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## Submission

### **Parliamentary Joint Committee on Intelligence and Security Review of the *National Security Legislation Amendment (Comprehensive and Other Measures No.1) Bill 2021***

#### **Introduction**

The demands of Australia's intelligence and security agencies for increased powers and authorities over Australian citizens since the 9/11 attacks on New York and Washington DC have been nothing short of extravagant.

The incidence of terrorism related activity in Australia has been low to non-existent since 9/11<sup>1</sup> and completely overshadowed by background crime in the community (see Attachment 1). After 20 years, Australia's intelligence and security agencies have failed to demonstrate any systematically causal relationship between their 'new' powers and claimed successes in disrupting terrorism. Most claimed successes over this period stemmed from community reporting of suspicious behaviour, police responses to incidents already in progress and low-level capabilities of alleged terrorists.

Claims by the Minister that Australia is facing an "evolving threat environment"<sup>2</sup> in the referral letter to this committee are true but omit to say this evolution encompasses declining impacts of terrorism across the world for the "fifth consecutive year"<sup>3</sup>. Disconcertingly, this fact and others important to understanding the Australian threat environment are scarcely, if at all, reported by those agencies seeking increased powers and authorities.

This submission will explore the nature of the Richardson Review and the measures contained in the *National Security Legislation Amendment (Comprehensive and Other Measures No.1) Bill 2021*. It will focus attention on the broader securitisation of Australia since the 9/11 attacks, question both the necessity for the changes that lie behind this process and examine their detrimental consequences for Australian citizens before making recommendations to restore the balance between civil liberties and national security.

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<sup>1</sup>The Global Terrorism Index (GTI) is a comprehensive study analysing the impact of terrorism for 163 countries covering 99.7 per cent of the world's population. <https://www.visionofhumanity.org/maps/global-terrorism-index/#/>

<sup>2</sup>[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/Comprehensive\\_ReviewBill/Additional\\_Documents](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Comprehensive_ReviewBill/Additional_Documents)

<sup>3</sup> Vision for Humanity <https://www.visionofhumanity.org/maps/global-terrorism-index/#/>

## Context of the Richardson Review and Subsequent Bill

Australia has been subjected to a deluge of intelligence and security legislation since the 9/11 attacks. The Richardson Review has sought to cement the changes introduced by this legislation into a more permanent framework. Little has been done however to question the broad spectrum need for such a draconian shift in the balance of power between ordinary citizens and government, and this section of the submission will examine key features of this dysfunctional process.

Richardson, not surprisingly, did not consider the question of where all the terrorists were and why their activities had been so muted if they constituted such a significant threat in Australia over the past 20 years. This question seems to have passed unnoticed in other quarters despite constant warnings about terrorists and their possible appearance in our midst.

All too often deliberations seem to have jumped from, *where are they if the intelligence is correct*, to the Bogey man scenario of, *but what if they do appear and wreak havoc amongst us?* In responding to a similar question of where all the Al Qaeda members were thought to be in the United States after the 9/11 bombings, John Mueller, a prominent analyst, responded:

*“No one knows. They never showed up.”*

[He continued further in the interview to say] *“It was a complete fantasy. Of course, they might still be here, and they’re just being very quiet. Maybe they’re waiting for the apocalypse or they’re too busy watching pornography and doing drugs or something. But certainly, obviously, if they’d done anything, we’d know it.”* [referring specifically to a public claim by former President George W Bush that there were 331 Al Qaeda operative in the US] <sup>4</sup>

This response, including its large measure of cynicism, is equally applicable to the Australian situation yet very few, including those on the Parliamentary Joint Committee on Intelligence and Security, have chosen to question the protracted difference between what actually occurred and what we were led to expect could occur along with related questions concerning the massive expenditure of resources and diminution in the freedoms and rights of Australian citizens.

In responding to these questions there are three possible explanations for the excessive behaviours witnessed since 9/11.

The first is that western intelligence agencies and the socio-political infrastructure with which they interact became unidentified casualties of 9/11, brought on by a failure to recognise and react to a single catastrophic event, which has seen them go into a long-lasting period of dystopian overdrive in an incongruous effort to prevent or compensate for what has already occurred. If so, this could explain the adoption of a *belt and braces* approach to national security designed to ensure agencies are never again caught with their metaphorical *pants down* again. After all, if the West’s largest and best funded intelligence and security mentors can fail

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<sup>4</sup> Brennan Center for Justice, 2016, *Rethinking Intelligence: Interview with John Mueller and Mark G Stewart* <https://www.brennancenter.org/our-work/research-reports/rethinking-intelligence-interview-john-mueller-and-mark-g-stewart>

to achieve what must be their very *raison d'être* or primary mission on such a shocking scale, it could happen to any of them. Under such circumstances institutional reactions could very well involve major and repeated over-reach in seeking unattainable degrees of certainty in response to possible future threats. The main route for achieving this position, as has occurred, would at a minimum involve seeking increased powers, authorities and resources to compensate for a lack of confidence in their own capabilities.

The consequences would be that no citizen is above suspicion and minority groups would be purposefully and ignorantly targeted for scrutiny in dangerously divisive responses which would be completely disproportionate to the actual level of threat. It is worth recalling at this point some indicators of this situation such as holding the metadata of every citizen, including children, banning the burqa inside Parliament House, Prime Ministerial admonishments of Muslim leaders in Australia and the unedifying spectacle of abuse directed towards women wearing the hijab in public places.

The worst possible consequence of such actions could have been alienation of the very people who protected Australia the most from terrorism by refusing to allow it to develop within their political, social and religious institutions.

### **Once-in-a-lifetime opportunity**

A less palatable behavioural explanation for the excessive demands of intelligence and security agencies is that the 9/11 attacks unleashed a once in a lifetime opportunity for these agencies to exploit the fear of an ill-defined threat phenomenon well after the main threat had passed. This threat began with terrorism but, as the community became more inured to the constant hyperbole and no major incidents occurred, terror warnings were transformed into what became a hyper-toxic mix of *bad guys* that *mums and dads* across the country could feel comfortable sanctioning. The *new threat* grew to include pedophiles, drug pushers, organised criminals and any other class of *untouchable* that threat proponents could think of to justify new powers and authorities.

More recently this has expanded again to include right-wing extremists, then more amorphous extremists such the controversial anti-vaxers. The most unimaginative bit of thinking, however, involved redefinition of Islamic terrorists, now innocuously labelled as religious extremists but *nod-nod wink-wink* we all know who they mean.

