Submission to the Senate Inquiry into the proposed Anti Terrorism Bill (No. 2) 2005

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Senators

Civil Liberties Australia (ACT) [hereinafter 'CLA'] acknowledges the work of the Liberal Party's backbench committee, of other Parliamentarians, of expert lawyers and judges, and of our compatriots in other civil liberties and allied bodies in bringing the Anti-Terrorism Bill 2005 from draft 1 in about mid-October to draft 63, the version being commented on now, less than one month later.

Our submission aims to achieve the best law for Australians in areas of civil liberties, human rights and the rule of law. In addition, we would like to see police and security forces using the most practical laws and regulations, and approaches to their roles, in which to prevent criminal and terrorist acts in Australia, and arrest and charge people who commit crimes.

Please note the different emphasis from how the Bill has been drafted.

CLA believes that the main motivation of sworn Parliamentarians should be the greatest possible protection of the traditional liberties and customary way of life of the majority of citizens of Australia. From that perspective, there should be marked differences in any anti-terrorism legislation enacted from what has so far been proposed.

This Bill's original drafting disclosed a determination to give police and security forces maximum possible powers. Such an outcome must be to the detriment of traditional liberties and rights, and the customary legal system, including the independence of the judiciary and long-standing *habeas corpus* and associated provisions. Such an outcome would be a sub-optimal result for the Australian Parliament, and the Australian people.

The laws as proposed, if passed, would restrict and conscribe the traditional liberties and rights of 20 million-plus Australians while targeting potential wrongdoers, who will eventually be charged and convicted, numbering possibly 10 a year at absolute maximum. Based on any local or international historical precedent, the maximum number of 'terrorist' criminals charged and convicted might reach 100 over 10 years.

The world's best police and security services with the world's best laws and regulations will, on historical evidence, undertake surveillance on, detain and control/arrest a minimum of 500-1,000 individuals over that same time frame to achieve conviction of a possible 100. At the very least, twice as many innocent people will be caught up by provisions of the legislation each year as those with any case to answer.

In Australia, therefore, the laws proposed to be passed by this Parliament will probably cause minor to massive interruption and disruption to the lives of at least 50 Australian families a year (or 500 over 10 years) who are entirely innocent of any connection with terrorism or terrorists. With associated impact into the lives of relatives, friends, work and social mates and organisations such as secular and religious groups, probably some 5,000-10,000 innocent people will be affected by these laws in a negative way, through no fault of their own, in a situation where they are completely innocent.

From that perspective, the laws as proposed are not good laws. They are unjust and inequitable, falling more widely and heavily on the innocent than the guilty.

The provisions will – as they have, even in draft form – heighten an atmosphere of fear in the community, inculcate apprehension as a continuous state of mind, and raise the stress level of a significant number of ordinary Australians.

Other submissions will undoubtedly describe in detail the impact on family lives. However, the disruption is almost certain to include – over 10 years – suicide, divorce, mental breakdowns, family break-ups, mentally-scarred children, children whose schooling suffers significantly, major financial cost, shattered reputations and being ostracised from in-laws, fellow employees, schoolmates and religious/society groups.

Remember, the impact we describe is on innocent people, entirely free of any terrorist connection. We think the Parliament can and should do better, by drafting better-worded laws...if, in fact, any further anti-terrorism laws are needed beyond those enacted in 2002-2005.

We refer your attention to the Parliamentary Joint Committee on ASIO, ASIS and DSD hearings on ASIO's detention and questioning powers of 19 May 2005. The Attorney-General's Department, ASIO and the AFP stated in public that they did not require any additional powers.

> Senator ROBERT RAY: *My question is directed to the Director-General, to Mr McDonald and to Dr Wardlaw. Putting aside the question of the sunset clause, in giving evidence today are you arguing for any increased powers in the existing legislation other than the removal of the sunset clause?*
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> Mr Richardson: *No.*
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> Mr McDonald: *With us, the answer is no as well. In fact, the amendments we included in our submission are about clarifying the powers probably in the direction of the rights of the individual.*
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> Senator ROBERT RAY: *Director-General, you are satisfied that the existing powers equip you to do the job you need to do?*
>
> Mr Richardson: *Yes.*

In the light of those answers, there is then no need for increased powers now. The argument that the London bombings of July 2005 demonstrated a new kind of threat to Australia, a threat that warrants the expansion of police powers, is unconvincing since the arrest of Jack Roche highlighted the possible existence of 'home-grown terrorists' as early as 2002.

