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Secretary:

CITIZENS COMMISSION ON HUMAN RIGHTS

Established in 1969 by the Church of Scientology to investigate and expose psychiatric violations of human rights

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Citizens Commission on Human Rights
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Monday, March 21, 2005

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

Dear Sir/Madam,

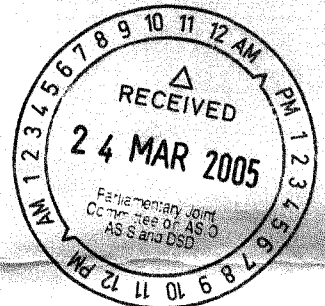
Re: Review of Division 3 Part III of the ASIO Act 1979 - Questioning and Detention Powers

I would like to thank the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) for giving members of the public the opportunity to provide input into the review of the ASIO Act ('the Act').

The Citizens Commission on Human Rights (CCHR) is a non-profit, public benefit organization dedicated to investigating and exposing psychiatric violations of human rights. CCHR was founded in 1969 by the Church of Scientology and Dr. Thomas Szasz, Professor Emeritus of Psychiatry at the State University of New York, Syracuse.

Along with our extensive interest in psychiatric human rights abuse we are naturally interested in any situation that reduces the basic human rights of any or all Australians, a point of view shared by High Court judge Michael Kirby in excerpts from this recent news article:

The High Court judge pointed out that since 2001, 17 items of legislation restricting civil rights have been adopted by the Federal Government, as well as complementary state laws... There is a tendency in this area to give legislation stirring names in the hope of rendering exceptions to civil liberties more palatable and



opposition to such laws more difficult...but the media have noticed the Orwellian character of ... titles such as the NSW Freedom of Information (Terrorism and Criminal Intelligence) Act 2003, whose object is to restrict and not to enhance access to official information on security grounds."

Sydney Morning Herald, Judge warns of Orwellian terrorism laws, By Michael Pelly, November 12, 2004

THE DANGERS

The main areas of concern for our organization, as with other organisations, are dealt with under the headings below.

The ASIO detention powers build on the broad and discretionary definition of terrorism

The Act refers to the definition of terrorism in the Criminal Code. This definition is very broad. Some of the activities that may be classed as terrorist acts under this definition include activities associated with legitimate freedom movements that oppose tyranny (for example, organisations like the African National Congress in South Africa).

The breadth of this definition means that many legitimate activities may be covered by the Criminal Code definition of terrorist activity. Furthermore, this legislation gives ASIO, other government agencies, and the government a lot of discretion, which means they can target specific communities or groups based on, for example, religion or race. This makes the law potentially divisive and extremely discriminatory in its application.

There is a template for protection offered by the current NSW Mental Health Law which we believe should be adhered to in any situation and applied to any person mentally ill or not. These provisions align with international human rights principles.

Under Section 11 of the Mental Health Law in NSW a person is protected against being drawn into the mental health system based on:

"(1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a **particular political opinion or belief**,
- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a **particular religious opinion or belief**,
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to **express a particular philosophy**,
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a **particular sexual preference or sexual orientation**,
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a **particular political activity**,
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a **particular religious activity**,

- (g) that the person engages in or has engaged in **sexual promiscuity**,
- (h) that the person engages in or has engaged in **immoral conduct**"

This section contains other protections not related to this submission.

As stated above while these provisions apply to the assessment of people regarding mental illness they act as a basic framework for the assessment of any person for any crime as they are based on United Nations Principles. Indeed the history of human rights is a constant war between certain forces in "power" or "influence" restricting rights and the efforts of, mostly, ordinary men striving to keep these forces at bay. We should apply the same basic protections to any member of the Australian community.

Detention is not limited to people directly suspected of involvement in terrorism

The Act does not require someone to be suspected of involvement in terrorism either directly or indirectly before they may be detained or questioned. This means that people who are not involved in terrorism may be held because they have "information". Those held could include innocent people who had no involvement or intention of involvement of a terrorist act but who are nonetheless deemed "guilty" by (inadvertent) association. A free society should not permit the detention of a person who has no involvement with terrorism.

More to the point without evidence of crime or clear evidence of collusion with criminals the detaining of a person has nothing to do with law or "terrorism." Restraint without lawful protection is "terrorism" and is one of the defining hallmarks of everybody from Hitler to Pol Pot to Saddam Hussein. To illegally restrain citizens because we are "defending" democracy is impossible because democracy itself is being suspended in the process.

Duration of detention and questioning is extremely long

Under the Act, people can be detained for up to 7 days and questioned for up to 48 hours. In ASIO's annual report 2003-2004, there was one person who was questioned for more than 42 hours. As mentioned above, the person being questioned does not even have to be involved or suspected of involvement with terrorism.

On the other hand, when the police reasonably suspect someone of having committed a crime, they may detain the person for a maximum of 12 hours without charge or for 20 hours in terrorism related cases. It appears excessive that ASIO may detain a person who is not even suspected of having committed a crime for 8 times as long the police.

