



# *Australian Education Union*

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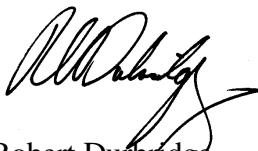
The Secretary  
Senate Legal and Constitutional Committee  
Parliament House  
Canberra, ACT, 2600

Dear Sir/Madam,

Herewith the submission of the Australian Education Union to the Committee regarding the package of Bills known as the Security Legislation Amendment (Terrorism) Bill, 2002 (No 2) and Related Bills.

The AEU would appreciate the opportunity of appearing before the Committee to support the submission and to answer any questions about it when hearings are conducted, preferably in Melbourne.

Yours sincerely,



Robert Durbridge  
Federal Secretary

## **Australian Education Union Submission into the Security Legislation Amendment (Terrorism) Bill, 2002 (No 2) and Related Bills**

The AEU does not support the package of bills proposed by the Federal Government as they are inadequate to increase the security of Australian citizens and concentrate on the wrong issues. The origins of insecurity lie much deeper than the proposed measures purport to address. Increasing penalties, instituting strict liability offences, reversing the onus of proof, giving extra powers to ASIO to detain and interrogate, banning organisations and removing rights to legal representation are superficial measures when confronted by a deteriorating global security environment.

The proposed measures are also unjustified breaches of civil liberties where striking the appropriate balance between security and liberties is concerned and can be addressed through existing legislation in the Federal, State and Territory spheres. Consequently, the Bills should be rejected pending further consultation or at least amended to remove their most objectionable measures as set out below. Policies to increase security should be implemented as discussed below.

### **Lack of Consultation**

The Australian Education Union deplores the lack of time and opportunity provided to Australian citizens on this matter which is vital to all those concerned to strike the right balance between security concerns and civil liberties.

It has been reported that officials of US Federal Bureau of Investigation have met with the Prime Minister and other officials over the six months since September 11 prior to these bills being introduced to the Federal parliament. Such access contrasts unfavourably with the two weeks afforded Australians to make submissions under the Senate Committee process.

The proposed legislation does not address the issues involved in countering terrorism but seeks to use powers of increased punishment and detection instead. It bears more than a passing resemblance to legislation introduced in other countries at the behest of the United States. This is an inadequate response in a world which is becoming increasingly dangerous and vulnerable to extremist thought and action and where simplistic responses may well prove counter-productive.

### **Growing Global Insecurity**

The position adopted by the Australian Government of slavish support for U.S. unilateralism, matched in the OECD only by the United Kingdom, reduces Australia to a component of the U.S. military and its strategy. The large number of U.S. bases in the country which play a key role in guiding U.S. naval, ground and air forces and targeting high-level bombing and rocket attacks adds to this scenario. The nature of Australia's military contributions does no more than give a "coalition" gloss to the U.S. unilateral actions.

The declared U.S. intention is to pursue a range of countries, including some in the Asia-Pacific region, and to stop them by military means if necessary from developing weapons which many other countries already have. This puts Australia at risk of being seen as hostile by nations such as China with which it is vital that peaceful and friendly relations continue. Where would Australia stand if China sides with Nth Korea against a U.S. attack?

## **AEU Policy on “Countering Terrorism”**

The views of the AEU’s Federal Conference on countering terrorism are attached. These were adopted unanimously on January 17<sup>th</sup> 2002 by delegates representing members in all states and territories of Australia.

The AEU’s approach centres on changing the conditions which are giving rise to terrorism by nations and individuals desperate for basic needs such as security, food and shelter. The damage to developing societies wrought by policies adopted by international financial institutions such as the International Monetary Fund lies at the heart of the rise of terrorism.

Corporate globalisation’s dominance since the end of the Cold War is raising questions as the consequence of its untrammelled progress is now evident in the destabilisation and impoverishment of many countries in the developing world.

## **Growing Instability in our Region**

The Committee may well reflect on the “arc of instability” which now surrounds this country in the Pacific region, a development which mocks the title of the region itself. As the dominant power in the South-West Pacific, Australia could well regret the growth of instability in the future. Instability has risen in line with the decline in Australian aid and the growth of inequality in the terms of trade with Australia, particularly over the past quarter century. The privatisation and deregulation formula pressed on nations like Papua-New Guinea has caused serious destabilisation. This failure of Australian policy, among others, requires more profound policy change and is not addressed by the measures contained in the Security Legislation package of bills.

## **Particular Concerns about the Scope of the Provisions**

As an affiliate of the Australian Council of Trade Unions the AEU supports the submission of that body. The following sets out some particular concerns relevant to AEU members.