Further, when 'urgent' change to legislation was required in early November 2005 to counter an allegedly immediate threat, the only alteration demanded was of minor wording. If that was the only urgent requirement in early November, there is obviously no need to further increase powers.

Based on formal evidence in mid-2005 provided to Parliament, and the actions and requirements of the Prime Minister and the Attorney-General as recently as one week ago, the legislation being proposed is neither urgent nor necessary.

CLA submits that a period of at least six months be allowed for considered public and Parliamentary debate to occur before this legislation is further considered by both Houses of Parliament.

Detention and control orders

We leave to legal and other experts the detailed analysis of why the detention and contol orders legislative provisions are wrong in law.

We wish to comment solely on:

- whether or not the proposed laws would achieve the aims of preventing terrorist attacks, and
- the danger to our own society's morals and ethics.

Assuming a cell (say three people) is planning a terrorist attack, the detaining of one of those people will result in the others being alerted within hours.

Those alerted will either continue with the planned attack, or either immediately or subsequently execute a different attack than that originally planned (possibly by blowing themselves up). A different attack/immediate explosion would confound the police or security forces concerned and create a greater danger to the public than the 'known' attack, where the situation/location could be monitored and controlled by police.

Should all three be detained (and the planning of the attack actually confirmed), any other unknown evildoer connected with the group would be alerted. In that situation, the police would have three detainees, obviously with information and knowledge, able to be held for say 14 days in the first instance, or a year or more by repeated orders.

In such circumstances there would be considerable danger that the people detaining the trio would be tempted to inflict cruel and unusual punishment to extract information. Should that occur, Australia would have lowered its standards to those of terrorists.

A better approach

Intelligence will prevent terrorist acts. Without evidence sufficient to arrest, detention or control will only postpone a terrorist act, maybe for weeks, maybe for a year – but not forever.

Rather than allowing people to be detained and controlled in ways that breach Australia's traditional rule-of-law values and Australia's international legal obligations, Parliament should instruct security and police forces to concentrate on gaining physical and electronic evidence sufficient to arrest people under normal Crimes Acts.

Potential terrorists watched and put under surveillance are of much more strategic and tactical value to good intelligence and preventing an attack than are potential terrorists alerted – and their co-conspirators and/or contacts alerted – by detention or control.

There are no circumstances where other than normal Crimes Acts are needed to arrest someone, and therefore take them out of circulation. This includes the situation of a probable immediate attack within minutes or hours.

Evidence of wrongdoing is obviously needed for arrest. Without sufficient evidence to arrest somebody, the potential terrorist is of more use being kept under surveillance and his/her actions and contacts monitored.

Without sufficient evidence to arrest, a detention or control order is not likely to stand up for very long to judicial supervision.

Surveillance teams need new training to intervene by making an arrest earlier rather than later, for example if a suspected bomb-maker leaves home with a well-packed backpack.

The terrorist threat to Australia is better managed by better police and security training, by more astute and accurate intelligence gathering, and by inculcating different attitudes in police and security personnel. Police and security forces are institutions where discipline and control are over-valued; hence they seek greater powers of detention and control by requesting Parliament to pass 'control/lock up' laws.

By contrast, terrorist groups are small, unstructured, flexible and adaptive. Australia's police and security forces, or at least sections of them, must be structured similarly to be able to predict terrorist thinking if the nation's ability to counter terrorism is to be enhanced.

A detention and control mentality is the least productive approach to counter terrorism. If Australia tries to defeat terrorism by acting like Abu Ghraib jailers, or by thinking that power and might will prevail against the amorphousness of terrorism, then the Australian nation and Australians will be left much more widely open than they should be to terrorist attack.

