

# Just Comment

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## Defending Our Way of Life or a New Police State?

The Government is using the threat of terrorism to introduce laws that put our most basic civil liberties under threat. The ramifications have the potential to be as terrifying as terrorism itself.

*Law Council of Australia, SMH advertisement, 5/12/05*

Since September 11 and the bombings in Bali the Australian Government, largely with the support of the Opposition, have introduced a number of new laws aimed at decreasing the threat of terrorism. However, these laws, which give increased powers to police and intelligence agencies, have been controversial, particularly the most recent Bill which has just been passed by Parliament. On the eve of the 2005 Anti-terrorism Bill being passed through Federal Parliament on December 6, 2005, the Law Council of Australia took the unprecedented step of placing a full-page newspaper advertisement under the heading "John Howard, you haven't replied to this letter!" President John North argued that the legal profession's concerns have been brushed aside by the Government and they have gone about "ramming these extraordinary laws through parliament" (*LCA Press release, 4/12/05*). Many prominent barristers and legal academics have spoken out about widespread concerns that this Bill breaches the separation of powers

by removing independent judicial review and undermines fundamental human rights by threatening the rule of law and due process.

It is not the only the legal profession that is alarmed by this new Bill. Artists, satirists, journalists and academics are alarmed by revamped laws of the age old charge of 'sedition'. Most telling is the opposition to the Bill from the Coalition led Senate Inquiry which reviewed almost 300 submissions in only a few weeks in late November and made 52 recommended changes including the removal of the sedition clause.

In their push to get the legislation through before the end of the year the Government dismissed most of these concerns. However, the Attorney-General was prompted to announce there will be a 'review' after the legislation is enacted. This leaves open the question as to why the laws were needed so urgently, and whether a review adequately addresses the concerns.

### Events leading to the passing of the 2005 Anti-Terror Bill

John Howard emerged from discussions with the Council of Australian Governments in September ready to push through new anti-terrorism laws. Alarmed that the public would have no say in these new laws, ACT Chief Minister, Jon Stanhope posted the Bill on his website.

The Age October 18 Editorial, summed up the alarm; "the Howard Government has a mandate to govern for three years, not some blank authorisation to make fundamental changes to the Australian way of life".

On November 8, large scale police operations in New South



Wales and Victoria culminated with a series of 17 arrests in Sydney and Melbourne, amid claims of extensive terrorist training and the intention of targeting the Lucas Heights Nuclear facility on Sydney's outskirts. Some commentators argued these arrests vindicated the Prime Minister's rush to implement the new laws. However, critics have responded by noting that the arrests followed an 18 month police investigation and that the laws, introduced only a matter of days before the final operation, would have had little if any impact. They argued that this demonstrated the capacity of State police under existing criminal laws and the current ASIO legislation to respond to alleged criminal activity in relation to suspected terrorism.

### Existing Powers

Under the 2002 Terrorism Act (and other legislation in 2003), amendments to previous ASIO legislation allow:

- Detention for up to 48hrs without access to a lawyer or con-

tact with family,

- ASIO to deny access to the choice of lawyer and monitor conversations,
- Removing the right to silence
- The Government to ban organisations associated with terrorism,
- ASIO to spy on communication between those suspected of terrorism.

Former Victorian Law Reform Commissioner, David Neil claims that amendments to the 2003 ASIO Act had already enabled any suspicion of terrorism to be thoroughly investigated and subject to due process. In early November 2005 these laws were shown to be sufficient to respond to a range of criminal charges including; incitement and conspiracy to commit murder, the possession of bomb making substances, having connections with or associating with members of terrorist organisations, possessing things connected with terrorist attacks, collecting or making documents likely to facilitate terrorist attacks, providing support financial or otherwise to a terrorist organisation, and providing or receiving training for a terrorist act (*Neil, The Age, 10/11/05*).