Ironically these groups are not new. Right-wing extremists have been around in various formats since at least evolution of the Old Guard, and the detested pedophiles, drug pushers and organised criminals have been embedded in Australian society since its inception with offences and targeted policing policies already in place. The *new threat* environment reinstated the Cold War presence of intelligence and security agencies at the center of government; restored their badly depleted resources, which in ASIO's case increased by over 300%; and increased their powers and authorities to match the grossly exaggerated threat challenges identified by them, as direct beneficiaries of these same measures. Continuation of the new threat environment into ever more inventive forms has become necessary to keep the *gravy train* all of the agencies have jumped on board, rolling along.

Australia's reaction to the terrorism crisis stands out around the world for its severity, with Ananian-Walsh and Hardy reporting in 2021:

*"No other nation can match the volume of Australia's counter-terrorism laws. Their sheer scope is staggering."* and

*"In the years since [9/11], our laws have become more extreme, setting us apart from the UK and the rest of our "Five Eyes" partners, the United States, Canada, and New Zealand."*<sup>5</sup>

These changes have been done in the absence of meaningful empirical evidence concerning the nature and extent of terrorism in Australia in favour of episodic narratives and speculation with the aid of a compliant political class all too willing to legislate what is now the largest shift of power away from private citizens to government since Australia's convict era. This has to be one of the most dangerous *pea and thimble* tricks ever perpetrated on Australian citizens.

### **Landing at Bondi Beach?**

A third possibility of course is that Australia needed to be prepared for terrorist attacks, not because of 9/11 but because we became actively involved in undeclared wars in Iraq and Afghanistan which successive governments did not wish to acknowledge as possible sources of domestic threat. No matter how these policy decisions were portrayed, Australia deployed forces to their countries and despite criminal intelligence manipulation in relation to Iraq, nothing ever revealed a hostile intent on behalf of Saddam Hussein or the Taliban to land at Bondi Beach or come marching up George St.

It is instructive to recall the *Sunday* current affairs program broadcast of 14 March 2004 where the Commissioner of the Australian Federal Police (AFP), Mick Keelty, was asked by the program's host, Jana Wendt, about the likelihood of a Spanish type train bombing in Australia. Keelty responded:

*"The reality is, if this turns out to be Islamic extremists responsible for the bombing in Spain, it's more likely to be linked to the position that Spain and other allies took on issues such as Iraq."*<sup>6</sup>

Australia's top cop and head of an independent statutory authority told Australians the truth and was rebuked for these comments in a telephone call from Prime Minister Howard's Chief of Staff, Arthur Sinodinos, before he even left the premises. The abuse continued with Michelle Grattan, a highly respected political reporter, stating that the Prime Minister [Howard] "went in with a meat axe", "wrestled Mick Keelty to the ground" and "publicly slapped him down"<sup>7</sup>. This was an extreme reaction to a public official performing his duties.

Despite claims to the contrary by notable officials including the Chief of Defence, Peter Cosgrove, Keelty's conclusion was proven correct by the later pattern of 'less than 9/11 scale attacks' in the United Kingdom, France, Germany the US and other allied nations. The extraordinary behaviour of government officials during the Keelty affair undoubtedly reflected deep seated concerns that it might be held responsible for domestic terrorism attacks resulting from interventionist military activities in Iraq and Afghanistan.

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<sup>5</sup> <https://theconversation.com/before-9-11-australia-had-no-counter-terrorism-laws-now-we-have-92-but-are-we-safer-166273>

<sup>6</sup> <https://www.theage.com.au/opinion/how-the-press-pack-got-the-keelty-affair-wrong-20040323-gdxjg3.html>

<sup>7</sup> *ibid*

There are of course other influences such as the authoritarian leanings of key political figures and senior bureaucrats who believe they know what is best for Australian citizens or who are vulnerable to the influence of powerful vested interest groups. The predictable result though is increasing resentment from sections of the Australian community now taking to the streets to protest everything from inaction on climate change, unjust detention of refugees, treatment of the indigenous population, wage inequality and COVID-19 mandates. News reporting on 4 February 2022 concerning the “Occupy Canberra” movement stated:

*"People from around Australia demonstrating in the nation's capital have a variety of grievances but a disdain for all politicians unites them."*<sup>8</sup>

This type of activity leads unnamed “experts” to speculate on a possible “change in tone”<sup>9</sup> (read violence) from such groups which can then be typified as extremist for daring to exercise their right to protest. This spawns flashbacks to ASIO’s latter day Cold War behaviour of targeting Australian citizens and others it labelled without definition as “radicals”<sup>10</sup> which frequently extended to members of the then Labor opposition and other political parties.

It is timely at this juncture to recall the counsel of Justice Hope, in the now landmark Royal Commission on Intelligence and Security in Australia conducted nearly 50 years ago, who specified that while intelligence and security were necessary functions of government, it was important to understand that:

*“[I]n the final analysis, public safety and individual liberty sustain each other...There are limitations upon what a security organization should do in a democratic society. Aims, even of security, do not justify all means. What has to be kept secure is not simply a physical entity; the society which exists within Australia is one with standards and principles which secure rights and freedoms as well as obligations...”*  
<sup>11</sup>

In all likelihood, the full range of factors discussed here has played out against a dystopian political background, shaping the excessive behaviours of Australia’s intelligence and security agencies over the past 20 years. The question is, will this be allowed to continue and if so for how long and with what further consequences for Australian citizens.

## **Independence of the Richardson Review**

The Richardson Review answers these questions from the perspective of the intelligence and security agencies. Australians have been presented with a Review which is nothing short of intelligence and security insiders openly seeking to *write their own ticket* in the presence of a political audience paralysed to resist by its own oratory, making it taboo to be accused of being *weak on national security*.

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<sup>8</sup> <https://www.theguardian.com/australia-news/2022/feb/04/occupy-canberra-behind-the-anti-vaccine-protests-at-parliament-house>

<sup>9</sup> *ibid*

<sup>10</sup> Coventry, C.J. 2018, *Origins of the Royal Commission on Intelligence and Security*, pp 44-72

<http://unsworks.unsw.edu.au/fapi/datastream/unsworks:54716/SOURCE02?view=true>

<sup>11</sup> *ibid* p 173

Against this background, the Richardson Review shamelessly showed a preference for contact with and receipt of submissions from intelligence and security agencies at both the state and national level and an almost complete disregard for the interest of civil society, daring to select just those voices it wished to hear. This outrageously dismissive document just adds to the confusing jumble of unstructured and dangerous demands of the national intelligence and security community, perpetuating the mess Australia has gotten itself into rather than moderating it.