The proposed laws are counter-productive. They start from the wrong premise: that terrorists can be controlled. They seek to stop terrorist acts by bars and bracelets, when terrorism will be ultimately stopped only by eliminating the reasons why some people think terrorists acts are right and proper.

The proposed laws saddle police and security forces with the responsibility for terrorism and terrorists, when it is the Australian community and its Parliamentary representatives who need to take the main action. The action required is to minimise the danger to Australia from any possible terrorist attack conceived and organised from outside Australia (not addressed by this legislation), and to work within the Australian community to eliminate the breeding grounds for radicalism that might lead to terrorism inside Australia.

A commentator has observed: A young man with a job, or happy learning at school/university, and/or with a girlfriend, plus having a motorbike, a family and a sporting, cultural or religious community involvement, has no time or inclination for terrorism. In those words lie how best the threat of terrorism can and should be countered in Australia.

Habeas corpus and associated safeguards

Basically, the proposed terrorism legislation would virtually abolish the fundamental principles of traditional Australian law founded on habeas corpus, due process, and the presumption of innocence.

The writ of habeas corpus has been described in US jurisprudence as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action". Harris v. Nelson, 394 U.S. 286, 290-91 (1969).

The first recorded usage of *habeas corpus* is in 1305, according to Sir William Blackstone (1723-1780), a noted authority. That usage is exactly 700 years ago, but it draws ultimately on Magna Carta 100 years earlier still.

CLA wishes to highlight that there has probably been more than 200 British Parliaments over the past 700 or more years, and therefore about 20,000 or more British Parliamentarians. Given parliaments of like common law and tradition in Canada, South Africa, New Zealand and Australia, as well as the USA, over the past 100-400 years, there have probably been at least another 10,000 Parliamentarians in those countries.

It is therefore extremely courageous of this Australian Parliament to be the first among similar parliaments in 700 years to legislate nationally to do away with, in circumstances other than during a formally-declared war, traditional protections founded on habeas corpus, due process, and the presumption of innocence.

The 300 or so Australian Parliamentarians of 2005 will stand out from more than 30,000 peers and predecessors who have never completely removed such protections from their fellow citizens, even in the face of revolutions, mass protest and violent terrorism occurring on a daily or weekly basis.

It is hard to argue against commentators who say that enacting the proposed legislation will be acknowledgement that the terrorists have spooked Australian Parliaments.

CLA suggests that such an extreme and radical legislative innovation requires more thought than a day or two on the floor of the House of Representatives and a rushed Senate Inquiry process over a handful of days.

The sedition legislation alone, if it is to proceed, which it should not, requires at least three months – but preferably a year – of public and Parliamentary consideration and debate. With 'urgent' legislation passed in the first week in November, there is no need now to rush to pass poorly-considered laws.

Sedition

Sedition is an offence of the mind, and also the 'big stick' of scoundrel governments wanting to silence dissent. The offence occurs in the mind of the government, and massive state resources – and media attention – are then brought to bear on an individual or group at odds with the government position.

Because of the offence's predisposition to abuse, legislation surrounding sedition should be crafted very carefully. Rather than being phrased in defensive terms, as in s80.3 of the draft Bill, it should be phrased in positive terms so citizens understand what their rights are. For example:

> 80.3 (1) People in Australia are entitled, under freedom of speech and expression principles, to point out in good faith that any of the following people are mistaken in any of their counsels or activities:
> (i) the Sovereign
> (ii) the Governor-General;
> (iii) the Governor of a State;
> (iv) the Administrator of a Territory;
> (v) an adviser or advisory bodies to any of the above;
> (vi) a person or body responsible in whole or part for the government of an Australian State or Territory, or part of a State or Territory;
> (vii) a person or body acting in a judicial or semi-judicial capacity federally, in a State or in a local context;
> (viii) a person or body responsible for the government of another country, or for the government or governance of international bodies; or
> ETC, ETC, ETC
>
> *(lines i, ii and iii to be automatically deleted if Australia elects to become a republic)*

PLEASE NOTE also, that the draft Bill does not appear to encompass critique of State or Local Governments, any court or judicial authority, or bodies such as the UN and similar. Obviously, constructive critique of these institutions should be the right of Australians, throughout Australia. This needs attention in the Bill.

