

Civil Liberty

Journal of the New South Wales Council for Civil Liberties Inc

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PRESIDENT'S REPORT

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It has been a difficult but rewarding period for the NSWCCCL over the last few months. We have seen the first part of the government's anti terrorism legislation pass through the parliament but due to our hard work, and that of similarly minded groups and individuals, it has been significantly reduced in terms of its scope and power. There is now no power for the Attorney General to ban individuals or organisations and the definitions of a terrorist act have been tightened to more accurately reflect reality. It is now much harder for the work of human rights activists, protesters and agitators to fall into the definition of a terrorist act.

The CCL re-formed its legal panel, which is a group of mainly legal members of CCL, which will meet ad hoc to take up and pursue cases that involve significant civil liberties issues. I would encourage any lawyers that have an interest in being on this panel to contact the Convenor, Stephen Blanks. They have decided to do some work in relation to the illegal imprisonment of Mamdouh Habib and David Hicks in Cuba by the US.

The last part of the government's anti terrorism legislation, and perhaps the most important part is the ASIO Bill. This would give ASIO the power to detain people indefinitely and incommunicado, without legal representation. It is the position of CCL that these powers are unacceptable, particularly for an unaccountable organisation like ASIO. As this issue of the journal goes to print it will be introduced into the Senate for debate. I urge all members to contact their Commonwealth Members of Parliament and Senators to communicate their opposition to this bill.

In October the 2002 AGM will be held at the usual place in the Lady Mayoress' Room of the Sydney Town Hall. All members are welcome and I hope that you find the time to come along.

Cameron Murphy
President

JOURNAL DEADLINE DATES

Material Deadline: 15/11/02

Only email or disk documents and digital images will be accepted
Articles no longer than 1500 words and letters 100 words.

NOTICE OF ANNUAL GENERAL MEETING OF THE NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INC.

to be held at
6.00pm on Wednesday 24 October 2002
At the Lady Mayoress' Room,
Sydney Town Hall, George Street, Sydney

CIVIL LIBERTY

Journal of the New South Wales Council for Civil Liberties Inc

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Views expressed in this journal are not necessarily those of the editor or of the New South Wales Council for Civil Liberties Inc.

COMMITTEE MEETINGS

Meetings are usually held at 6.30pm on the fourth Wednesday of the month, at the Council's office, 149 St Johns Rd, Glebe. Members are welcome to attend as observers.

SUBCOMMITTEE MEETINGS

Fundraising & Finance –

Convenor: *Joan Kersey*
Members: *Ken Buckley, Cameron Murphy, Susan Cleary*

Refugees/Asylum Seekers

Convenor: *Ken Buckley*
Members: *David Bernie, Susan Cleary, Sol Encel, Joan Kersey, Eloise Riches*

Sniffer Dogs

Convenor: *Cameron Murphy*
Members: *David Bernie*

ASIO/Increased Police Powers

Convenor: *David Bernie*
Members: *Ken Buckley, Cameron Murphy, Pauline Wright*

Complaints –

Convenor: *Daniel Brezniak*
Members: *Joan Kersey, Jeremy Styles*

Subcommittees usually meet monthly. For further information please contact the Executive Secretary who can tell you when your subcommittee meets or put you in contact with the relevant Convenor.

Sub Committee Reports

Fundraising News

With a rousing talk by Professor George Williams on the new terrorist bills at a lunch in the fine venue of the President's Dining Room at Parliament House, our fundraising function got off to a good start. Regrettably, the second such event had to be postponed due to an unavoidable change in circumstance of the guest speaker, Shadow Foreign Minister, Mr Kevin Rudd. We are currently liaising with Mr Rudd to confirm a suitable revised date for the lunch. He has expressed a keen commitment to this fundraising opportunity for the CCL.

Also those who may feel the cost of such occasions is a bit too hefty, we are arranging a series of 'get-togethers' over drinks and nibbles at the Nags Head Hotel, St Johns Rd, Glebe at which we shall hear the words of wisdom from a series of erudite speakers. Hopefully this will be kicked off by the redoubtable Bob Ellis talking on whatever he likes at a date yet to be decided.

There is one small problem. I need help to find some well-known and interesting speakers for either lunches or drinks, with some clue as to how I might contact them. Would you ring or fax the CCL office with your suggestions or email me directly at joanie@acay.com.au.

