

Principles for Anti-Terrorism Legislation

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PREAMBLE

The present Government believes that "terrorism" presents a "clear and present danger" and creates unique and special circumstances, and thus the need for special laws. This includes laws that impinge exceptionally upon the civil liberties of every Australian citizen.

I believe that the Anti-Terrorism Bill 2005 and the Anti-Terrorism Bill (No 2) 2005 (together ATB2005) so fundamentally change the texture of Australian society that the terrorists can look and laugh and claim victory.

No longer is proof or evidence required; *suspicion* or association is sufficient cause for imprisonment, detention, and control.

A person may be stopped, searched, questioned, tagged, restricted, and detained based on suspicion alone. Individuals are required to "dob-in" family, friends, or colleagues, if asked, and to provide records about people. Such people are not allowed to disclose anything, or they may be imprisoned.

The AFP is not required to reveal the reason for preventative detention of citizens. A person may be locked up for days or months, without knowing why. A detained person may contact *one* family member, one employer or employee: "I am safe and unable to be contacted." And those people are not allowed to disclose anything, or they may be imprisoned.

No longer does an Australian citizen have the right to a lawyer of choice; all client/lawyer communication will be monitored.

Experts and "just plain folks" around Australia have identified an overwhelming number of problems, absurdities, illegalities, and unconstitutionality within the existing anti-terrorism laws proposed in the ATB2005.

PRINCIPLES

I believe the laws proposed in the ATB2005 require a fundamental re-think.

I believe there is no way to "fix" the ATB2005; tampering at the fringes of something that is corrupt from its core will produce laws that are even more scrambled and obtuse - and even more corrupt.

If this Government is going to enact anti-terrorism laws, those laws must be based on a set of principles that balance civil liberties and protection.

Any law must comply with the following principles:

- (1) Any definition of "terrorism" or "sedition" must be consistent with:
 - (a) Freedom of speech; and
 - (b) Freedom of association; and
 - (c) Freedom of movement; and
 - (d) Freedom of expression.

[Reference: The International Covenant on Civil and Political Rights (ICCPR), to which Australia has formally signed assent.]

- (2) Any remedy taken against a person merely suspected of preparing for or participating in a terrorist act must be consistent with (1) and:
 - (a) The right to liberty and security of that person; and
 - (b) Freedom from arbitrary arrest or detention; and
 - (c) Liberty of movement; and
 - (d) No arbitrary interference with the person's privacy, family, home or correspondence; and
 - (e) Preservation of the person's dignity, honour, and reputation.

[Reference: The International Covenant on Civil and Political Rights (ICCPR)]

- (3) Any arrest, detention, or control must be based on:
 - (a) An indictable offence; or
 - (b) An offence against a State or Commonwealth Law; or
 - (c) Evidence or proof that an (a) or (b) has been committed; or
 - (d) A demonstrably, documented "reasonable belief" that (a) or (b) or (c) will occur.

[These are all consistent with the current Crimes Act.]

- (4) Any person facing arrest, detention, or control must be:
 - (a) Apprised in full of the charges facing her/him; and
 - (b) Apprised in full of those charges as soon as possible.
- (5) Any person facing arrest, detention, or control must be accorded full right and access to objective, independent judicial review:
 - (a) Such review being provided in a timely manner; and
 - (b) The person selecting a lawyer of the person's choice; and
 - (c) Ensured confidentiality of lawyer/client discussions; and
 - (d) Covering all charges against the person, documenting the results of the review, putting the records in the public domain for appropriate review; and
 - (e) Expunging all records demonstrably and immediately upon determination there is no proof, evidence, charge, or indictable offence
- (6) Any person facing arrest, detention, or control must be assumed innocent until proven guilty.

- (a) Those making the charges bear the burden of proof.
- (7) Any person arrested, detained, or controlled has a right to:
 - (a) Representation by a lawyer if her/his choice; and
 - (b) Private and confidential communication with her/his lawyer; and
 - (c) Private and confidential contact with up to three significant persons within one hour of being arrested, detained, or subject to a control order

Where a "significant person" is an immediate family member or someone with whom a significant financial, custodial, emotional, or care-giving/-receiving relationship exists
 - (d) Private and confidential contact with up to three significant persons daily
- (8) Any law must comply fully with:
 - (a) The International Covenant on Civil and Political Rights (ICCPR); and
 - (b) The ACT Human Rights Act 2004; and
 - (c) All international treaties/conventions to which Australia is a signatory; and
 - (d) The Australian Constitution; and
 - (e) The Crimes Act.
- (9) Any law enacted based on these principles applies to:
 - (a) All Australian citizens anywhere in the world; and
 - (b) All people of any nationality on Australian soil anywhere in the world; and
 - (c) All people of any nationality under the control of Australian citizens anywhere in the world.
- (10) Any law enacted must ensure that each clause:
 - (a) Has a sunset clause of no longer than two years; and

This ensures that the Government that creates these laws is accountable to review their adequacy, and consciously and publicly re-commit to each clause.
 - (b) Is subject to reporting and active and public discussion, debate, and review by Parliament quarterly; and
 - (c) Is either renewed explicitly or, if no action is taken, the clause automatically becomes null and void.

CONCLUSION

The Government believes that terrorism is a significant threat to Australia, and believes that existing laws are insufficient to address that threat. They have introduced "draconian" measures to address the gap they perceive.

The ATB2005 fundamentally changes the Australian justice system, restricts the civil liberties of Australian citizens, and destroys many cherished "Australian values."

Australia must adopt a principled approach to all of its anti-terrorism legislation - and now.

If our Government does not act on principles, then I foresee an Australia where:

- We grow increasingly fearful, distrustful, even hateful of our neighbours; and
- We become so afraid of our shadows that we isolate and harden ourselves; and
- We participate willingly or unwillingly, consciously or unconsciously, in increased Government monitoring and control of our daily lives.

Then the actual or imagined terrorists will have won.

VERSION HISTORY

When	Version	Who	What
051029	v0.1	JBamberger	created sent to Kris/CLA
051029	v0.2	JBamberger	added (9) and (10); forgot to include them before sending to Kris!
051105	v0.3	JBamberger	updated with Bill's comments