It is totally unreasonable (and also, in passing, entirely disproportionate in terms of resources, or 'equality of arms'), for the State to require an individual to prove "good faith". The burden of proving a person has not acted in good faith should be on the government, as it is the government's opinion which creates the offence.

If governments can potentially simply silence and lock away public critics and opponents, almost at whim and with the critics put completely on the defensive by the way the legislation is worded, then Australia will be much changed for the worse.

The sedition legislation demands much longer and deeper community discussion and debate, in public, as well as extended Parliamentary consideration and debate, before being put to the Parliament for consideration in mid- to late-2006.

s80.3.2.d (…engaged in armed hostilities against the ADF)

This section, if passed, would:

- legitimise unproclaimed wars of the Executive of the government of the day; and
- potentially silence criticism of hostilities of which even the Australian Government does not approve.

The section removes the making of war from Parliamentary supervision. 'War' is being re-defined by this provision into whichever State or organisation the government of the day allows, or inadvertently allows, the Australian Defence Force to operate against. As such, it is a provision dangerous to democracy.

No Parliamentarian, of any political persuasion, should be happy to give to an unfettered Executive the power to create a sedition offence by stealth.

CLA highlights that, as drafted, this clause could extend the silencing of critics of Australian policy to events and situations far beyond Australian control or influence. For example, if an ADF person on secondment is serving with a foreign army, navy or air force (as is at least frequently, if not constantly, the situation), this clause extends the reach of sedition around the world to conflicts not even endorsed by the Executive of the Australian Government, much less by the Parliament.

It is easy to envisage a situation where an Australian service person on secondment with United States forces could cause this clause to have effect in a country or conflict anywhere in the world, even where the Australian Government itself may be a critic of the situation.

The same awkward and embarrassing situation potentially applies in relation to many other countries. Australian personnel serve, have served or are likely to serve with armed forces of many countries, including the USA, the UK, Canada, New Zealand, Indonesia, Malaysia, Singapore, Thailand, the Philippines, South Africa, India, Pakistan, Afghanistan, South Korea, Japan, China, Iraq, Kuwait, Saudi Arabia, Israel, East Timor, Papua New Guinea…and others.

This clause, as well as creating a dangerous precedent where Parliament does not endorse Australia becoming involved in armed hostilities, would act to silence criticism of any engagement with a country or any 'organisation' entered into by any country with which an ADF person was serving. The clause would make Australian free speech hostage to the excesses of countries where Australians cannot vote, even if the locals can.

It is a very ill-conceived and dangerous clause. It should be removed entirely.

It could catch the Prime Minister of Australia, when he/she criticises the action of another country unaware that an Australia has an ADF person serving with that country. On whom would the charge of sedition be laid? The Prime Minister, or the Governor General?

Australian Parliaments should be asked to declare war when such a declaration is appropriate…and then sedition legislation could be properly triggered, without the operation of legal trickery in the form of "armed hostilities against the ADF" wording.

The Australian Constitution is clear in demanding a formal declaration of war when needed. It should be followed, and not worked around, as appears to be becoming a pattern.

S80.5 Attorney-General's consent required

This clause politicises the proposed sedition offence in two ways:

- It allows the silencing of criticism by permitting the issuing of a warrant and the making of an arrest, detaining someone or charging and releasing them on bail. It is easy to envisage this section being used to slap a regime of silence on one or more people.

- With such a serious charge, it should be left to the police forces and the independent Directors of Public Prosecution to decide whether or not to proceed, not the political animal who is, whichever political group is in power, the Attorney-General.

Our democracy demands that this offence be as far removed from political manipulation as is possible.

'Sedition' is in the eye of the beholder

In passing, CLA comments that it is ironic that no-one is legally permitted to urge anyone to overthrow the Constitution by force or violence…but a Prime Minister is permitted to urge State Premiers and Territory Chief Ministers to overthrow the Australian Constitution by law (by passing State legislation to extend detention and control periods beyond what would be permitted under the Constitution).