Joan Kersey
Convenor
Subcommittee on Fundraising

Update on Commonwealth ASIO legislation

This piece of legislation deals with proposed new powers for ASIO to investigate the new "terrorism offences" which were otherwise dealt with in the first package of heavily amended Bills passed by the Federal Parliament in June 2002. The ASIO bill has not yet passed and will be reintroduced in the parliament soon. The ASIO bill allows for detention without charge.

Cameron Murphy and I gave evidence to The Parliamentary Joint Committee on ASIO, ASIS and the Defence Signals Directorate. This Committee examined the ASIO Legislation Amendment and recommended many changes including that the agency should not be able to detain people under 18 and that some rights against use of self-incrimination be included.

Recent press reports suggest the government will not accept most of these changes and according to Sunday Age: ***"Under the government's counter-proposals, 14-year-olds could be detained and questioned. The child would be entitled to have a parent present, but contact would be supervised by an ASIO officer. Detainees would have access to a lawyer after 48 hours in custody, but an ASIO officer would be present during all discussions. The lawyers would be vetted by ASIO beforehand and would face up to two years' jail if they revealed details of cases to an unauthorised person."***

It is believed that, in its response to the Committee's report, the government will agree to limit detention by ASIO to seven days unless charges are laid."

EVERY member of CCL, and all concerned friends, should contact, by letter or meeting, their local Federal MP, whether ALP (the ALP has been very weak in any opposition) or Coalition (some Liberal backbenchers are concerned), to object to this legislation which is the greatest internal threat to our liberty in the history of Australia. Every letter, email etc will help the wavering opposition to resolve against this horrendous legislation.

David Bernie
Convenor
Subcommittee on ASIO / Increased Police Powers

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Book Launch Invitation



CCL Secretary, Joan Kersey will be launching her book

2050: A DRUG ODYSSEY

on **Thursday 3 October, 5.30pm for 6pm** in the Jubilee Room at Parliament House, Macquarie St, Sydney and all CCL members are invited to attend. *2050: A Drug Odyssey* will be launched by The Hon. Richard Jones, MLC.

As a former social worker, the author of 'High Society', member of the NSW Council for Civil Liberties and of the Foundation for Drug Law Reform, Joan Kersey has had a long standing interest in the problem of illicit drugs. Once again she attempts to tackle the thorny questions this time from an entirely new perspective.

Joan says: In attempting to find solutions to the problems associated with the use and trade of illicit drugs, we find debate easier than action. We continue years of discussion as to whether 'harm minimization' or 'zero tolerance' should govern our future policies and projects, or whether there should be an all out 'war on drugs'. To date, nobody seems to have a clear or credible idea of what to do about drug use and the drug trade.

"My latest book does not merely analyze the problem and offer a few familiar 'answers'. Instead, it takes an entirely fresh perspective and assumes that, as you read, it is the year 2050 and most of the drug problems which had plagued society on Planet Earth around 2000 have been solved. It looks back on the present situation and warns that the international drug trade and corruption and will escalate out of control unless something is done. The long and tortuous journey towards the solution is in the nature of a

drug odyssey from the last years of the 20th century to 2050. It is a story of life on earth more than fifty years ago when drug-taking was rampant, and of the differing attitudes and efforts to cope with the problems of drug addiction, drug trade and corruption. And it is a story of the events leading to the Drug War of 2035 and of the personal experiences of one man, who symbolizes the triumph of good over evil and who was largely responsible for the final solution. But this is not another piece of science fiction full of superficial speculation about the future. It is a drug odyssey, suggesting a course that could finally lead to the solutions for the problems of illicit drugs on earth."

Book Review

Lighting the Way Reconciliation Stories,

Dianne Johnson, Federation Press 2002.
ISBN 1 86287 427 1
rrp \$29.95 (incl.GST)

Reviewed by: Gillian Moon

On a wintry June Sunday in 1838, writes Dianne Johnson in **Lighting the Way**, a group of Wirrayaraay women, children and old men were roped together by a band of stockmen. As they screamed and sobbed, they were hacked and slashed to death, a mother and baby thrown onto the fire and burned alive. In a killing spree that lasted for days, the younger men and another 30 to 40 people along the Gwydir River were hunted down and murdered.

The massacres stopped decades ago and the legal notion of *terra nullius* was thrown out by the High Court in 1992. Yet the relative attitudinal isolation of the individuals whose reconciliation stories are told in **Lighting the Way** tells of a sustained, entrenched denial of much of the history of colonial Australia, a denial which characterises our society

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Book review contin....

