

JustComment

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Anti-terrorism powers: necessary measures or an assault on our rights?

The Heart of the Debate

The September 11 attack on the World Trade Centre and the subsequent 'War on Terror' has reignited the debate over the powers of police and intelligence agencies. The Australian Government has recently passed a series of laws increasing these powers. The Government argues new legislation will help identify and prevent terrorism, but critics fear that it will undermine civil rights.

Other countries, like Britain and America, have passed similar laws. However, in America, there is a formal Bill of Rights, which prevents

the government from breaching civil rights. Australia and Britain have no such protection and it is feared that once the door is open to small breaches of these rights, larger breaches are sure to follow.

Human rights agencies as well as political opponents have argued that the broad and vague language used in legislation means police and intelligence agencies have too much leeway in interpretation of these laws. How then can governments protect their citizens against secretive terrorist networks without intruding on people's privacy? Governments do need some powers to prevent violent attacks, but it is equally important to ensure that people's rights and liberties are not violated. The question that arises is, how much intrusion constitutes a true infringement on essential civil liberties and to what extent will this intrusion be tolerated.

Legislation

A number of new laws have been introduced, or old laws changed, which increase police and intelligence powers.

- *The Australian Security Intelligence Organization (ASIO) Legislation Amendment (Terrorism) Act 2002* – This Act increases the powers of ASIO, Australia's main intelligence agency. The law allows ASIO to detain people, even if they are not suspected of a crime, just because they might have useful information. This legislation gives ASIO the right to:

- Detain someone for up to 48 hours without access to a lawyer or contact with family;
- Deny them access to their choice



"In the fight against

terrorism, truly draconian legislation has been passed which allows anyone to be detained on the mere suspicion held by the Attorney-General that such detention will, and I quote; substantially assist the collection of intelligence".

Justice Terence Higgins

ACT Chief Justice

ABC Online 3/3/04

of lawyer;

- Monitor their conversations with their lawyer;
- Require people to answer all questions (i.e. no right to silence).
- Australian and English common law has traditionally protected people's right to immediately see a lawyer of their choice, and discuss their case in confidence. This act essentially revokes that right.

- *The Security Legislation Amendment Act 2002* – This Act allows the government to ban

“There is no trade off between effective action against terrorism and the protection of human rights.”

UN Secretary General,
Kofi Annan, 18/1/02

organisations associated with terrorism; however, the definition of terrorism is broad and this legislation could potentially be used to ban social and political action groups such as anti-globalization demonstrators. This legislation also grants the power to charge people who have links to these organisations with crimes.

- *The Suppression of Financing of Terrorism Act 2002* – This Act bans people from transferring money to or from terrorist organisations. However, it could allow people’s financial details to be made public when they have not committed any crime.

- *The Telecommunications Interception Legislation Act 2002* – This Act allows ASIO to spy on communication between those suspected of terrorism. While a necessary tool in the fight against terrorism, it could very easily be misused.

International Comparisons

In the United States, the parliament has passed tough new laws as part of the Patriot Act. The Patriot Act allows the Government to look at someone’s medical, financial and education records by simply claiming that the person has something to do with terrorism. It also makes it easier to tap phones and the internet, and allows people to be imprisoned without following the normal standard of due process.

The main difference between the debates in the US and in Australia is the presence of the US Constitution. The

Fourth Amendment to the Constitution guarantees that individuals will be free from unreasonable search and seizure. Many legal scholars as well as civil rights groups have argued that the Patriot Act is in explicit violation of the Fourth Amendment.

Without a Bill of Rights, Britain is more comparable to Australia in the way that they have handled post- 9/11 security. Following the same international and common law guidelines as Australia, Britain has been able to pass legislation that essentially allows the government to make their own rules in emergency situations. The Anti-Terrorism, Crime and Security Act and the Civil Contingencies Bill jointly act to give the government the ability to temporarily opt out of the European Convention of Human Rights (ECHR) in cases of emergencies, and concurrently, enact powers that infringe on rights that the ECHR guarantees. The most contentious issue regarding this legislation is what exactly constitutes an emergency. Because of the vague wording of the bill, emergency can constitute almost any unusual event meaning that the government can essentially suspend the ECHR at will.

Illegal Detention?

During the conflict in Afghanistan, the United States military detained a large number of people thought to be fighting with the Taliban. These people have been detained for more than 2 years at a military prison in Guantanamo Bay, Cuba, without being charged, and many have never even committed a crime. The US government has been able to label the detainees ‘enemy combatants’, rather than prisoners of war, because the parliament never formally declared war. This means the detainees are not protected by the Geneva Convention, which outlines the standards of treatment that all prisoners of war must be afforded. The US Supreme Court has recently ruled that because the prisoners are held in a military base in Cuba they are not protected by US law either.

Two of the prisoners at Guantanamo Bay are Australians – David Hicks and Mamdouh Habib. Both men have been

held in open-air steel cages for over 20 months without being charged. For much of this time they did not have contact with their families, friends or a lawyer. The US Government has now allowed David Hicks to see a lawyer before being tried in a military court. His lawyer has claimed the military court will not provide a fair trial. Other prisoners from Britain have recently been sent home to face trial, but the Australian Government has ruled out doing the same, fearing that the two men may not have broken any Australian law.

Political Perspectives

What the Parties say:

- *The Liberal Party* have supported all of the new laws and requested greater powers to arrest and detain individuals and ban organisations.

- *The Labor Party* has been critical of some elements of the laws. They have supported all the new laws, but opposed further increases. They have called for retrospective laws to allow Hicks and Habib to be tried in Australia.

- *The Democrats* have opposed the legislation, called for an Australian Bill of Rights and supported the return of Hicks and Habib without new laws to try them.

- *The Greens* have opposed the legislation, called for an Australian Bill of Rights and supported the return of Hicks and Habib without new laws to try them.

Just Action

- Check out the following websites for more information
www.fairgofordavid.org
www.nationalsecurity.gov.au
www.hrca.org.au
www.amnesty.org.au
www.hreoc.gov.au/speeches/human_rights
- Or write a letter expressing your concern to:
Attorney-General:
Robert Garran Offices
National Cir, Barton ACT 2600
Department of Defense:
Russell Offices
Canberra ACT 2600

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