The Bills would create offences of a very serious nature which are ill-defined and which could well bring within their scope people entirely innocent of terrorist knowledge or intent, potentially including members of the AEU. This would be most likely in relation to the provision of training as provided in S101.2 of the Security Legislation Amendment (Terrorism) Bill 2002.

While absolute liability is said to apply only to the connection with a terrorist act, (S101.2 (b)), a teacher who unknowingly provided training (S 101.2 (a)) which was connected to a subsequent preparation for an act, which may have never occurred (S101.2 (3)) would attract the penalty unless they could prove they were “not reckless” (S101.2(4) in providing the training. The reverse onus required here may be difficult to establish after the event when retribution may be an emotional public issue.

The Technical and Further Education (TAFE) system in all states and territories works closely with industry in the provision of relevant training. In most states and territories this includes the mining, building and agricultural industries. In the course of their work, a TAFE teacher could provide training in explosives to staff working at a coal mine unaware that one of the trainees later used the knowledge to plan an act outside Australia to advance a religious or political cause. Even if the act never occurred, the teacher would have to prove they were not reckless in not knowing the training could be used or was being undertaken with a terrorist act in mind to avoid conviction and imprisonment for life.

What would constitute recklessness in the provision of training and how is it distinguished from merely negligent, or completely careful training? This could make the difference between life imprisonment or a failure of prosecution. TAFE colleges and the teachers they employ are not in the business of conducting security checks on students and if the legislation is to require a standard of care then the resources and specific requirements should also be spelled out. Alternatively, the existing provisions of the criminal law should be considered which do not purport to establish strict liability and reverse the onus of proof.

## **Lawful Protest and Industrial Action**

The breadth of the definition of “terrorist act” includes interference with the provision of services, utilities and systems, including electronic systems (s100.1 (2)) done or threatened to advance a political, religious or ideological cause (s100.1 (b)) but not including lawful advocacy, protest or dissent; or industrial action, (s100.1 (b) and (c))

These exclusions may not cover the wide range of activities engaged in by unions such as the AEU in the course of pursuing the industrial, professional and social interests of its members. The AEU has supported and urged members to attend protests on causes such as Aboriginal Reconciliation, Women’s Rights, Anti-Union Laws and Independence for East Timor. In the course of such protests members may have stopped work and “seriously interfered” with a system used for the delivery of essential government services, that is an education system in a state or territory.

The term “industrial action” may be construed as having a meaning based on the constitutional powers of the Commonwealth in the Workplace Relations Act 1996. Because the Commonwealth’s powers are specified only in relation to the legal meaning of an “industrial dispute” where jurisdiction is provided, the protection afforded by the exclusion of industrial action could similarly be interpreted narrowly.

In case law there are also grounds for concern arising from narrow interpretations of industrial action where picketing is concerned for example as described in the ACTU submission.

Narrow definitions of industrial action could affect the defences available to members of the AEU and should be clarified in the proposed legislation to avoid unintended consequences.

## **Civil Rights**

The AEU is also concerned at granting the Attorney General the power to ban organisations and the consequences for individuals of belonging to or assisting such organisations. The provisions may well have made affiliation and assistance to organisations dedicated to the independence of East Timor or the ending of Apartheid in South Africa illegal and the AEU open to prosecution. (s102.2 (1) (d) and s102.4 (c)). Just how many of the AEU's 155,000 members would be open to a term of 25 years imprisonment as a result is not clear.

The onus on the defendant to prove they did not know about the activities of the organisation is an unnecessary reverse of the normal criminal onus of proof and an unwarranted infringement on the principle of freedom of association.

## **Increased ASIO Powers**

It is highly predictable that a Conservative government would see increased powers to ASIO as a means to increase security. The attempt by the Menzies Government to ban organisations deemed subversive and to detain, interrogate and imprison citizens, which was rejected by the Australian people by referendum in 1951 is in many ways echoed in the current proposals. Giving ASIO such powers now will not give citizens any great sense of security.

ASIO has been a conspicuous failure in maintaining security, having concentrated its attention on trade unions and progressive political parties since 1948 at the expense of preventing the activities of the only organisations dedicated to terrorism which were drawn from the far-right of Australian politics. The bombing of Yugoslav Airlines offices in Sydney in the 1970s is a case in point.

The most significant act of domestic political terrorism which resulted in the deaths and injury of police and municipal workers was the Hilton Bombing during CHOGM in Sydney in 1978. Many questions remain unanswered as to the true origin of this action and the detection and punishment of those responsible. The release of those originally convicted raised new questions. The involvement of ASIO itself in one way or another in this case has often been suggested, yet no agency, including ASIO, has yet satisfactorily cleared the air of these allegations. Unlike the United States, ASIO is not subject to scrutiny even subsequently through legislation such as the U.S. Archives and Freedom of Information laws.