The paucity of recorded history of Aboriginal/non-Aboriginal relations and the failure to teach it in any substantial way are evidence of this denial. Behind the (inspiring) individual stories in ***Lighting the Way*** is a "larger" story, in which the task of recognising and confirming essential parts of Australia's history has fallen on and been taken up by ordinary people in local communities. Johnson has ensured that their stories will not be lost to the twilight-world of unrecorded history.

Lighting the Way also tells a second "larger" story - that of people experiencing the shock of realisation, the personal discovery of official brutality, deceit and the pervasive denial, extending even to today's governments and institutions. The cavalier loss of so many languages and so much culture, the abandonment of so many Aboriginal people to poverty and despair and, perhaps above all, the on-going failure to identify at the personal level with Aboriginal suffering, are also aspects or consequences of this entrenched denial.

Discovering this betrayal can be deeply challenging. Some so challenged - the Myall Massacre descendants, for example - have responded in defiance of the denial with remarkable gestures. As have Tasmanian Debra Chandler, grazier Camilla Cowley and many others whose stories are compellingly told in ***Lighting the Way***. Dianne Johnson captures not only the people but the common spirit which has found expression in unrelated actors and different places. It is a rich and revealing story.

Sub Committee Report

DOG SQUAD

- The Sniffer Dog Subcommittee Report

The Sniffer Dog subcommittee has been consumed over the last few months with the launch of the highly successful Snifferdog Alert website. This has been the major

project of the committee in conjunction with Redfern Legal Centre.

The site is located at www.snifferdogalert.com and it provides information on the use of the sniffer dogs as well as a free SMS messaging service that will let subscribers know where the dogs are being deployed. It is a voluntary process where scouts, out in strategic locations where the dogs are regularly used such as nightclubs, pubs, and areas like Oxford Street, have a coded message that they send to a computer server when they see a police dog squad. The computer server then sends a message to all those registered on the website to let them know where the dogs are.

Due to the overwhelming demand we are now restructuring the service to limit the number of people that can register each month. In the first couple of weeks we had the server continually crashing because thousands of people were trying to access the site and sign up. The numbers need to be limited in order to keep the service viable and maximise its impact. We initially expected only a few hundred people to sign up for the service but were astounded, and overwhelmed when almost thirty seven thousand people logged on in the first few weeks. The site will be offline for periods until October when the restructuring is complete.

Everyone with an interest in the dog issue is waiting patiently for a decision from the NSW Supreme Court on the Darby case. This case is the appeal by the NSW Police over the ruling by Deputy Chief Magistrate Jerram that the dogs were being used by police to conduct illegal searches.

Lastly, a great deal of skill, talent and knowledge has been lost from the subcommittee with Timothy Moore moving to Melbourne. We wish him great success there and hope that he is able to help Liberty Victoria in the drug policy area.

Cameron Murphy
Convenor
Subcommittee on Sniffer Dogs

Articles



The Crimes Amendment (Police & Other Law Enforcement Officers) Bill 2002 is regarded by the NSW Council for Civil Liberties as dangerous in that it undermines the right of ordinary citizens to monitor and comment on law enforcement officers.

The Hon. Peter Breen, MLC gave the following address to the Legislative Council regarding this bill.

The Crimes Amendment (Police and Other Law Enforcement Officers) Bill is misconceived, in my opinion, because it seeks to raise the bar on citizens who may have a legitimate concern about the way certain law enforcement officers carry out their duties. Police are public servants, after all, and although they are put under greater personal pressure than other government workers, they are specifically trained to deal with difficult situations so far as harassment and other forms of intimidation are concerned. Why draw the line at police officers? The list could include road workers, council officers, bus and train drivers, court staff, social workers, or politicians for that matter.

The Leader of the Opposition might be the subject of threats or intimidation. I frequently receive abusive phone calls for opposing the Government's law and order agenda. When I opposed the Greens euthanasia bill I was roundly booed and hissed. If I were to boo and hiss at a police officer carrying out his or her duty I would be interfering with a

police officer in the course of his or her duty. That is a serious offence and attracts a gaol sentence. The point is, police officers already have adequate protections against the conduct contemplated by this bill, and it is fatuous to suggest that they themselves need added protection, although I concede that an argument can be made for extending additional protections to their family members. My remarks are therefore limited to the provisions of the bill that relate to law enforcement officers.