The Hon Michael Kirby, in an article entitled, *The Changing Legal Framework of the Australian Intelligence Community: from Hope to Richardson*, reflects at some length on the post-2000 trend of appointing insiders to conduct inquiries of the types assigned to Richardson, Cornwall, L'Estrange and Flood (all government insiders) as opposed to previous practices where "independently minded judges"<sup>12</sup> were appointed. In this regard Kirby concluded in respect of the Richardson review:

*Substantially, this was an inquiry in which the main actors [intelligence and security agencies] had a shopping list they had been accumulating for years. In Dennis Richardson, they had secured what must have seemed a perfect alumnus to deliver a sympathetic report with as few obstacles as possible to impede the once-in-forty-year opportunity that the government had provided.*<sup>13</sup>

Kirby added the worrying additional comment to these observations that, *"The voice of civil liberties was muted."*<sup>14</sup>

Kirby is not alone in expressing serious concern over this review. Greg Carne, Associate Professor of Law at the University of New England, has also raised the alarm concerning "securitisation of Australia" as a state, "transformative impacts beyond rationally justified national security protective definitions",<sup>15</sup> and the absence of any Charter of Rights<sup>15</sup> to protect Australian citizens and prevent Australia becoming a police state. Members of this PJCIS would do well to recall the words of Prime Minister Chifley, Australia's leader at the time ASIO was founded, when he said, "never is liberty more easily lost than when we think we are defending it".<sup>16</sup>

Others including several Independent National Security Legislation Monitors (INSLMs) and a vast array of civil society organisations and concerned citizens have publicly resisted the ever-increasing intrusions of both intelligence and security agencies into Australian life and concerns have been expressed by civil society as to the impartiality of the Parliamentary Joint Committee on Intelligence and Security.

The impartiality issue has been exacerbated by the *bipartisanship* arrangement between the Liberal and Labor Parties which has diminished public debate and scrutiny of such legislation with both parties abrogating their responsibilities in favour of the Greens and independents. The absence of these groups, including the National Party, from membership of this committee

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<sup>12</sup> Kirby, M. 2021, *The Changing Legal Framework of the Australian Intelligence Community: from Hope to Richardson*, p4, Australian Law Journal update: Special Issue – Vol 95 Pt 10.

<sup>13</sup> Ibid p12

<sup>14</sup> Ibid p12

<sup>15</sup> Carne G ref comments concerning the impact of intelligence and security legislative changes in Australia.

<sup>16</sup> Coventry CJ 2018 p23



is more than apparent to the country's civil society organisations. The result has been a growing disparity between civil society and both national intelligence and security agencies which increasingly risks a failure of confidence in them by civil society, that is the very people they are meant to serve.

The situation has become more bilious the longer it has been allowed to run.

An objective observer could reasonably conclude these insider reviewers are prone to hear the echo of their own voices in the submissions they sought from former colleagues and even current friends. The expertise the reviewers are argued to bring to these processes properly belong in submissions to such reviews, not in the persona of the reviewer.

The situation compromises the whole nature of being seen to be independent and shifts the balance of influence away from civil society organisations advocating for individual freedoms and human rights, towards those seeking expedience and convenience of method to achieve their ever-expanding objectives which require further intrusions into the lives of ordinary Australians.

### **Bias Against Civil Liberties by Intelligence and Security Agencies in the Legislative Reform Process since 9/11**

Individual human rights and civil liberties are by their very nature obstructive and inconvenient for intelligence and security institutions and often viewed poorly because they are seen to protect alleged '*bad guys*' or adversaries, fostering entrenched tendencies to breach the civil liberties of targeted individuals.

Whilst such behaviours are not visible in the closed domain of intelligence services, they are more readily observable in recent audits of the AFP<sup>17,18</sup>, especially in respect of metadata with literally thousands of repeated access breaches, including a journalist, leading the Ombudsman to describe the underpinning attitude as "cavalier"<sup>19</sup>.

Add to these observations matters such as the now infamous Haneef Affair, the large volume of recorded complaints against police documented in successive Australian Productivity Commission Government Services Reports<sup>20</sup>, recent adverse publicity concerning identifiable patterns of police protecting their own in domestic violence matters<sup>21</sup> and a disturbing conclusion becomes obvious.

Police agencies, and by inference intelligence services, are staffed by human beings with the same penchants and vulnerabilities towards decisive errors in judgement, ideological, social and cultural biases, and innate wrongdoing as other members of the community.

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<sup>17</sup> <https://www.anao.gov.au/work/performance-audit/australian-federal-police-use-statutory-powers>

<sup>18</sup> [https://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0021/78123/Commonwealth-Ombudsman-AFP-JIW-report-PDF-FOR-WEBSITE.pdf](https://www.ombudsman.gov.au/__data/assets/pdf_file/0021/78123/Commonwealth-Ombudsman-AFP-JIW-report-PDF-FOR-WEBSITE.pdf)

<sup>19</sup> <https://www.abc.net.au/news/2021-04-28/ombudsman-report-act-policing-telecommunications-data-access/100099796>

<sup>20</sup> <https://www.pc.gov.au/research/ongoing/report-on-government-services>

<sup>21</sup> <https://www.abc.net.au/news/2021-05-10/nsw-police-officers-charged-with-domestic-violence-2020-victims/100114114>

It is important to understand that police transparency is much higher than that for intelligence agencies and that victims of abuse by the former may not even be aware they are dealing with intelligence personnel.

It is for this reason that great care must be taken when increasing the powers of intelligence and police agencies because they have self-reinforcing tendencies to become laws unto themselves.

Opposition members of the committee would do well to recall their own party's establishment of the Australian Security and Intelligence Organisation (ASIO) during its competitive battle with communism only to itself become the target of ASIO. The subsequent distrust culminating in the now infamous Murphy raids of 1977 and subsequent Hope Royal Commission are testament to the severity of political interference. As Coventry points out:

“ASIO in the last years of the Coalition's long time in office had become a political research unit of a kind. McKnight argues the McMahon Government (1971-1972) was the worst for interference: In this period the extent to which a minister could direct the security agency to provide security information for partisan purposes was taken to its furthest limit...”<sup>22</sup>

With this in mind, it should be remembered that ASIO has been very close to termination on two occasions, at least one of which was due to the excesses reported to have commenced with its long-serving (two decades), early Director, Brigadier General Spry<sup>23</sup>.

All elected officials should realise it takes little to generate dangerously uncontrolled influences when the powers and authorities of intelligence and security agencies become disproportionate to those of general citizens and oversight and accountability is degraded. This may best be described as the *J. Edgar Hoover Syndrome*<sup>24</sup> (or the Himmler Syndrome, or the Beria Syndrome etc.) where personalities in intelligence and security agencies gain sufficient power to distort the political system and implementation of government policy.

It is all too easy to forget the lessons of these times with ‘*reds under the beds*’ type scares used to attack political adversaries, abuse of LBGTQI members of the society (remember the security clearance forms asking if the applicant was homosexual or owned a ham radio set) and marginalization of other minorities that occurred during these times.

