

## Submission to the Inquiry into the Anti-Terrorism (No. 2) Bill 2005

As a doctoral candidate researching how similar legislation operated in Australia in the past I suggest that there are lessons to be learned from history. There needs to be a balance between the security of the community as a whole and the protection of an individual's civil liberties. My research (still in progress) for my thesis entitled "Internment of Political Dissidents in Australia during the Second World War: A Social History" indicates that in the cases of approximately 50 'British-born' men and women, who were interned under Emergency Regulation 26<sup>1</sup> (promulgated under the *National Security Act 1939-40*), the balance was not achieved.

My research is based to a large extent on the security dossiers of this particular group of internees of non-enemy alien background, supplemented by collections of private papers and interviews.<sup>2</sup> The dossiers reveal the 'evidence' used to intern and keep these people interned for varying lengths of time. It alarmed me to see how bits and pieces of information from a neighbour (possibly malicious), an injudicious pre-war article, a hot-headed statement made at a tempestuous (but legal) political meeting could be cobbled together to make a damning 'case'. These bits were used over and over again (without further investigation) at different stages of the internment process when Attorney-General HV Evatt reviewed cases, when the internee lodged an objection and appeared before an Advisory Committee and even during an Inquiry conducted by Mr. Justice Clyne in 1944-5 into the internment of those belonging to the Australia First Movement.<sup>3</sup> At no stage was the 'evidence' ever tested by the normal procedures of an open trial. The Attorney-General and the members of the Advisory Committee relied upon the advice given by security personnel, some of whom needed to obfuscate the role played by agent provocateurs. Review of the cases for these processes did not entail review of how the evidence was collected. Reading through the transcripts, it is clear that the individuals and their lawyers (when they could afford them) were greatly disadvantaged by not having specific charges laid against them which could be tested in open court. The whole process was stacked against these political dissidents who were under the impression that free speech and rules of *habeas corpus* still operated in Australia.

My research finds that the experience of between 6-41 months internment without trial, usually followed by restriction orders upon release had a devastating impact upon the mental and physical health of the individual, their spouses and children, their economic situation as they lost income both while detained and after when they experienced great difficulty gaining post-internment employment or continuing in their pre-detention profession. However, the worst effect for them of the internment experience was the destruction of their reputations. They had been branded traitors in

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<sup>1</sup> See National Security (General) Regulations, Reg. 26 (1c) : "The Minister may, if satisfied with respect to any particular person, that with a view to prevent that person acting in any manner prejudicial to the public safety or the defence of the Commonwealth it is necessary so to do, make an order....directing that he be detained."

<sup>2</sup> See Attachment A: Some Relevant Manuscript Files (this is a selection of some of the files I have gone through so far in my research). The first group of files (Service and Casualty forms) will indicate the internee cases I am studying for my thesis. Some relevant published references may be found in Attachment B.

<sup>3</sup> See transcripts in the National Archives but also the report, Commonwealth of Australia, *Inquiry into Matters relating to the Detention of Certain Members of the 'Australia First Movement' Group*. Report of the Commissioner (His Honour Mr. Justice Clyne), Canberra 1945.

time of war with no recourse to the normal processes of law to establish their innocence. This marked them and their families for the rest of their lives.

In the light of this I urge that the current legislation includes safeguards for the civil liberties of the individual particularly in the matter of length of detention before a specific charge is laid and in ensuring independent judicial review of the evidence collected by ASIO and the police.

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