The Council for Civil Liberties made some interesting comments about this bill. In a media release dated 19 June 2002 the Council said that the bill would prevent non-government organisations and individuals from monitoring the actions of corrupt police officers. One member of the Council for Civil Liberties told me he would have been obliged to throw out a whole filing cabinet on Roger Rogerson if the bill had been in place 10 years ago. No doubt Tim Anderson would have been in the same position as regards the police officers who tried to fit him with the Hilton Hotel bombing. In the same vein I have been trying to establish that Stephen "Shorty" Jamieson has been stitched up by the police for the rape and murder of Janine Balding, and the bill before the House is a serious impediment to my inquiries.

Currently, I have an outstanding application to the Innocence Panel, an inquiry to the Police Integrity Commission, and another to the Ombudsman, and I have been in touch with the Premier's office as well as Commander Clive Small. Furthermore, I have written numerous letters to the Minister for Police and the Minister for Corrective Services about the circumstances surrounding the investigation and arrest of Stephen Jamieson. Needless to say, my inquiries focus on the police officers responsible for the murder inquiry. I have also written to the Director of Public Prosecutions, two referees, two hospitals, several lawyers

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The Hon. Peter Breen contin.....

and numerous witnesses who gave evidence at the trial of Jamieson. Few people would argue that my campaign to free Jamieson could be seen as harassment or intimidation of law enforcement officers.

Just last week, for example, I visited Jamieson in prison. I specifically wanted to give him a newspaper clipping about the progress of his case. Jamieson happened to be in solitary confinement for giving cheek to a prison warden. That is what one gets in prison for harassment or intimidation of a law enforcement officer. The officer in charge of the unit where Jamieson was confined refused to allow him to see the newspaper clipping until I left the prison. I am a patient man, but I blew a fuse over this arbitrary and capricious exercise of power by the prison officer. According to my reading of the bill before the House, if it were law last week I could be looking at a charge of harassment or intimidation of a law enforcement officer while in the execution of the officer's duty, with a maximum penalty of five years imprisonment. ***Even to ask a law enforcement officer for his or her name and rank could amount to intimidation or harassment.***

As the Council for Civil Liberties stated in its press release, ***the bill undermines the right of ordinary citizens to monitor and comment on law enforcement officers.*** The bill needs to contain a public interest defence, and should only deal with actual demonstrated harm to law enforcement officers. One of the fears I have with the bill is that police and law enforcement officers will use it as a weapon when it is clearly intended as a shield. ***The Minister in his second reading speech said that harassment and intimidation of law enforcement officers has the potential to pervert the course of justice. I agree with that proposition.***

However, it also needs to be said that justice will be perverted if law enforcement officers

use this legislation to avoid scrutiny and accountability. Police officers, corrective service officers and public watchdogs are not above the law. They perform a very important public duty that happens to involve law enforcement. Justice demands that the work of law enforcement officers is transparent, since abuse of the power of law enforcement is perhaps the most cynical and perverse of all abuses of power. I cannot imagine a greater injustice than to be imprisoned for a crime I did not commit.

Might I conclude by saying that I have no wish to stand in the way of legitimate protections for the many good people who are involved in law enforcement in this State. Threats against police and their families, as outlined by the Minister in his second reading speech, are real and distressing. I simply wanted to make the point that protecting the rule of law and guarding against the abrogation of due process rights of citizens are also important features of a democratic society. Many of us have very real concerns about the avalanche of new laws involving increased police powers, and it is difficult to know where to draw the line. Certainly, threats against police and their families are intolerable, but if all the new police powers were exercised in New South Wales on any one day, that is the day we would be living in a police State. I am therefore opposed to the bill.

published by permission of The Hon. Peter Breen, MLC

The bill was passed in its original form despite concerns from many sectors of the community. The Police Minister, Michael Costa assures us the bill will not be misused in any way...time will tell.

Articles



Professor George Williams gave the following address to the CCL fundraising lunch held on 14 June at Parliament House. The lunch attracted a capacity crowd and was thoroughly enjoyed by all.

AUSTRALIA'S LEGAL RESPONSE TO SEPTEMBER 11: NEW TERRORISM LAWS

Thank you for the invitation to speak on the government's proposed legal response to September 11. Recognise the strong leadership in this debate by the NSW Council for Civil Liberties and by Cameron Murphy. And is good to see that such advocacy has had a real impact –the ongoing debate within the major parties is proceeding on the basis that the original legislation flawed in important respects.