Another point to be added to the above example of a person being questioned for 42 hours is the concept of torture. Recent events with Mr. Mamdouh Habib indicate that governments internationally are already willing to ignore every known standard of civilized behaviour in the quest for "terrorists." If this is already happening now why is more coercion needed unless there is an unstated agenda within some parts of the Australian government. It can be argued that detention and constant questioning could itself degenerate into a kind of physical or psychological torture. This cannot be allowed to happen.

Can't talk about your detention

A person detained under the Act may not talk to anyone else about it (excluding certain government and legal officers, and/or parents and guardians in some limited circumstances). They can not even tell their spouse or their employer. If they do so within a two-year period, then they are liable to five years in prison. This is likely to have an extremely debilitating and destabilising effect, especially for someone who was not even involved in terrorism. How is it possible for someone to disappear for a week and not be able to tell anyone where he or she was and still maintain 'normal' social or working relationships?

What makes this even more unfair is that the Minister may disclose the relevant information (after making appropriate applications). Thus the Minister can make public the information about a detention, but the person who was detained may not!

While this provision is somewhat less dramatic than the previous point it is in fact a greater attack on our rights than most other aspects of these laws because:

1. Every person has a common law right to communicate. Obviously where matters of security are concerned there are limits for the protection of all. But under the current conditions a person detained could be found to have no connection to terrorism and then, as a fully innocent member of society, not be able to explain what happened to others and suffer loss because of this. That is, they are being punished though innocent. This is again terrorism, the kind of things the Australian government would accuse Saddam Hussein of in relation to the Kurdish population in Iraq: punishment though innocent.
2. But of even more concern is the concept that no person can complain about their detention or make public a grievance which means that any abuse suffered under these "anti-terrorism" laws will never be exposed. This means that Australian society approaches a Totalitarian system in practical terms and again mirrors the very regimes it claims to defend against.

Proving you don't know or don't have something

When being questioned under an ASIO warrant, you no longer have your common law right to silence, and you have to answer all questions put to you. If you do not answer, then you may go to prison for five years. A further grave concern is that it is up to the detainee to prove that he or she doesn't know something.

It is very difficult – if not impossible - to prove that you don't know something. The detainee, for example, might have had no knowledge of an issue until ASIO raised the matter or alternately may have had a fleeting or superficial knowledge of the matter or may have genuinely forgotten some details. In summary it is very difficult – if not impossible in these circumstances - to prove that you do not have or know something.

The above point is worth expanding by applying it back to ASIO and other government agencies. If any person detained has to prove "that they do not know something" (an impossibility at best) then ASIO and other agencies should have to answer all questions put to them in their treatment of Australians and have to prove that they did not know they were breaking international standards of law when instances of abuse arise under these laws.

As stated earlier, an impossibility either for an individual or ASIO.

Presence of lawyers

It is a very long-established principle that a person should be permitted to have a lawyer there to assist him/her particularly when there are complex legal issues with severe consequences. The terrorism and ASIO related laws are very complex, with more than 20 pieces of legislation and over 200 pages of law. A lay detainee clearly needs a lawyer to assist him/her in this situation, to act as an advocate and to provide clear legal advice and information. However, under the Act, ASIO may question the detainee in the absence of a lawyer; and even if a lawyer is present he or she may be replaced if they are being "unduly disruptive". It is extremely unfair and one sided that ASIO may have a team of lawyers while the detainee may not even have the assistance of a single lawyer.

This situation again approaches the same kind of situation that the Australian government is claiming to defend against. We will not defeat terrorism by suspending legal process, something the American Supreme Court has indicated in it's recent rulings regarding Guantanamo Bay in Cuba.

Withdrawal of passport

Under the Act, if ASIO applies for a warrant, a person's passport is to be taken away immediately. This is an extremely broad power that may be invoked by ASIO to prevent travel and may be based on very thin evidence. Furthermore, procedural rights and grounds of appeal against the withdrawal of a passport is unclear in the legislation

In closing

Mainly since the September 11 incident in New York in America there has been a steady tendency by certain governments, amongst them the British, American and Australian governments to use this event, and others like it, to justify the restriction or dissolution of basic, God given rights. No evidence has been presented of increased levels of threat that would justify the draconian measures in question.

The Bali bombing represented a terrorist attack on Australians that further fuels this trend. It has been used by various arms of the government to amplify the simplistic "good guy bad guy" view of the world that suits those who would like to weaken our rights. One simple question that should be asked by the committee is why terrorist groups are getting what marginal support they do get in their home countries. (There is not evidence that they have ever been supported by the majority of peace-loving hard-working members of the societies that supposedly "harbour" terrorists.)

Terrorism is only supported because it is being fed by injustice, poverty, disempowerment of peoples. These are real issues that need to be addressed and they can only be addressed by using democracy and its values not by demeaning it and twisting it to become the mirror image of the regimes it claims to oppose.

The necessary laws are already in place to protect ourselves. What the government should do is win over Australians to this cause using information not based on fear and comic book descriptions of the world, but by utilizing the already entrenched belief of Australians in democracy, legal process and freedom.

Yours sincerely,



Michael Woods
Production Director
Citizens Commission on Human Rights