This continues today with immigrants having difficulty obtaining high level security clearances which result in them being denied jobs in government, funded by their tax dollars. Professor Rory Metcalf, of the National Security College, made this point in 2020, saying:

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<sup>22</sup> Op.cit. p70 also note the work of McKnight, D, 2008. “Partisan Improprieties: Ministerial Control and Australia's Security Agencies, 1962-1972.” *Intelligence and National Security* 23, no. 2, pp 707-725.

<sup>23</sup> Coventry, see above

<sup>24</sup> Edgar clearly perceived the world as an unsafe, unpredictable place, perpetually on the verge of catastrophic threat, and, with a mixture of competence and grandiosity, he saw himself as the new sheriff in town. His exquisitely attuned radar for fear and power proved quite an adaptive fit for a country in which gangsters roamed freely and communism suffocated the national discourse, and for a government that was at a tipping point for taming the wild west of a post-depression society. <https://www.psychologytoday.com/au/blog/reel-therapy/201111/j-edgar-hoover-pathology-and-the-fbi>



*“The rigidities of the current system, which dates back to the 1950s, can be an obstacle to harnessing the talent of multicultural Australia or new generations who live and think differently”<sup>25</sup>*

Who in Australia would have imagined in the year 2000 that any Australian government would knowingly implement legislation within a few years to:

- marginalise the judicial oversight in intelligence and security in favour of greater involvement by politicians and bureaucrats under their control,
- repeatedly introduce what are now being called “god powers” vested in ministers and public officials,
- retain widespread information on, and images of, citizens who have not and will not ever commit an offence in their lifetime,
- shift burdens of proof from the accuser to the accused and introducing pre-crime offences where the principal offence has not yet been committed,
- create preventive detention orders where no crime has been committed, and
- establish invasive stop and search laws.

This state of affairs is reminiscent of authoritarian nations through time and across the world.

### **When will it stop?**

The intelligence and security community has now had over 20 years to bring forward a complete and comprehensive plan which could have reasonably been expected in five years.

Those charged with this responsibility just can’t manage to achieve that goal in an organisational culture dominated by short termism and an opportunistic attitude which has kept them tied to a *what next policy formula*. Each success has been followed by renewed claims for another tranche of changes offering fresh opportunities for governments to be “tough on terrorism” or some newly discovered form of *extremism* which has been in the community all along.

All Australians and especially members of the Parliamentary Joint Committee Intelligence and Security should be disappointed by this failure and the *Oliver Twistian* pleas to all too willing governments of, “*please sir can I have some more*”. Under more disciplined circumstances this process would have come to an ignominious end years ago because of its lack of long-term planning, structure and completeness but this is difficult because those seeking the changes are also those briefing on the threat environment – which unlike the case of poor *Oliver* generates a bottomless *bowl of gruel*.

This process is defective, contributes to a gross misallocation of resources and continues to strip away the rights and freedoms of ordinary Australian citizens.

Where is the detailed plan explaining how this second generation of far-reaching legislative reform will be approached, so that the Australian public, the Parliament and the Government has a thematic understanding of how, when and why each of Richardson’s recommendation will

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<sup>25</sup> <https://www.theguardian.com/australia-news/2020/dec/10/australian-spy-agencies-urged-to-overhaul-1950s-era-security-vetting-to-rise-to-china-challenge>

be brought forward along with the issues that will need to be managed in the meantime? The committee should be deeply interested in this matter as it will describe what can be expected over the next several years. It would be reasonable to expect such a plan to cover priorities, combinations of recommendations to be brought forward in legislative blocks, explanation of why this is being done, benchmark dates, costs (both pecuniary and non-pecuniary) of each block and a balanced appreciation of risks arising from each priority including alternative courses of action.

## **The Bill and its contents**

The *National Security Legislation Amendment (Comprehensive and Other Measures No.1) Bill 2021* contains just a small subset of legislative responses to Richardson's recommendations. How and why, they have been selected for the first of what observers agree must be viewed as second generation tranches of intelligence and security legislation is unclear.

Even a cursory review of Richardson's recommendations reveals an incredibly *mixed bag* of ideas, ranging from the trivial, which agencies could implement without any government or legislative action through to large numbers of interconnected recommendations which will, if implemented, change the Australian way of life.

Recommendation 1 for example reads in part, "*that agencies should ensure that induction and ongoing training addresses the history, background and principles that underpin their legal frameworks*"<sup>26</sup>, in contrast to much of the report which is for example dedicated to recommendations for the establishment of a new electronic surveillance bill which transforms Australia into a surveillance state.

This is occurring at the very time the government is criticising China as a surveillance state and Prime Minister Scott Morrison is arguing "*government needs to butt out of people's lives*"<sup>27</sup>.

In a contrarian twist, increased surveillance seems to be fine in Morrison's view as the government has agreed to all of these recommendations for ordinary Australian citizens whilst media reporting reveals another view in relation to the NSW Independent Commission on Corruption, saying "*Morrison claims voters would be deeply distressed if federal Liberal politicians were humiliated by a nasty boyfriend surveilling anti-corruption body*"<sup>28</sup>.

Australian citizens should be rightly concerned by the contradictions in these claims and the absence of any single standard. It seems that in the *new* Australian liberal democracy being imposed over the past 20 years a lot depends on who you are rather than equality.

In sorting through the maze of the Richardson Review it appears Australians are expected to rely on an invisible *pick and choose* approach managed by truly faceless bureaucrats with assumed identities (common in the intelligence world) but with no idea of the order in which things will occur and where the change process starts or ends. All of this is obfuscated by over

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<sup>26</sup> [https://www.ag.gov.au/system/files/2020-12/Government-response-to-the-Comprehensive-Review-of-the-Legal-Framework-of-the-National-Intelligence-Community\\_1.PDF](https://www.ag.gov.au/system/files/2020-12/Government-response-to-the-Comprehensive-Review-of-the-Legal-Framework-of-the-National-Intelligence-Community_1.PDF)

<sup>27</sup> <https://thewest.com.au/news/coronavirus/scott-morrison-pm-wants-government-to-butt-out-of-peoples-lives-as-australia-opens-up-c-4930727>

<sup>28</sup> <https://www.theguardian.com/australia-news/2021/nov/27/it-was-hard-to-keep-up-during-scott-morrisons-horror-week-it-would-help-if-he-could-get-his-story-straight>

1000 pages of review containing 203 recommendations, many composed of multiple parts. The choices underpinning the mix of reforms in this bill is, to put it simply, perplexing.

One theme that does emerge from the bill (Schedules 5,6,7 & 10 and to a lesser extent 11) and was strongly evident in the Richardson Review is a desire to increase the uniformity of agencies and break down barriers between them to increase the scope for cooperation and interoperability. This has positive attributes in terms of increasing efficiency and if done with more robust protections than presented by the Richardson Review with less ministerial/ agency head discretion such measures could serve Australia citizens better than the current arrangement.