But, the battle has yet to be won. There remains the possibility that Australia will enact legislation that will abrogate civil liberties to a greater extent than any other legislation since the anti-communist legislation of 1950. Indeed, I think that this is still the most likely outcome. Let me be explicit, the federal Parliament is likely to pass legislation that will lay down the apparatus of a police state. The legislation may not be used in such a way today, or even over the next decade, but how can be guess at the wisdom and motives of a government in 10, 20 or even 50 years time.

The stakes are high and we are now in the thick of the debate. Next week will be crucial – Cabinet and Shadow Cabinet on Monday and Party Room Debates on Tuesday followed by Parliament later in the week.

Propose today to look at the most significant elements of this legislation and to explore where we might go from here. My starting point may differ from the NSW CCL in that I believe that Australia should have national laws on terrorism. There are currently no federal laws that deal with terrorism (only in NT), and such laws are important from the view of community confidence and also re Australia's international obligations.

Security Legislation Amendment (Terrorism) Bill 2002

Terrorism – section 100.1

Original form defined 'terrorist act' as act or threat that:

- involves serious harm to a person or serious damage to property; or
- endangers another's life or creates a serious risk to public health or safety; or
- seriously interferes with, disrupts or destroys an electronic system; and

is done 'with the intention of advancing a political, religious or ideological cause'.

Definition is very wide. Lack of focus on the ultimate intent of the terrorist act or, put another way, what distinguishes terrorist violence from offences or forms of violence covered in other Acts.

Criticisms have focused on the range of civil protests that may be criminalised as *terrorist acts* under the definition. For example, farmers, unionists or other protesters marching, blockading or mass e-mailing could fall within the definition as soon as their actions were unlawful in any way (eg. trespass, nuisance, property damage).

Legislation must not catch people in the net who the community would not regard as terrorists. Especially as mistakes may be made – eg, Shining Path Band Management Business with assets frozen. Plus, in 1950, in his second reading speech for anti-communist legislation Menzies listed 53 persons whom he asserted were communists in positions of authority in Australian unions.

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AUSTRALIA'S LEGAL RESPONSE TO SEPTEMBER 11 contin....

Menzies later admitted to the Parliament that five of the persons 'named' on 27 April 1950 were not communists. A similar mistake was made by the SMH when it published the photograph of Mr JWR Hughes, the Deputy Commissioner of Taxation, instead of Mr JR Hughes, a union official.

The Senate Legal and Constitutional Legislation Committee recommended that the definition of 'terrorist act' be amended to include a third element, namely that *the action or threat of action is designed to influence government by undue intimidation or undue coercion, or to unduly intimidate the public or a section of the public.*

Government amendments accept this and change definition of 'terrorist act' to include additional element of intended intimidation or coercion of government or the public. Better, but retained exclusion for 'lawful advocacy, protest or dissent' (hence unlawful can be terrorism ...). Eg, Union activity with pickets in Patrick Stevedores Dispute.

Declarations of Proscribed Organisations – section 102

Original form established four alternate bases for the Attorney-General to make a declaration proscribing (or banning) an organisation. Then criminal offences, eg 25 years jail for members and supporters. Three main problems:

- Absence of fairness in proscription and lack of meaningful review

A disturbing absence of a balancing opinion, whether of a court or other independent body, in the making of a decision to proscribe an organisation. A power, like that found in the Terrorism Bill, to proscribe an organisation (and effectively to destroy it by prosecuting any person who continues to be associated with the organisation) should not be vested solely in a member of the executive. Further safeguards are necessary.

Intended that a decision to proscribe an organisation could be reviewed under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. But this not be always possible. Capacity to review a decision under section 102.2 could be removed by regulation made under section 19B of the *Administrative Decisions (Judicial Review) Act* (which, of course, would be subject to disallowance, but when Parliament next sits).

A judge might in any event refuse to review a decision made under section 102.2 where the decision relates to a matter of national security. Such matters have been seen by the courts as non-justiciable. The fact that the decision to proscribe under section 102.2(d) can be made solely on national security grounds makes the negation of judicial review a real possibility. Even if this is not the case, meaningful review would require that a proscribed organisation could marshal the evidence it would need to show that a decision has not been properly made in the interests of national security.