In other words, Australia's leading legislators are conspiring to act directly contrary to the Australian Constitution. If passed, the proposed Anti-Terror laws, on this issue alone, will go down in Australia's political history as infamous.

Retrospectivity

Laws proposed under this Bill appear to act retrospectively. Parliamentarians should be extraordinarily wary of retrospectivity.

Retrospectively, most current Parliamentarians who have ever spoken out against error or mistake in Australia, or tyranny or excess outside Australia, could be guilty under the proposed laws.

The danger is extended well beyond speech or writing by the proposed legislation. Clauses in the financial section of the Bill would seem to be applicable to records of transactions and events as far back as decades, when the action which is to become illegal was legal. This is unacceptable, and should not be allowed by a Parliament protecting the rights of its citizens to live under our customary rule of law.

Whittling away, incremental creep

Overall, the legislation gives the appearance of whittling away at Australians' liberties and rights by semantics and subterfuge. There is continuous incremental creep occurring as, month by month, new laws and regulations restrict personal rights and freedoms and give police, ASIO and ADF personnel more and more intrusive and anti-democratic powers.

On the pendulum of liberty v repression, the swinging arm is away to the right, with continuing momentum outwards. Terrorists are achieving a profound change to the Australian way of life without one incident on Australian soil.

Monitoring

The reporting and monitoring provisions of the proposed Act are inadequate in the extreme. The proposed legislation tilts the democratic pendulum dangerously towards toppling – even the legislation's main proponents have agreed that it is draconian because of 'the times', that is because of the possibility of terrorism occurring in Australia.

Given that the proposals are well beyond what would normally be considered appropriate, the legislation once enacted needs to be monitored on a case-by-case, day-by-day basis. This will happen to some extent in Queensland, but not in the rest of Australia unless new provisions are included in the proposed legislation before it is passed.

At minimum, there should be a public interest monitor (as in Queensland) appointed in each State and Territory, funded by each State and Territory. Otherwise, Australians will be treated unequally under this and associated legislation depending on where they live.

As well, there should be a review committee of at least five people who analyse and comment on the State/Territory public interest monitors' reports.

The review committee should be able to review and comment on all aspects of the legislation's application and implementation quarterly. The review committee should have the power to go back, beyond the public interest monitors' initial supervision, to original sources for full and complete documentation and explanation, if a memer of the review committee deems it is necessary to do so.

The composition of the review committee should include:

1 person appointed by the Government;
1 person appointed by the Opposition;
1 person appointed by the Australian Council for Civil Liberties;
1 person appointed by combined religious groups of Australia; and
1 other person appointed to represent a different community sector.

No State or Territory public interest monitor should be an appointment to the review committee, nor should any police, security of ADF person, or a person formerly from that background. Review committee people should receive payment for time expended on their work. They should also be compensated for quarterly attendance at two-day meetings in Canberra. A secretariat of at least three people should be appointed to serve the review committee. The secretariat should be funded by the Australian Government.

Compensation:

As it is known, from experience locally and overseas, that many innocent people will be detained (and possibly controlled), there should be an established recompense system contained in the Bill, or available from regulations empowered by the Bill.

CLA proposes that any person detained/controlled and subsequently released without being charged with an offence under this Bill should be recompensed at the rate of $1,000 for each full day of detention/control. This allows for a 'half-day free' for police and security personnel to check for simple errors, such as going to the wrong address or finding someone of the same name not implicated.

Monetary compensation, increasing daily, would act as a major deterrent to any police or security force tendencies to detain/control people just to "see what they know" without a proper and reasonable suspicion. There should be some additional restraint imposed on the police and security forces, because the legislation gives them truly extraordinary powers to ruin the lives of individuals, families and children, if the legislation is mis-used or even used carelessly.