This, however, raises the question of why more direct methods should not be adopted to achieve the same goal by completely restructuring the Australian intelligence apparatus.

### **'National Intelligence Community'**

There are now so many intelligence agencies in Australia that they are collectively identified as the National Intelligence Community, with their own official acronym (NIC) in government circles. The terms of reference for the Richardson Review identify the NIC as consisting of six agencies<sup>29</sup> while the Office of National Intelligence, a member of the very same community, claims there are 10<sup>30</sup> while the Sydney Morning Herald says there are 16.<sup>31</sup>

ASIO alone employs about 2,000 staff<sup>32</sup>, more than the population of many small towns in Australia: when the others are added they could easily fill a medium size town (without families) and exceed the size of the nation's police force, the AFP. Does a country of only 25 million people really need six core intelligence agencies and four non-core *hangers on*? That is one NIC member organisation for every 2,500,000 Australian citizens based on 10 agencies or 1,500,000 based on 16 agencies.

Integration of the core intelligence agencies into a single organisation would mean breaking down the six *empires* which have been built up over decades. This is a move which would undoubtedly be resisted by vested interests within the current structure. The most obvious benefits of integration would be:

1. Simplification of the overall intelligence and security structure would remove barriers to the speed and clarity of decision-making processes. It must be remembered that the United States intelligence apparatus possessed information on the 9/11 attacks before they occurred<sup>33</sup> but, as with the Pearl Harbour intelligence

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<sup>29</sup> <https://www.ag.gov.au/national-security/publications/terms-reference-comprehensive-review-legal-framework-national-intelligence-community>

<sup>30</sup> <https://www.oni.gov.au/national-intelligence-community>

<sup>31</sup> <https://www.smh.com.au/politics/federal/proper-scrutiny-new-powers-for-bodies-overseeing-spy-agencies-on-the-cards-20211005-p58xck.html>

<sup>32</sup> <https://www.asio.gov.au/sites/default/files/Annual%20Report%202020-21%20WEB.pdf> p136

<sup>33</sup> CIA Director Tenet was given a report entitled "*Islamic Extremist Learns to Fly*" not later than 24 August 2001, 18 days before the attacks; participants in the attacks identified by the CIA as having undertaken training outside the United States were not included on interagency watch lists; and a pilot trainee who participated in the attacks was reported to the FBI but this information was not disseminated to other relevant agencies.  
<https://www.britannica.com/event/September-11-attacks/The-September-11-commission-and-its-findings>

failures 80 years earlier, this became trapped in the *alphabet soup*<sup>34</sup> of the United States intelligence infrastructure;

2. Cost reductions arising from the adoption of common service elements including human resource management, financial management, procurement, logistics, policy, ministerial liaison, fleet operations, building management and training could be returned to government or redirected to front line operational activity;
3. Elimination of operational overlap and interagency duplication would produce further cost reduction benefits to again be returned to government or redirected to other operational priorities;
4. Expansion of career and personal development opportunities for personnel otherwise siloed into the six smaller empires which restrict opportunities for diverse work experiences;<sup>35</sup> and
5. Implementation of more rigorous oversight and accountability mechanisms spread across fewer agencies with less scope for evasive behaviours.

Similar consideration could be given to non-core agencies as was done with the integration of Crim Trac into the Australian Criminal Intelligence Commission (ACIC). This could be extended to include AUSTRAC. As the ACIC is already based in AFP national headquarters it could be also be abolished and its functions rolled into the AFP as a new division with the same obligations, noting this has already been done to some extent through co-location. The taxpayer should not be expected to fund separate empires based on spurious distinctions visible only to Canberra bureaucrats who derive personal benefit from this form of artificiality.

A second theme arising from the bill and one also seen in other post 9/11 legislation is a maturing pattern of seeking to by-pass external approval process for certain activities in the interests of **expedience** and **convenience** for intelligence agencies which are put above the protections and rights of Australian citizens.

This is most clearly seen in this bill and existing legislation with for example authorisation processes covering approvals for intelligence operations regarding Australian citizens, the issue of certain warrants and the use of metadata for routine purposes (remember it was introduced to beat back the waves of terrorists and serious criminals) which have been assigned variously to ministers, heads of agencies and even middle managers within agencies.

The usual reasons for this are claims that existing approaches put unnecessary barriers in the way and are too slow because agencies might have to *mess around* justifying their activities to

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<sup>34</sup> Australia's own version of this *alphabet soup* of intelligence and security agencies is (ONIASISASIOAS DDIOAGODHA(I)ACICAUSTRAC AFP(I)) which excludes the intelligence bodies in the six states and two territories embedded in police, anticorruption bodies and other inquiry entities.

<sup>35</sup> Shearer runs through some of the changes: "For decades, individual intelligence agencies did their own security clearances. On December 1, we established a new top-secret vetting hub for the intelligence agencies. It sits within ASIO." This will make it easier for personnel to transfer between agencies.  
<https://www.theaustralian.com.au/inquirer/the-man-bringing-national-security-outof-the-shadows/news-story/3a21deec885d891562c4e6fb54810888>

unpredictable, overworked members of the judiciary. It is much more expedient and convenient to have someone approve such requests who is sympathetic, trusts members of the agency, doesn't ask probing questions they may not be able to answer and ensures compliance with aspects of the law such as proportionality and fairness.

The difference between expedience and convenience in these cases is usually cast around worst case needs for speed in emergency situations but is then also applied to routine matters and a desire to avoid going through the inconvenience of quality control and accountability processes.

Short cut processes are and were always unnecessary and ill-advised as they abolish the rights of ordinary citizens and issues of time delays could always have been addressed by the simple measure of funding more positions in the judiciary to facilitate such activities, increased use of electronic means and better training of intelligence and security personnel to ensure they were intimately familiar with these processes.

When has this committee ever sought submissions on alternatives before approving agency recommended deletion of civil liberties?

The dismissive attitude of intelligence and security agencies towards the interests of ordinary citizens is most clearly seen in this bill in what can only be described as the arbitrary 100 % increase, from two weeks to one month, for the *Suspension of Travel Documents* at Schedule 8.

This might be more convenient for ASIO and associated agencies but it is extraordinarily inconvenient for document holders who may have urgent business or personal matters to deal with overseas and who must meet the costs resulting from suspension of travel documents including cancelled or rescheduled flights, accommodation, hire cars and events in which they planned to participate? Why this period of disruption, why not 5, 10, 15 or even 20 days instead of arbitrarily nominating 28 days? Has the Committee asked why precisely 28 days is necessary? Why was two weeks originally acceptable when agencies proposed this measure to the Parliament? Does this mean it is acceptable to be 100% wrong and is this the standard we should accept from our intelligence and security agencies?