Even if a judge were to proceed to review a decision made under section 102.2, the grounds of review under the *Administrative Decisions (Judicial Review) Act* are narrow. There would be no scope for review on broader proportionality grounds. That is, even though it is possible to ask whether the act itself is constitutionally valid by applying a proportionality text, no such test would be applicable in reviewing decisions actually made under the act. In other words, it could not be argued that a decision was wrongly made because it was not 'reasonably appropriate and adapted' to the relevant purpose or object. This is a serious limitation in the scope of review under the Act.

If a wrongfully proscribed organisation was successful in having a decision under section 102.2 overturned, the process of review could take a considerable period during which its reputation and standing in the community could be damaged irrevocably. Retrospective judicial remedies provide an insufficient means of controlling the exercise of power under section 102.2.

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11 *contin....*

- Lessons from the *Communist Party Case*

The Terrorism Bill is similar in design to the *Communist Party Dissolution Act 1950* (Cth). Strange as that model that approach as struck down by High Court!

That Act granted the Governor General an unfettered, and unreviewable, power to declare an organisation to be unlawful or a person to be a communist. The Act was struck down by the High Court essentially because the act granted the Governor General an unreviewable power. A majority of the Court found the Act to be invalid because it was beyond the power of the federal Parliament to suppress an organisation under its defence power on the opinion of the Governor General in a time of relative peace. Cold war just like now war against terrorism.

The Terrorism Bill may not suffer the same constitutional defect as the *Communist Party Dissolution Act* as review of a decision of the Attorney-General is available. But, the Bill may still be invalid because the limited scope of review equals no 'effective' review.

Even if constitutionally valid, the similarity with *Dissolution Act* is of grave concern. Both give a very broad power to a member of the executive to ban an organisation. The separation of powers, including the notion that power must not be concentrated in any one arm of government, suggests that the proscription power should be vested instead in a Court, or at least must be subject to a more strict form of scrutiny by an independent tribunal. The dangers of not doing so are obvious. As Sir Owen Dixon stated in the *Communist Party Case*:

History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power.

- Over breadth of 'security or integrity of the Commonwealth or another country'

Not only is the meaning of 'integrity' broad and uncertain, but organisations can also be proscribed because they have endangered the integrity not only of Australia, but of another nation. Integrity would at least refer to the geographical, or territorial, integrity of a nation, and hence this power could arguably be used to proscribe organisations that advocate or support non-violent independence movements within other nations. Over recent years, a good example would be organisations supporting independence for East Timor. Australians do not see such organisations as ordinarily being involved in terrorism. A power to ban such organisations should not exist, and certainly should not lie with the Attorney-General.

Senate Committee recognised this and recommended that this proscription power be dropped.

Government proposed amendments: In seeking to keep his proscription power, the Attorney General has rejected a key finding of the Senate Committee. As amended, the decision to ban an organisation could be overturned by a vote of either House of Parliament. But Parliament is not the right forum for an independent review of a decision to ban an organisation.

Parliament is neither a secure nor sensible place to review volumes of sensitive national security information. It does, of course, include people from an Attorney General's own party, who will likely support the decision on party grounds. The idea of a political and partisan debate on whether to accept a decision to ban an organisation and to criminalise its members is deeply disturbing.

Review by Parliament and not by a court would actually prevent an immediate response in an emergency situation. The Attorney General has stated that a decision to ban would come into effect only after Parliament has had the chance to review the decision. If the Attorney General bans an organisation between parliamentary sittings

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AUSTRALIA'S LEGAL RESPONSE TO SEPTEMBER 11 contin....

this could take months to come into effect. During that time the organisation might change its name and membership and dispose of its assets.

There is simply no good reason for giving a politician the power to ban organisations. An Attorney General is no substitute for the judicial process. A judicial hearing would maintain community confidence and reduce the likelihood of an arbitrary or incorrect decision being made in a time of crisis.

ASIO LEGISLATION AMENDMENT (TERRORISM) BILL 2002

The ASIO Bill would allow adults, and even children, to be detained and strip searched. While detained, they could be denied access to anyone outside of ASIO. All this could occur without charges being laid, or even the possibility that they might be laid (some journalists have misunderstood this as thought apply to terrorist suspects, but ASIO Bill would apply to journalists and the like and actually give such people even fewer rights than those charged with an offence).

Australians could be held by ASIO not because they have engaged in terrorism or are likely to do so, but because they know something about a terrorist offence. They could be held without access to legal advice and without the normal rights to silence and to avoid self-incrimination. While the Bill says that detainees must be treated with dignity, there is no penalty for ASIO officers who subject them to cruel or inhuman punishment.

