



Civil Rights Defence is a group of citizens concerned about the impact of Australia's anti-terrorism legislation on human rights. We believe that pre-existing criminal law was adequate for dealing with terrorism and no new special laws were necessary. We advocate the repeal of Australia's anti-terrorism laws.

OUR RECOMMENDATIONS: (justified below)

1) We support **the introduction of a Human Rights Act** which will help to promote a culture of respect for human rights.

However a Human Rights Act on its own will be ineffective in preventing abuse of human rights through anti-terrorism laws.

Therefore we consider it imperative that the following be implemented:

2) **An effective oversight mechanism for Australia's security agencies**, including ASIO and the Australian Federal Police. This should comprise a committee of independent individuals who are empowered to examine secret evidence. The committee must be able to report publicly (without revealing classified information) on their opinion/s regarding the manner in which security agencies act, particularly in relation to the application of anti-terrorism laws. The committee must be able to investigate and report on the effectiveness of the actions of security agencies, not just whether they are acting within legal bounds. For example, the committee must be able to investigate, whether, in their opinion, an adverse ASIO security assessment of an individual is justified in reality (not simply whether the case satisfies legal technicalities). Therefore they would have to be able to access the evidence, including secret evidence, that ASIO used to make its assessment.

To be effective the oversight committee must report publicly on its opinions. The purpose of the oversight committee would not be only to ensure that security agencies are acting legally. The purpose would be to examine the effectiveness of the actions of security agencies in protecting Australia from security threats and to determine whether Australia is really being protected from genuine threats by the various actions of the agencies.

3) **A review of anti-terrorism laws:** A committee of independent individuals should review all of Australia's anti-terrorism laws to determine whether the laws are violating

human rights and to make public recommendations. The committee should also examine whether the laws have been effective in protecting Australia from real threats. The committee should also examine whether previously existing criminal law is adequate, on its own, to protect Australia's security.

A Bill originally introduced by Petro Georgiou MP to establish a terrorism laws reviewer has lapsed with no action by the government. The suggestion by the government that the Inspector General of Intelligence and Security be the reviewer was rejected by the IGIS himself. Rather, what is needed is an independent committee of several individuals who can conduct a wide-ranging inquiry into the operation of Australia's anti-terrorism laws and examine whether the laws infringe human rights.

TERRORISM LAWS IN ACTION: a justification for recommendations 2) and 3).

Violation of human rights under anti-terrorism laws in Australia goes far beyond the Mohammed Haneef case. Almost all other cases in which terrorism laws have been used against Australian citizens involve much greater abuses than occurred in the Haneef case. Further, we argue that no individuals who have posed a genuine threat to Australia's security have been convicted under Australia's terrorism laws.

Jack Thomas was pursued relentlessly for five years by ASIO and the Federal Police in a failed attempt to gain a prosecution under anti-terrorism laws.

It was clear from the beginning that Thomas posed no genuine security threat to Australia. It was recognised in court early on that Thomas did not have any terrorist intentions. Yet he was still pursued under new anti-terrorism laws which enable the prosecution of individuals who present no actual threat. It appears that the motivation was primarily to boost the credentials of the security agencies, particularly the Australian Federal Police, and to legitimise the anti-terrorism laws. The effect was certainly political as it boosted the "security credentials" of the government of the day. The use of laws for political purposes will result in injustice and violations of human rights. In Jack Thomas we have a clear example of an individual who presented no threat to Australia but, who has been pursued at length under new anti-terrorism laws to the detriment of his human rights.

Izhar Ul-Haque, a young student in Sydney, is another example of a man who was not a terrorist who was pursued also in an attempt to gain a prosecution under the new terrorism laws. The motivations appear to be the same as in Jack Thomas's case. In the course of the pursuit of Ul-Haque his human rights were violated by illegal detention and questioning by ASIO agents who were found by a court to have exceeded their powers. This was another example of "trophy hunting" by security agencies using new terrorism laws which encourage the side-lining of basic human rights.

Thirteen Muslim men were arrested in Melbourne in November 2005 and early 2006 and charged under anti-terrorism laws with being members of a terrorist organisation.

This was not any previously recognised terrorist organisation, rather they were accused of themselves constituting a terrorist organisation.