The relevant agencies have received what can only be described as enormous budget and staff increases since 9/11 to undertake the tasks associated with their work. Doesn't ASIO own an overtime budget, flexible working hours or time in lieu provisions for dealing with matters that inconvenience citizens of Australia?

### **Why should it be the citizens who are inconvenienced?**

Under these circumstances it is arguable that inconveniencing government agencies would be preferable to inconveniencing Australian citizens and other members of the travelling public which makes Australia look like a *tin pot banana republic* run by an authoritarian *security cult*.

The claim in Schedule 8 reflects an ever more dismissive attitude by NIC agencies towards the rights and freedoms of those unfortunate enough to attract their attention based on intelligence *guesstimation* rather than evidence. Where there is evidence of an offence don't suspend travel documents, make an arrest, but where disruption is to be for information gathering purposes, intelligence and security agencies should be required to obtain such material in the shortest possible time rather than at their convenience. All costs of disruption to travel plans as the



result of such activities should be met from public revenue because they result from public policy rather than by private individuals.

The third and final theme in the bill is that some truly objectionable provisions are buried in its morass. These relate to already existing NIC propensities to share intelligence on Australian citizens with foreign powers, collection of additional information on Australian citizens (Schedules 1, 2 & 4) and internalizing approvals for such procedures.

The last time these types of arrangement *broke the surface* publicly they involved information provided by foreign authorities which led to the *Haneef fiasco* and before that, information provided by Australia to Indonesia, a death sentence country, which resulted in the arrest of nine Australian citizens and the execution of two of them for offences that in Australia would have resulted in minor penalties for several of those involved.

It is worth noting that perhaps Australia's closest intelligence cooperation arrangement is with the United States, where over 50% (27)<sup>36</sup> of states retain the death penalty and the extent of information sharing with death sentence counties arising from Operation Ironside remain unknown as do the consequences for persons named or otherwise identified.

It needs to be emphasised that intelligence is not evidence.

Elements of this bill propose exchanging information with unspecified authorities in unspecified countries without the knowledge of the subject or independent scrutiny and which may disadvantage or even result in the death of Australian citizens. The AFP already has such arrangements in place with many other countries, including the People's Republic of China, and already has a regrettable record in both the *Haneef* and *Bali Nine* affairs. These types of initiatives turn Australian citizens into *intelligence commodities* which can be traded for reciprocal information or the generation of goodwill with other agencies and should be unacceptable to all Australians without high level, independent, judicial scrutiny.

Australia does have an Inspector General of Intelligence and Security to overwatch the behaviour of security and intelligence agencies. The adequacy of this arrangement is questionable given the miniscule resourcing allocated to this task (approx \$13m p.a. and 30 personnel)<sup>37</sup> relative to the size and diversity of the intelligence community (approx \$3000 m p.a. and 7000 personnel)<sup>38</sup> and the scope for capture by those agencies due to prolonged exposure of the NIC.

Longer term exposure of the same small number of personnel to these agencies is not in accord with best audit practice due to the scope for capture by agencies. This is especially so given the secretive functions of these agencies, with concentrations of skills associated with concealment, deception and recruitment of field assets. Annual reports<sup>39</sup> indicate reliance on self-identification of compliance breaches by subject agencies as opposed to detection by the oversight authority. Language used in annual reports gives the impression of cooperative arrangements for scrutiny as opposed to accountability requirements based on inspection activity. Higher levels of scrutiny and a stronger emphasis on accountability would be more in

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<sup>36</sup> <https://www.independent.co.uk/news/world/americas/death-penalty-us-states-map-b1932960.html>

<sup>37</sup> <https://www.igis.gov.au/about/annual-report>

<sup>38</sup> <https://www.theaustralian.com.au/inquirer/the-man-bringing-national-security-outof-the-shadows/news-story/3a21deec885d891562c4e6fb54810888>

<sup>39</sup> Op.cit.



line with best practice audit and inspection standards. Overall, these arrangements have the clear appearance of being cozy and cooperative rather than effective.

A far better response would be the enactment of a properly constructed Human Rights Act to protect Australian citizens and shape the behaviour of government towards the people it serves, including that of oversight bodies such as the Inspector General of Intelligence and Security. The Australian National Audit Office sets the standard for Commonwealth accountability as a servant of the public, not the government.

There are much better approaches to intelligence and security accountability than the lazy and inadequate models applied in Australia.

## Conclusion

This submission is not exhaustive and is only meant to draw attention to the *rickety house of cards* which is Australia's intelligence and security infrastructure. This mish-mash has been cobbled together over decades with agencies sprouting up from the decaying remains of various perceived crises in unplanned ways and, since 9/11, generating an unparalleled demand for unprecedented authoritarian legislation in *knee jerk* reactions to incidents occurring in other countries.

These demands have reached the point where they are now a greater threat to the Australian way of life, with its former freedoms and civil liberties, than anything they claim to be protecting Australian citizens from, both inside or outside the country.

This dangerous situation has matured to a point where governments now appoint intelligence and security insiders to review and create their own agendas in place of rigorous independent judicial reviews in the form of royal commissions.

Civil libertarian and human rights representations have been marginalised in these reviews whilst security mandarins get unhindered platforms for the promotion of authoritarian policies in response to spurious argument of *evolving threats* which their own agencies sell to government in classified briefings unseen by the community at large.

This has become the perfect *self-licking ice cream* based on an invisible tautological reasoning loop where reality becomes what those in the intelligence and security community say it is.

Political leaders have allowed this to happen because they lack the moral courage to challenge this new status quo for fear of being labelled *weak on terrorism*. This loop persists despite the strongest of empirical evidence that Australia's experience of terrorism has been magnitudes weaker in terms of death, injuries and property damage than generated by background crime and other major sources of disruption in Australia (see Attachment A). This fact is also true of most other developed nations.

The Richardson Review and the *National Security Legislation Amendment (Comprehensive and Other Measures No.1) Bill 2021* continue the disturbing pattern of demonizing minorities by imputation in Australia, especially citizens of Muslim and Chinese extraction, and dividing the nation rather than unifying it.

The succession of powers sought by this bill reflect an unprecedented capture of government by the highly funded intelligence and security community that has grown into a multitude of budget hungry empires which have been shifting the balance of power away from ordinary citizens towards government authority for over 20 years.

The intelligence and security community itself needs to be rationalized and brought back under proper civil and judicial control with a scale, budgets and powers that reflect the actuality of Australia's security situation rather than some bottomless pit of nefarious, worst-case scenarios.

The 9/11 attacks fit this mould as a highly unlikely triumph which only succeeded because the security apparatus failed to act on the information at its disposal. Increasing the scale and powers of intelligence and security agencies will not prevent such an attack if intelligence and security agencies remain incapable of processing the warning signs that often sit flashing in front of them while they are facing in the wrong direction.