Neil asks the crucial question: *If the conduct alleged on the basis of the 17 arrests this week is not the sort of conduct targeted by preventative detention, control orders and sedition proposals, what sorts of acts is it aimed at? What sort of conduct, according to the Government, is beyond the reach of the existing law? (The Age, 10/11/05)*

### New Powers

The new 2005 legislation includes:

- Preventative detention – up to 14 days without charge, strict limits on legal representation.
- Control Orders – Australian Federal Police allowed to seek 12 month control orders on those who pose a terrorist risk; including tracking devices, travel and association restrictions and house arrest.
- Secrecy – tough limits on passing on and reporting information relating to those on preventive and control orders.
- Sedition – 7 year jail terms under expanded sedition provisions...“urging” another person to engage in conduct that supports an organisation or country that is at war with Australia (*SMH, 1/11/05*).

### Preventive Detention and Control Orders

Former Prime Minister Malcolm Fraser argues that the “intelligence rational for a control order and a preventive detention order is not easy to grasp. If surveillance is thorough why not watch the person, collect more evidence and then charge the person with an offence?” (*New Matilda, 30/11/05, p8*)

Instead, the proposed Bill includes:

- A senior Australian Federal Police Officer decides whether another AFP officer has reasonable grounds to suspect a person will conduct a terrorist act or whether a person’s detention will “substantially assist in preventing a terrorist act”,
- A person subject to preventive detention is not entitled to a full hearing where he or she can contest the police evidence and arguments, or provide evidence which contradicts police allegations,
- They are not entitled to be present at an application for extension beyond 24hrs,
- The detained person would bear the burden of proving there was a legal error in the decision making leading to the order,
- Without the evidence presented to the judge or magistrate who made the order, and without any reasons for the decision, this “right” is virtually meaningless... (*David Neal in The Australian, 28/10/05*).

The UK laws, on which Australia’s new laws are supposedly based, do allow for a hearing and a right of appeal. Britain’s anti-terror legislation has been developed in light of its 1998 Human Rights Act, an important safeguard that Australia does not have. Without a Bill of Rights, Australians must simply trust that governments will not abuse their powers, yet that is not a safeguard that is acceptable to any other nation (*George Williams, SMH, 27/10/05*). Furthermore, the UK terrorism Bill was introduced to its Parliament in mid-October and is still being examined by the Joint Committee on Human Rights while this is not the case in Australia (*George Williams, SMH, 27/10/05*). John Von Doussa QC, President of Human Rights & Equal Opportunity Commission, argues that without judicial review this Bill contravenes the International Covenant on Civil and Political Rights and “the defining characteristic of a police

state...[is] that police exercise power on behalf of the executive without being effectively subject to the courts” (*quoted in SMH editorial, 1/11/05*).

### Sedition

Sedition is when a person plots or promotes violent attacks against the state. Such laws are rarely used in modern democracies, but the new laws include two new sedition offences. Chris Connolly argues that the defence of ‘good faith’ does not protect artistic expression or media reporting and sedition now extends to cover offences that are not actually linked to “force, violence or terrorism” (*Human Rights Defender, Special Issue 2005*). This provision has been of particular concern to the media, academics and artists who fear that criticism of government policies could be viewed as encouraging terrorists, opposed to the same policies (*Fraser, New Matilda, 30/11/05, p8*).

Effective judicial review also involves media scrutiny of government action. “The publicity of court proceedings is a vital element in the media’s continuing scrutiny of government action and in the protection which that scrutiny offers to individual rights” (*Sir Anthony Mason, Law & Justice Foundation Justice Awards Dinner, 6/10/05*).

Brad Adams, Asia Director of Human Rights Watch, argues that “locking people up or seriously restricting their liberty when they have not even been charged are characteristics of dictatorship, not a democracy...unjust measures are likely to alienate the very communities whose cooperation is vital to an effective counterterrorism strategy through the criminal justice system” (*New York, Oct 13, 2005*).

### Just Action

- Join the New Matilda Human Rights Act for Australia campaign
- Check out key facts on ‘sedition’ in ‘The Anti-terrorism Bill (No.2) 2005 Special Issue of the Human Rights Defender, Australian Human Rights Centre; UNSW.



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