Australians could be detained under this legislation for 48 hours, or two days. It is even more disturbing that this period could be extended indefinitely. And no power to notify family or employer etc.

Australians should not be detained except as a result of a finding of guilt by a judge or as part of the judicial process (such as being held in custody pending a bail hearing). Neither the Parliament nor any government should be given the power to detain Australians without a trial except for well

known exceptions such as mental illness or infectious disease. This underpins Australia's democratic system and the separation of powers entrenched by the Australian Constitution. The ASIO Bill breaches basic principles and could be challenged in the High Court.

The Parliamentary Joint Committee on ASIO has now reported. The Joint Committee, including members of the government, found that the legislation 'would undermine key legal rights and erode the civil liberties that make Australia a leading democracy'. The Committee then made some modest recommendations about the operational aspects of the legislation, including that it not apply to children and that people be detained for a maximum of seven days.

However, the Committee did not address the main issue. A government should not have the power to detain Australian citizens where there is no suspicion that they have committed an offence. There are some exceptions, such as in regard to infectious disease, but it has never been recognised that Australian citizens should be detained to help ASIO with its inquiries.

Australians should not accept the imprisonment of citizens except as part of a fair and independent judicial process resulting from allegations of criminal conduct. There are grave dangers in allowing a government to bypass the courts, especially where ASIO is involved.

ASIO has important secret intelligence gathering operations that are not compatible with it being a police force. It would not be acceptable for a State police force to secretly detain people for lengthy periods, nor should it be for ASIO. Even lesser powers should not be granted to an organisation except in circumstances where their exercise is subject to a high level of accountability, including public scrutiny.

Hence, if ASIO is to exercise these powers, which far exceed its current role (which includes, for example, executing search warrants in regard to postal articles), it must also be subject to equivalent political and public scrutiny. It just be subject to the same

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AUSTRALIA'S LEGAL RESPONSE TO SEPTEMBER 11 contin....

controls as any other police force. This is not compatible with the current intelligence gathering work of ASIO and its organisational structure (eg, cannot publish the identity of an ASIO officer). It would be difficult, if not impossible, for ASIO both to be sufficiently secretive to adequately fulfil its primary mission, as well as sufficiently open to scrutiny as would be necessary for it to exercise the powers set out in the ASIO Bill.

Conclusion

The government's objective of seeking to strengthen Australian law against terrorism is important and worthwhile. The law must enable the efficient investigation of terrorism offences and should impose stringent sanctions. However, it should not do so at the cost of compromising the democracy that the laws are meant to protect. We must hold the line in two areas:

- We must deny the Attorney General a power to unilaterally proscribe organisations and to criminalise their members and supporters; and
- We must deny ASIO the power to detain Australians where there is no suspicion that they have committed a crime.

If we do not do so, an important precedent will have been set. Once we cross this line they may be no coming back. The debate shows how bad laws can emerge from hasty decisions made in times of perceived danger. We should not enact anti-terrorism laws that we are likely to regret for many years to come.

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Professor George Williams
Anthony Mason Professor of Law, UNSW
Director of the Gilbert & Tobin Centre of
Public Law*

Dates for your Diary



Candle Day

Candle Day is the largest national event on the Amnesty International Australia calendar. This event aims to raise money, and promote Amnesty and its work on a national level. They need as many volunteers as possible so if you are interested in getting involved in the Candle Day Team, please contact the AINSW Activist Centre for details.

When: Friday 18th October

Amnesty International Global Human Rights Conference

Amnesty International's Human Rights conference will run in conjunction with the Sydney 2002 Gay Games Outreach Festival of Ideas and Ideals. The conference aims to break the silence surrounding incidents of sexual identity-based ill-treatment, discrimination and torture. Confirmed participants include High Court Judge Michael Kirby and AMA President Kerry Phelps.

When: October 30th - November 1st 2002

Where: The 'Y on the Park', Oxford St, Sydney

For more information on any of these events or to register your interest, please call the AINSW Activist Centre on 9217 7670 or e-mail us at: nswaia@amnesty.org.au.

NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES

PO Box 201 GLEBE NSW 2037 or DX 1111 SYDNEY
Phone (02) 9660 7582 Fax (02) 9566 4162 email: nswccl@office.net.au

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