## Recommendations

It is recommended that the PJCIS:

1. Note the contents of this submission, particularly:
  - a. the excessive powers and authorities approved for and continuing to be sought by intelligence and security agencies since 9/11;
  - b. the widely recognised lack of impartiality in the Richardson Review as an insider-led approach to reform which has down played the interests of civil liberties and human rights for Australian citizens;
  - c. the unceasing nature of demands by intelligence and security agencies along with elements in Australia's political class for further intrusions into the civil liberties of ordinary Australian; the absence of any strategic planning based on empirical data as opposed to episodic reporting of actual or speculative occurrences;
  - d. failure of the intelligence and security community to explore reform alternatives which extend beyond the existing multi-agency structure which was a factor in the 9/11 intelligence failures in the United States;
  - e. the fixation of intelligence and security agencies on **expedience** and **convenience** of action at the cost of protecting Australians from abuses which have characterised aspects of their operations since at least the Cold War; and
  - f. broad concerns over the performance, structure and function of the NIC which has evolved incrementally and not been subject to a truly independent review in nearly 50 years.

2. Advise the government that the extent of reforms to the intelligence and security sector has reached a point after 20 years of ad-hoc restructuring that it now:
  - a. requires a full spectrum review;
  - b. a Royal Commission, similar to the Hope Royal Commission, with expansive terms of reference should be conducted as a matter of urgency; and
  - c. as with the Hope Royal Commission, this process should be led by a prominent and independent jurist.
3. The recommendations of the Richardson Review should not be implemented prior to completion of a royal commission process and that they:
  - a. should be treated as a submission to the Royal Commission process; and
  - b. where the intelligence and security sector argue certain recommendations of the Richardson Review are critical to national security, they be implemented with strict sun set clauses which lapse when the Royal Commission process is completed and recommendations implemented by government.
4. Should government proceed with implementation of the Richardson Review, the PJCIS advise that a detailed, structured plan be developed and promulgated for implementation of the review due to the extensive and diverse nature of its recommendations. This plan should cover priorities, combinations of recommendations to be brought forward in legislative blocks, explanation of why this is being done, benchmark dates, costs (both pecuniary and non-pecuniary) of implementing each legislative block and risks arising from these as they become realities.
5. Government, as a matter of priority, adopt measures which protect the Australian people from all forms of abuse including the enactment of a powerful Human Rights Act and stronger accountability regimes for intelligence and security agencies.

## **ATTACHMENT A**

## COUNTER TERRORISM POLICY IN AUSTRALIA – HOW DO THE FACTS STACK UP?

By Dr Tony Murney

**Government responses to terrorism in Australia have seen the rights and freedoms of its citizens diminished in the name of “keeping Australia safe”. Do the facts on terrorism justify legislated safety on a scale which dramatically shifts authority from citizens to the Government?**



YouTube Scott M.C.

### Counter Terrorism Policy – Rights and Freedoms

There has been an ongoing reduction of rights and freedoms of all Australian since 2001 based on Government claims about terrorism.

The claim has been repeatedly made that we need a “new balance” between rights, freedoms and security, all in the interests of [“keeping Australia safe”](#).

This has been done legislatively by placing additional legal obligations on ordinary citizens, interfering with their privacy, reversing presumptions of innocence, marginalising the role of the judiciary, reducing restrictions on deploying the military in civil matters and increasing the powers of government to monitor e-communications.

Elements of this approach deny natural justice, decrease protections from government abuse, reduce the accountability of police and security agencies, limit free speech, restrict travel, jeopardise citizenship, diminish the rights of children in alleged terrorism matters, create e-communication risks and impinge on freedom of the press.

The terrorism threat in Australia must be serious, continuous and imminent to justify such drastic actions over so long a period. A comparative look at key facts on serious crime and “killer” problems in Australia provides powerful insights into the realities of this proposition with important implications for those making policy in this sphere.

### Terrorism and Homicide

Deaths due to terrorism in Australia between 2001 and 2013 were surprisingly low given the post 9/11 hysteria with only one person killed and a small number of incidents interdicted. The period between 2014 and 2019 represents the peak of terrorist activity in Australia with 10

people killed. Of these, four were perpetrators, one victim was killed by police and the remaining five were killed by perpetrators.<sup>404142</sup>

Homicide (murder) is probably the nearest criminal comparator to terrorism. Based on the most recently published data, there were [414 murders](#) in Australia in 2017. This total for one year is 83 times more deadly than terrorism over six years and, if translated to an equivalent effect for the period 2014 to 2018, it would be over 400 times more deadly.

Deaths due to terrorism in Australia are so incomparably low by comparison other sources of homicide that legislative impositions on citizens due to the threat of terrorism seem heavily disproportionate to its real-world consequences over the past 18 years.

### **Terrorism arrests versus other serious crime**

The Government often uses arrest numbers to show the severity of terrorism in Australia. Published data indicate [116 people](#) were arrested for terrorism related offences between 2001 and 2018, averaging six a year. The concentration of terrorism related incidents from 2014 to 2018 saw the average for this period increase to 18 a year.

Whilst there are no simple direct comparators against which to assess these claims the offence categories set out below have direct parallels to key aspects of terrorist activity.

Six hundred and seventy-nine alleged offenders were proceeded against by police for [murder and related offences](#) (Table 1, line 7) in Australia during 2017-18 with 7,277 for the whole decade. The number of alleged offenders in this category for one year is nearly six times higher than the total number of terror offenders arrested over 18 years.

Of closely related interest, 78,391 alleged offenders were proceeded against by police for [acts intended to cause injury](#) (Table 1, line 12) in 2017-18, with a staggering 730,903 recorded over a ten-year period.

The number of alleged offenders in this category for one year is 676 times higher than the entire terror total since 9/11.

Remarkably, 13,016 alleged offenders were proceeded against by police for having committed [weapons and explosives offences](#) (Table 1, line 44) in the same year with a total of 106,407 for the decade.

The combined total number of alleged offenders in these three categories alone is 794 times the 18-year total for terrorism.

Terrorism arrests in Australia are minute by comparison the number of offenders charged with *murder, intent to cause injury* and *weapons or explosives offences* and Government appears utterly over focused on priorities which are nowhere near the main sources of casualties and domestic threats to life and safety across the nation.

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<sup>40</sup> <https://www.nationalsecurity.gov.au/Media-and-publications/Publications/Documents/Australias-Counter-Terrorism-Strategy-2015.pdf>

<sup>41</sup> <https://time.com/5075253/terrorist-attacks-australia-timeline/>

<sup>42</sup> [https://en.wikipedia.org/wiki/List\\_of\\_terrorist\\_incidents\\_in\\_Australia](https://en.wikipedia.org/wiki/List_of_terrorist_incidents_in_Australia)



## Mass Casualty Events

Mass casualty events are perhaps the major source of fear from terrorism. No terror related mass casualty events occurred in Australia between 2001 and 2019 9 (see thwarted attacks).

