

24 March 2005

Committee Secretary
Parliamentary Joint Committee on ASIO, ASIS and DSD
Parliament House
Canberra ACT 2600

Dear Secretary

We appreciate the opportunity to participate in the review of ASIO's special powers relating to terrorism offences as contained in Division 3 Part III of the *Australian Security Intelligence Organisation Act 1979*.

UnitingCare NSW.ACT is the peak body for all community services, chaplaincy and the social justice and advocacy activities of the Uniting Church in the New South Wales Synod. Its work is inspired and guided by the biblical principles of justice and compassion. UnitingCare NSW.ACT reports to the UnitingCare Board within the New South Wales Synod and is part of the national network of UnitingCare Australia.

UnitingCare NSW.ACT has a number of concerns relating to the part of the Act under review. Our first concern rests around fundamental principles of human rights which appear to be overridden by the Act, in particular the ability of ASIO to detain people without trial and without even any suspicion of the person having committed a crime. This safeguard has underpinned the legal system in Australia since Federation. We do not believe the threat of terrorism justifies the abandonment of human rights and the rule of law in this country.

We are also deeply concerned about the secrecy provisions in the Act. ASIO is able to hold people (not necessarily suspected of committing a crime) for up to a week in secret, and for two years afterwards it is an offence to discuss what happened with anyone other than one's lawyer and certain other authorities. This means that it is an offence tell one's friend, family and community what occurred.

The committee must be clear about the meaning of this. A person may disappear without a trace for up to a week, causing significant distress to their spouse and family. After this time, the person returns home and is not able to explain to their spouse and family where they have been. This Act forces people to be dishonest to their own family. It is likely such actions could strain family relationships and lead to loss of employment for unexplained absence without leave.

A system of open and accountable government and government agencies is a prerequisite for true and meaningful democracy. These laws open the door for abuses of power and, of even greater concern, the concealment of these abuses. The secrecy provisions contained in the act are unreasonable in an open, democratic society and should be amended.

Another concern we have is that those questioned under the ASIO Powers have no right to silence. The right to silence is a fundamental principle of our justice system. We note that this provision does not exist in the United States where constitutional guarantees protect their citizens' rights in this regard.

This is coupled with the ambiguity in the Act concerning legal representation. There is no requirement that ASIO permits the person to obtain legal advice or to have a lawyer present. Where a person is permitted to contact a lawyer, ASIO may still question them prior to the lawyer arriving and before they have a chance to obtain legal advice. Where a person's lawyer is found to be disruptive during questioning the lawyer may be removed.

Given the absence of the right to silence and the seriousness of matters being investigated in such cases, it is critical that people undergoing questioning have unfettered access to legal advice before and during questioning.

In summary, it appears to us that the intent of this part of the Act is to circumvent legal protections Australians have held as fundamental to the basis of society. These protections have been built up slowly in recognition of the potential for abuse of investigative powers by police and other state agencies.

Terrorists' threat to Australian security should be taken seriously. They do not, however, threaten the future of our society itself. We note Justice Kirby's recent comments that more people die of HIV/AIDS every day (as do a number of other diseases) than were killed in the single biggest terrorist attack against Western countries on September 11, 2001. We commend to you his comments to the recent conference on national security that "We should never forget that to the extent that we exaggerate the risks to national security we fall into the hands of those who threaten our constitutionalism ... To the extent that we overreact, we proffer the terrorists the greatest tribute."

We also draw the committee's attention to the important ruling of the Law Lords in the United Kingdom last year which found the British government's self-derogation of its human rights commitments unlawful, and specifically commented on the threat caused not by terrorists themselves, but by our over-reaction to them. As Lord Hoffman noted, "It calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention." While the specifics of the case there are different to the part of the act under review, we believe the principles at stake are identical.

Once again, we thank the Committee for the opportunity to contribute to the above Review.

Yours faithfully,



Harry Herbert
Executive Director
UnitingCare NSW.ACT