The men were held for over 2 years in the most severe conditions possible in Australia's prison system before they were brought to trial. A UN report criticised the conditions they were being held under in terms of recognised human rights. An 'Opinion' published by the United Nations Working Group on Arbitrary Detentions said the conditions of detention "...are particularly severe, especially taking into account that they have been imposed upon persons who have not yet been declared guilty and who must, accordingly, be presumed innocent". (Opinion No 7/2007 Australia 27 Oct 2006 p 6)

Subsequently at the trial Justice Bongiorno himself criticised these conditions saying "I find the conditions in Barwon very troubling from the court's perspective." "The State runs Barwon prison. What is the reason why...people need to be treated in the way that...the accused in this case have been treated?" "It is extremely difficult not to see this as some sort of pre-emptive punishment being imposed." (Justice Bongiorno, 7th September 2007, *The Australian*)

Four of the men were ultimately acquitted of all charges after spending 3 years in incarceration in these conditions.

We believe that the convicted men have been convicted under deeply flawed terrorism laws which permit the criminalisation of speech rather than action. It was recognised at the trial that no concrete actions were taken by any of the men towards carrying out or planning any terrorist acts. They have been convicted on the basis of speculation about what they would have done in the future based on recorded talk. The new laws which make this possible thus encourage the violation of recognised human rights by criminalising talk rather than action.

The dilemma has been well expressed by Ian Carnell, the Inspector General of Intelligence and Security, in his submission to the Senate Inquiry into the Petro Georgiou inspired Bill to establish an Independent Reviewer of Terrorism Laws. He said: "While the emphasis on prevention is understandable, it can raise concerns about just when should the criminal law operate. A person may well reflect on and talk about committing crimes and do things which might or might not lend themselves to carrying out crimes, but whether this develops to the point of actually constituting intent and a real threat to society, can be far from straightforward."

Questionable tactics were used by the security agencies who used an undercover agent to encourage the men to take steps towards carrying out a terrorist act. This blurs the line between a security agency's role in protecting Australia from terrorist acts and actually encouraging terrorism in order to gain convictions.

We believe that the conviction of these men raises very serious concerns about whether our terrorism laws are being used to defend Australia against genuine security threats, or whether they are primarily being used for political purposes to boost the credentials of security agencies and politicians.

Certainly the sensational claims of planned attacks against the MCG, the Casino and other high profile targets in Melbourne were discredited at the trial itself, with Justice

Bongiorno as good as directing the jury to ignore them. These allegations were nevertheless repeated in the media after the trial. The fact remains that the men were convicted on the basis of presumed future intentions, not on any planned terrorist attack.

Arguably the conviction of these men makes dangerous inroads into the basic human right of freedom of speech and expression of opinion as well as opening up a legal avenue through the precedent now created for criminalisation of presumed future intentions.

The anti-terrorism law which has made this possible criminalises membership of a terrorist organisation. The men belonged to no recognised terrorist organisation but were accused of themselves constituting a terrorist organisation. The law contains a very wide and vague definition of what constitutes a terrorist organisation. Under the law an organisation (which is not itself defined in the law) can be deemed a terrorist organisation if it “indirectly fosters” a terrorist act. “Indirectly fostering” has now been interpreted by the jury as covering talk rather than action. We believe this is an example of an anti-terrorism law which enables the violation of human rights.

In June 2006 **Faheem Lodhi** was convicted of preparing for a terrorist act and sentenced to 20 years. There were no plans or any materials acquired for a terrorist act. Like the 7 convicted Muslim men Lodhi was convicted on the supposition that he would have carried out a terrorist act in the future. Yet the evidence that Lodhi had any terrorist intentions was extremely flimsy.

Nevertheless the atmosphere of fear and hyperbole generated at the time created a prejudicial atmosphere in which very tenuous evidence was sufficient to convict. The prejudicial atmosphere was partly generated by the security agencies themselves, predisposed to see terrorist plots and anxious to secure convictions. Lodhi’s conviction should be re-examined both in terms of the scope of the anti-terror laws that were used against him and the behaviour of security agencies at the time.