Non-terror mass casualty events are not uncommon in Australia. The most infamous of these is the Port Arthur massacre where 35 people were killed and 24 injured.

More recent events include the 2017 Bourke St Mall vehicle attack where six people were killed and 27 injured, and last year's shootings in Osmington W.A. where seven people were killed. A fact lost on most Australians is that three days after the Lindt Café siege eight children were murdered in one incident in Cairns and Australia seems to have all but forgotten the tragic 2011 Quaker's Hill Nursing Home killings where 11 lives were taken.

Each of these single events had higher death tolls the 18-year total for terrorism and the combined total of these events alone was five times higher than all terror deaths for this period.

The public has good reason to be disturbed by mass casualty events due to their sheer concentrations of brutality but the Australian experience shows that while such events can be expected none have been due to terrorism over the past 18 years and that Government would be better focused on these than less common hypothetical possibilities.

## Thwarted attacks

ASIO reported that [14 terrorist attacks were "thwarted"](#) by police and security agencies between 2014 and 2018, averaging 2.8 a year or 0.23 a month (note ministers are reporting this has increased 16 in 2019).

This type of proposition is very difficult to assess as the commission of an offence requires a combination of **intent, means and opportunity** to do so. Where any one of these components is missing, for whatever reason, the principal offence (an attack) cannot be successfully committed.

As a rule, police do not record such propositions because claims that an offence did not occur are hypothetical and more often than not difficult or impossible to prove. Were police able to reliably count the hypothetical impacts of disruption on future criminal activity this would likely run to tens of thousands of occurrences or more each year.

Disruption effects also vary greatly in quality depending on the capability of criminals, measured by their ability to successfully marshal the means and isolate opportunities to commit offences. Post incident information on thwarted terrorist attacks show a wide variation in the quality of prospective attackers ranging from "the gang that couldn't shoot straight" type scenarios to more sophisticated criminal groups.

Speculation by public officials, including ministers, on events which did not occur is potentially misleading and compromise any matters still before the courts. In any case these thwarted events are likely to represent only a tiny fraction of such occurrences as the result of broader law enforcement operations.

## Terrorism and other “killer” problems

There were [3,128 suicides in Australia during 2017](#), [2,782 deaths from accidental falls](#) and [1,223 road deaths](#).

The suicide figure for 2017 is on par with total deaths in the 9/11 Twin Tower attacks and deaths from accidental falls are not far behind. Deaths from the 2017 road toll alone are 245 times those of the five-year terrorism total.

Suicide in Australia is seven time higher than homicide and along with the road toll is a constant source of public concern. Government could do more in this area and if vulnerable Australian’s have something to fear, it is not terrorism but falling over which is 556 times higher for one year than domestic terrorism killings since 2001.

## Possible number of terrorists in Australia

Successive governments have been reluctant to indicate the possible magnitude of terrorism in Australia. This is an important omission because it links directly to the number of people associated with terrorism, the numbers of personnel required to manage the problem and the basis for impinging on the rights and freedoms of all Australians as opposed to just those associated with this phenomenon.

In the absence of any official figures and working from incident and arrest reporting, the total is probably less than 500 people in a population of [25,385,642](#) or 0.002%. Allowing for this estimate to be wrong by 100% and doubling it to 1000 only increases this to 0.004%. Percentage results remain incredibly small even if these estimates are doubled again and again.

This simple observation raises question raises question as to whether legislation affecting the freedoms and rights of all Australian is even remotely justifiable as opposed to more precise measures which target just those involved and alleviates the “you might all be guilty of something at some time” syndrome which underpins blanket approaches to national security.

## Overseas Terrorism

As overseas terror events have affected Australia’s response regime, two observations can be made on transference effects to Australia. [First, world terror deaths have been falling for three years and 99% of those were in nations characterised by conflict or political repression.](#) Second, 85% of terror deaths occurred in only [10 countries](#) across the world, mostly located in the Middle East and North Africa.

In this environment, transference pressures on Australia should be falling and, with the exception of our engagements in the Middle East, Australia does not match the profile for high volume terrorist incidents.

The Global Terrorism Index rates the impact of terrorism in Australia as “LOW” against 138 countries.



Australia's long-term response to terrorism seems to be premised on the overseas experience rather than what has actually been happening here and many of the measures implemented have simply been copied from other countries. This wrongfully conflates Australia's culture and terrorism experience with that of countries which are very different to here and results in significant potential to generate inappropriate policies and misallocate resources.

### **Decades of experience**

A major shortcoming of proposals to shift the balance between rights, freedoms and security in response to terrorism is a failure to appreciate that Australia has already been progressively adjusting to similar types of occurrence, especially mass casualty events, on the basis of domestic experiences for several decades.

These adjustments include, world leading firearms regulations, strict control of explosives and dangerous goods, establishment of specialized police capabilities and capitalising on Australia's unique border control advantages as the only unitary nation-continent on earth.

Long-term multicultural policies stressing inclusiveness rather than division have also been important in this space.

As a result, many of the subsequent legislative initiatives created in the name of "keeping Australia safe" have been either unnecessary because of what has already been done or are counterproductive because they divided citizens rather than unifying them.

Before the proponents of increased legislative intrusion try to use the data presented here as an alternative justification for "keeping Australia safe", it should be stressed that Australia's homicide rates, arguably the most reliable international crime comparator, are amongst the lowest in the world. That is, Australia is already amongst the safest nations on earth.

In responding to international terrorism, it is important to note that no event on the scale of 9/11 has recurred in any western nation in the subsequent 18 years and that a major aspect of strategies deployed by Al Qaeda and Islamic State is to induce adversaries to deplete their resources and disrupt their own societies by over reacting to improbable events. This raises questions as whether those formulating counter terrorism policy in Australia have been protecting Australia or dancing to the tune of those they oppose.

### **The "New Balance"**

The facts of Australian terrorism indicate Government responses have been markedly disproportionate to the incidence of both the actual and hypothetical occurrences over the past 18 years when compared with serious crime and other "killer" problems which threaten the lives and safety of Australian citizens.

The "new balance" between rights, freedoms and security is, from an empirical perspective, a deeply flawed concept and represents an unnecessary over-reach by Government with a greater to potential to undermine our way of life than preserve it.

As a general rule, security policies which do not align with empirical fact are prone to distort national security priorities and misdirect resources away from the real problems. Australia's

current counter terrorism policies need to be systematically reviewed and balanced with the challenges we face rather than draw down on the precious civil liberties of Australian citizens.

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