Please Note: CLA wishes the following commentary on the proposed legislation, which was prepared before the emergence of v63 of the draft Bill, but is still applicable, to be considered as part of the CLA submission:

COMMENTS ON THE ANTI-TERRORISM BILL 2005

1. **The Government has not demonstrated the need for new anti-terrorism laws. The official Australian threat level has not increased since late-2001.**

2. **Comparisons of the Anti-Terrorism Bill 2005 to the UK situation and the legislative framework there are unconvincing and unjustifiable.**

3. **The Anti-Terrorism Bill 2005 goes much further than the arrangements of major US allies in the 'War on Terror'.**

4. **The Government has not established whether the Anti-Terrorism Bill 2005 is likely to be effective and what difference the new arrangements will actually make to the terrorist threat to Australia.**

5. **The Anti-Terrorism Bill 2005 has negative effects on, and adverse long-term consequences for, Australia's national security and policy interests.**

6. **The Anti-Terrorism Bill 2005 is incompatible with Australia's legally binding obligations under international law (including several treaties to which Australia is a party). Detention orders and control orders regimes particularly infringe.**

7. **In light of the magnitude of the new laws as well as the Bill's length, the Government should allow more time for public and expert scrutiny and then public debate, followed by parliamentary debate, of the new arrangements.**

8. **The draft legislation overturns people's rights to a lawyer. It allows the Government (not the person detained) to ultimately choose who his/her lawyer will be. It allows the police, ASIO and the Government to monitor – and therefore potentially use against the person in subsequent follow-up or evidence gathering – conversations between the detainee and the lawyer. This totally changes the lawyer/client relationship, if not destroys the relationship.**

9. **The legislation allows the Australian Federal Police to be judge and jury. They can issue detention orders without reference to a magistrate or judge. Solely on the AFP's "suspicion" that someone might do something wrong in future, the detention can be extended out two weeks, and then extended again.**

1. The Government has not demonstrated the need for new anti-terrorism laws.

The Government has stated that terrorist attacks on the London transport system in July 2005 have raised "new issues" for Australia and highlighted the need for further amendments to our laws. It has not explained what these "new issues" are or how the London bombings have affected and/or changed the threat to Australia.

Indeed, the official terrorism threat remains at 'medium', as it has been since late 2001. At no time since the London bombings or the recent Bali attacks was Australia's threat level changed. The Government stated on www.nationalsecurity.gov.au that *"the terrorist attack in Bali does not provide any basis to change the alert level for Australia. The national counter-terrorism level of alert remains at Medium – a terrorist attack could occur."*

If there has been no change in the threat level, there appears no justification for changing the already-toughened counter-terrorism laws introduced in 2002-2005.

2. Comparisons to the UK.

Comparisons of the Anti-Terrorism Bill 2005 to the UK situation and the legislative framework there are unconvincing, and do not justify such repressive action in Australia. The situation in and the threat to the UK is different for political, geographical and demographical reasons.

Furthermore, civil liberties and human rights in the UK are protected by the Human Rights Act 1998. Australia, however, has neither a constitutional bill of rights nor any act of parliament protecting the basic rights of Australian citizens. The lack of such an instrument leads to a lack of checks and balances restricting excessive proposals such as the Anti-Terrorism Bill 2005.

If, however, a comparison is nonetheless made to the UK situation, then it is imperative to acknowledge that the British Law Lords have been highly critical of the Blair Government's recent controversial detention plans for terror suspects. It has been stated that the UK proposals breach the UK Human Rights Act as well as legal commitments under international law.

The warning from the independent reviewer of the British proposals, Lord Carlile of Berriew, QC, that the powers are vulnerable to a challenge under human rights laws reflects concerns understood to be felt by the UK Attorney-General Lord Goldsmith, QC.

3. Proposed laws go further than other countries.

The proposed laws go much further than the arrangements of other major US allies in the 'War on Terror' (such as Spain) and further than other US allies such as Germany and Canada.

For Australia, the proposed laws would shake the foundations of our 'fair go' tradition. They would be repulsive to any thinking Diggers who fought real wars to keep Australia a free society; the freedom our forefathers fought to establish is now to be given away at the hint of a threat.

4. Government has not made a case.

The Government has not established whether the proposed laws are likely to be effective and what difference the new arrangements would actually make to the terrorist threat. It is crucial to subject the Anti-Terrorism Bill 2005 to special scrutiny to see how far it is based on fair estimates of actual consequences rather than on the security forces wish for reprisal or the comforts of purely symbolic action.