Giving ASIO increased powers which erode current civil rights is not justified, particularly since ASIO's record in protecting domestic security is questionable.

## **Unlimited Detention and Interrogation by ASIO without Evidence or Legal Representation**

With respect to the questioning of suspects and non-suspects, the AEU opposes the removal of the requirement that the individual must be reasonably suspected of or charged with any crime. This normal requirement of criminal law should be retained.

The issuing of warrants on application to the Director General of ASIO to allow detention and questioning for 48 hours which can be extended by application to the Deputy President of the Administrative Appeals Tribunal with no right to contact a legal adviser, unless specifically granted, or other person other than government officials is draconian and extreme.

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill provides in S34F (8) that a person cannot contact anyone whilst they are in custody unless the warrant specifically allows for this. This includes legal representation which unless specified would mean that a person cannot contact a lawyer.

During questioning, a person is denied the right to remain silent and can be imprisoned for up to five years for failing to give information, or giving false and misleading information. This would include lawyers who were acting for persons otherwise charged.

## **Conclusion**

The Australian Education Union submits that the package of Bills before the Senate is inadequate in that they do not address the causes of insecurity and that the philosophy behind the measures is a simplistic response to a growing instability in our region and the world.

They are also unnecessary in that existing criminal provisions in the Federal, State and Territory spheres are extensive and contain powers and sanctions adequate to meet current threats. As such the measures proposed by the Australian Government will not stop the growth of terrorism. Rather, the measures risk criminalising the work of innocent people by bringing within their scope a range of activities which cannot be considered as contributing to terrorism in any way.

Consequently, the AEU calls upon the Senate Legal and Constitutional Committee to recommend rejection of the Security Legislation Amendment (Terrorism) Bill 2002 and Related Bills or at the very least to seek amendments in line with the above submissions.

**EXTRACT FROM THE MINUTES OF THE**  
**AUSTRALIAN EDUCATION UNION**  
**2002 ANNUAL FEDERAL CONFERENCE**

**INTERNATIONAL REPORT**

**Countering Terrorism**

The AEU strongly condemns the attacks in the USA on September 11, 2001 which resulted in a tragic loss of life as crimes against humanity.

We express our sympathies to all those who have suffered, particularly American educators and their families, and children everywhere who have directly or indirectly had their lives irrevocably changed as a result of this violent event.

Further we condemn all acts of terrorism, whether state sanctioned or the activities of individuals or small groups as indefensible. Those responsible for the September 11 attacks must be brought to justice.

This Conference believes that the response from the international community must be based on global values of human rights and justice, not retaliation which causes the further loss of innocent lives. The victims of this tragedy, like all victims, deserve justice not revenge.

We are concerned at the language of war being used by world leaders including our own political leaders in response to this attack and the prevailing environment of racism and xenophobia around the world. We condemn the attacks on Arabic and Islamic communities.

Military retaliation in response to this mass murder will only worsen the cycle of fear, anger and violence and result in further loss of innocent lives. War and violence is only serving to further the suffering of innocent people who have already endured invasions, civil war and drought in the past decades. The women and girls of Afghanistan have suffered savage repression by the Taliban regime.

Military action will provide no long term solution to the acts of terrorism. It is weakening the level of international support to bring the perpetrators of the September 11 attacks to justice, particularly in Muslim/Arab nations, and threatens to extend the crisis. The defeat of the Taliban has not achieved justice for the victims of these terrorist attacks – this will only be achieved in an international court of justice.

This Conference calls for:

- 1) renewed efforts by the international community to work within the UN structures to address terrorism;
- 2) long term solutions to human security which address the greed and inequities existing in the world that have resulted in millions of people, particularly women and girls, suffering from the violence inflicted by terrorism and war, or the lack of food, medicine and housing;

- 3) greater international efforts to resolve the Palestinian/Israeli conflict which has fuelled the tensions in the Middle East and the Islamic world.

Further this Conference urges the Australian Government to:

1. increase long term aid programs that address poverty and inequity in developing countries; and
2. work towards the improvement of organisations such as the United Nations and the International Court of Justice as part of an ongoing campaign to establish the rule of law, the pursuit of justice and the principles of peaceful resolution of conflict as the norms of international conduct.

We recognise that schools and educators have a responsibility to teach students the importance of resolving conflict in a humane, civilized and constructive manner. The actions of terrorists and aggressive responses undermine those teachings. Governments must play a leadership role in combating poverty and injustice as a prerequisite to a truly peaceful world.