Scott Parkin

In September 2005 American peace activist Scott Parkin, who advocates totally non-violent Gandhi style protest, was detained by ASIO and deported back to the US. ASIO had made an official assessment that Parkin constituted a security threat to Australia. There was no means of checking the evidence or reasons behind ASIO’s assessment and Parkin and the Australian people have been left in the dark about the reasoning behind the assessment. We contend that an effective independent oversight committee is needed (see recommendation 2) to be able to examine such assessments as part of their work and report to the public whether they agree with the merits of the assessment ie whether they agree that the individual really did constitute a genuine security threat to Australia (not simply whether ASIO had acted within legal definitions of such a threat). This can be done without revealing secrets publicly, as long as the committee itself has access to the secret documents involved.

At present oversight of ASIO is conducted by the Inspector General of Intelligence and Security, Ian Carnell. In December 2005 the IGIS released an 8 page report on the Parkin case in which he concluded that “legislative requirements were met” by ASIO in issuing the adverse security assessment. This illustrates the inadequacy of present oversight

which focuses only on legal requirements and fails to consider, or report publicly on, the merits or otherwise of actions by ASIO in terms of the security of Australia and the preservation of individual rights.

Adverse security assessments were also made by ASIO against 2 Iraqi refugees, **Mohammed Sagar** and **Muhammad Faisal**. Sagar was held in detention on Manus Island and Nauru for 7 years as part of Australia's "pacific solution" as a result of the adverse security assessment and was finally resettled in Sweden. In 2006 Faisal was evacuated to hospital in Brisbane after becoming suicidal. This triggered a second ASIO security assessment which retracted the adverse assessment and found that Faisal was not a risk to Australia's security.

Mamdouh Habib was "rendered" to Egypt and tortured there in 2001 / 2002 with the cooperation or at the least acquiescence of the Australian intelligence agency (ASIO).

INTERNATIONAL COMMISSION OF JURISTS REPORT:

A report from the Eminent Jurists Panel, of the International Commission of Jurists (*Assessing Damage, Urging Action* 16 Feb 2009) has relevance to our recommendations:

Relevant to Recommendation 2) : "The Panel recommends that agencies involved in intelligence gathering, including military intelligence, must be subject to effective mechanisms of control and that their operations (domestic and trans-national) must be governed by law and regulations in full compliance with all human rights standards."

"...intelligence services worldwide effectively enjoy impunity for human rights violations because of a **lack of meaningful civilian oversight** and / or a lack of political will by governments to investigate and prosecute State agents involved in such abuses."

"Care should be taken to regulate by law the powers of intelligence agencies, the gathering of intelligence and the sharing of intelligence with other agencies. It is also imperative to establish independent oversight mechanisms."

Relevant to Scott Parkin case: "A common feature of all these measures is the use of secret intelligence to justify the action taken. The intelligence is not disclosed to the people against whom action is taken and they have no effective opportunity to rebut it."

Relevant to Mamdouh Habib case: "We have seen intelligence services around the world acting with insufficient accountability and intelligence cooperation being undertaken outside the rule of law" (quote in press release by Hina Jilani)

Relevant to recommendation 3): **Key recommendation 1c**: "Nationally: States should undertake comprehensive reviews of their counter-terrorism laws, policies and practices,

including in particular the extent to which they ensure effective accountability, and their impact on civil society and minority communities. States should adopt such changes as are necessary to ensure that they are fully consistent with the rule of law and the respect for human rights, and to avoid all over-broad definitions which might facilitate misuse.” (Assessing Damage, Urging Action report of International Commission of Jurists p 17)

CONCLUSION:

Terms of Reference 1 Which human rights should be protected and promoted?

We believe that all human rights recognised in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights should be protected and promoted.

2 Are these human rights currently sufficiently protected and promoted?

Human rights are not sufficiently protected in relation to Australia’s anti-terrorism legislation. A Human Rights Act alone will not protect human rights in relation to terrorism laws. A wide-ranging review of terrorism laws is needed to determine how the laws are or could violate human rights and to make recommendations for changes or repeal of terrorism laws in cases where human rights are endangered.

3. How could Australia better protect and promote human rights?

By undertaking a review of Australia’s anti-terrorism laws in relation to human rights and by instituting effective independent oversight of security agencies (including ASIO and the Federal Police) by a committee which has access to secret intelligence and which reports publicly.

OUR RECOMMENDATIONS:

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