Indeed, the potential gap between symbolism and effectiveness may be best illustrated by referring to the reduction of due process guarantees: Reducing due process guarantees (habeas corpus, the right to remain silent, the right to a lawyer without the Government eavesdropping, etc) as proposed by the Anti-Terrorism Bill 2005 may make it more likely that terrorist suspects will be convicted.

But is our security enhanced by making the conviction and punishment of suspects more likely? We know that the conviction and punishment of an Al-Qaeda fanatic, for example, will have no general deterrent effect. If anything, it will have the opposite effect – making it more rather than less likely that the country punishing the suspect is subject to terrorist attack.

Of course, this is not a reason for not punishing the perpetrators of murderous attacks. But the reasons for punishing them are reasons of justice, not security (via general deterrence). Justice can not be practically separated from the scheme of civil liberties that the Government currently proposes to trade off, because our traditional civil liberties are inherent in our justice system.

It is beyond question that it can be notoriously difficult to make fair estimates on the effectiveness of the Anti-Terrorism Bill 2005. However, the difficulty of the task cannot be an excuse for the lack of thorough analysis and sound decision-making. An in-depth analysis must include an examination of the experiences from previous terrorism crises and comparable campaigns such as the so-called 'war on drugs'. As far as left-wing terrorism in Europe in the 1970s and 80s is concerned, for example, it is highly questionable whether repressive counter-measures and intrusive anti-terrorism laws did play a significant part in the decline of terrorist organisations. Similarly, in the context of the 'war on drugs', a campaign which in many aspects may be compared to counter-terrorism, there is little compelling evidence to suggest that requiring higher standards of due process and protection of human rights impeded effective law enforcement.

5. Proposed laws may actually create more problems.

The new proposals actually have negative and adverse long-term effects on Australia's national security and policy interests. It is thus crucial to examine the potential effects of the Anti-Terrorism Bill 2005 more closely. While it is conceivable

that certain measures may achieve some short-term security gains, they may simultaneously increase the threat of terrorism and diminish security in the long run. This argument has both a domestic and an international dimension; and at its heart lays the question of what motivates terrorists to engage in violence.

The terrorism literature goes into great detail on the psychological and sociological aspects leading to individual engagement of terrorists. While terrorist behaviour is perhaps always determined by a combination of innate factors, two themes appear to dominate the debate among scholars: the role of personal grievances and the lack of alternative routes of expression and bringing about change. Harvard scholar Jessica Stern concluded, for instance, that both alienation and humiliation play major roles in an individual's decision to engage in terrorism or political violence. Similarly, other scholars have observed that social pressures as well as personal and cultural humiliation constitute major grounds for the emergence of terrorism.

This has also been confirmed by Abdul Aziz Rantisi, the late political leader of Hamas. Addressing the motivation of Palestinian suicide bombers, Rantisi stated that 'to die in this way is better than to die daily in frustration and humiliation'. Likewise, hopelessly entrenched political impasses and a blocked society have been blamed for the rise of Islamic extremism in Egypt, Saudi Arabia and Algeria. During the 1990s, Islamic radicals in these countries grew increasingly frustrated by their failure to change the status quo at home. As a consequence they began turning their attention abroad. It was (and is) felt among Islamist extremists that striking at the Arab regimes' Western sponsors - the United States in particular - would be the best means to improve local conditions.

This phenomenon is not limited to Islamic extremism. The lack of political and societal reforms also played a significant role in the emergence of left-wing extremism and terrorism in Europe in the 1970s and 80s. In response, several governments introduced a wide array of repressive counter-measures including special security laws that curtailed human rights to a significant extent. Rather than leading to a decline of violence and civil unrest, however, the measures taken often undermined safety as personal injustices increased and channels for expressing discontent and altering the political, legal and social structures were closed.

A comparable development may also occur as a consequence of the measures introduced by the Anti-Terrorism Bill 2005. Perceived as repressive and discriminatory the Bill may lead to an inflamed sense of grievance and injustice, especially among the Muslim community. This in turn could further alienate and isolate even so-called moderates and foster sympathy and support for religious fanatics.

