2016:

- ! The Government plans to amend section 268 of the Criminal Code to clarify that the war crimes offence of murder would not apply to members of an organised armed group or to collateral civilian deaths resulting from a lawful attack.
- ! In international humanitarian law, a lawful attack is one that conforms to principles of military necessity and humanity- that is, only to the degree ‘that is required in order to achieve the legitimate purpose of the conflict. Namely, the complete or partial submission of the enemy at the earliest possible moment, with the minimum expenditure of life and resources’.
- ! These proposed amendments, when released, should be examined carefully. They must maintain the constraints on military operations imposed by international humanitarian law, which are carefully observed by the Australian Defence Force.

## United Nations Response

In a media release on 18 October 2016, United Nations independent expert Michel Forst called on the Government of Australia to urgently dispel civil society’s growing concerns

about the combined 'chilling effect' of its recent laws, policies and actions constraining the rights of human rights defenders.

"I was astonished to observe mounting evidence of a range of cumulative measures that have concurrently levied enormous pressure on Australian civil society," said the UN Special Rapporteur on the situation of human rights defenders at the end of his first fact-finding visit\* to the country.

"This situation can be reversed and improved. The Government should start re-building confidence of human rights defenders," he said. "For that purpose, I urge the Government to consider adopting a national action plan on human rights, through meaningful consultation with civil society." The UN Special Rapporteur expressed his readiness for further constructive dialogue to identify ways to help ensure enabling environment for human rights defenders in Australia.

During his two-week visit, at the invitation of the Government, the expert met with vast range of federal and state officials, members of the parliament and judiciary, statutory bodies, as well as human rights defenders and representatives of civil society, media and business. Mr. Forst will present a final report with his findings and recommendations to the Human Rights Council in 2017.

### **Quaker Perspectives**

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.

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.

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.

Canberra  
October 2016