While research in this regard is still in its infancy, the possibility of such developments has been confirmed by two studies conducted in the United Kingdom. The first of these studies was commissioned by the Islamic Human Rights Commission. The study, published in late 2004, found that the Muslim experience of discrimination ranged from hostile behaviour to abuse, harassment, assault and alienation. About 80 percent of respondents reported that they had experienced discrimination because they were Muslim, a figure that had dramatically increased since 2001.

A second study was conducted by the Institute of Race Relations (2004) and specifically focused on Britain's anti-terrorist laws. Examining 287 out of the 609 arrests made in the aftermath of 9/11, the study revealed that there was a considerable gap between the number of arrests made and the number of convictions achieved. Indeed, the low conviction rate among those arrested - only fifteen convictions have so far been secured – would point to an excessive use of arrest powers against Muslim communities. This finding was further supported by the discrepancy between the religious background of those arrested and those convicted. While the overwhelming majority of those arrested were Muslims, the majority of those convicted appeared to be non-Muslims. It is thus not surprising that an increasing number of Muslims regard the anti-terrorism laws as highly discriminatory, biased and suspicious. However, it is precisely the cooperation of the Muslim that is needed to effectively manage the threat of Islamist extremism.

The Anti-Terrorism Bill 2005 may not only create security problems on the domestic level. It may also have direct impacts on international security issues of major importance for Australia. This is particularly so in cases in which Australia pushes for the introduction of special anti-terrorism laws in Islamic countries and offer the Anti-Terrorism Bill 2005 as blue print. Repressive measures taken by countries such as Indonesia may be perceived as being initiated by 'the West', which in turn may fuel hostility and lead to increased popular support for extremists groups. Besides, the introduction of repressive laws such as the Anti-Terrorism Bill 2005 also leads to a corrosion of Australia's credibility in the field of international human rights policy. How can we legitimately demand respect for international human rights standards and treaties if we do not strictly adhere to them ourselves?

6. Bill incompatible with binding international obligations.

The Anti-Terrorism Bill is incompatible with Australia's legally binding obligations under international law (including several treaties to which Australia is a party). The potential violations include violations of several customary law principles of the UN Universal Declaration on Human Rights, and also violations of fundamental provisions of the UN International Covenant on Civil and Political Rights.

The regime surrounding detention orders and control orders takes Australia's respect for international standards of rights to a new low. The Australian Government is ignoring international legal treaties it has formally adopted; in such circumstances, how could the Government be trusted to honour safeguards in the proposed legislation, and to not lock up suspects (not proven criminals or terrorists) for years without charge or trial?

7. More time required for expert/public scrutiny and debate..

In light of the magnitude of the new laws as well as the Bill's length, the Government should allow more time for public and expert scrutiny and debate. It should appoint an independent expert to review the Anti-Terrorism Bill 2005 (as has been the practice with the new laws in the UK, where Lord Carlile of Berriew, QC was the independent reviewer).

8. Laws remove right to choice

The laws are excessive and repressive. They effectively take away a person's right to a lawyer of his/her choice, and allow the Government to appoint the lawyer they want to represent the detained person. They also permit the Government to monitor the conversations between the Government-chosen lawyer and the detainee.

In questioning how these freedom-squelching powers would be used, Parliamentarians might well ask where would most of the asylum seekers now out of detention be if the Government had had the power to proscribe the lawyers who worked to get them out?

9. Laws to give extraordinary powers to police.

The proposed legislation would give extraordinary powers to the Australian Federal Police.

Police themselves – not a magistrate, not a judge – would be able to order immediate detention for days or weeks (when the Bill passes State Parliaments) on the say-so of the AFP, who have only to "suspect" that a person might do something wrong in future. "Suspicion" is an extraordinarily low level test for detaining someone – and how can a person prove or disprove he or she will not do something wrong in future?

On suspicion only by the AFP, the person can then continue to be detained if brought before a magistrate or judge (when the Bill passes State Parliaments). Detaining anyone for an extended period without any proof is totally against the traditional Australian rule of law and fair treatment.

Ends CLA submission

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