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## The War on Terror

### The impact on human rights internationally and in Australia

This paper is structured in three interrelated sections – the international context of the war on terror and the place of human rights; the Australian manifestation of the war on terror and its impact; and community responses and strategies for dissent.

#### 1. International Context: Human Rights in the age of war?

*The War on Terror is no longer a shift in foreign policy aimed to fight a supposed threat. Nor is it simply an economic expansionist effort on the part of the US elite or its corporations. It is a systematic erasure of the category of normalcy that allows for force to replace legality.*<sup>1</sup>

We are in a state of global permanent warfare – witness the US-led war in Iraq, the insecurity politics of the war on terror and the war on freedoms supposedly guaranteed by 'democracy'.

The legacy of Empire is in the globalisation of capital, which has intensified 'civil war' within nation states. The immiseration of the poor, the exploited, and the criminalised 'other' is heightened in more authoritarian ways. The secret police are strengthened with unprecedented powers and surveill and intimidate without accountability. Australian military intervention in Iraq is promoted as a part of the Australian-US war on terror. Non citizens entering the US on suspicion of endangering security are interned without charge under the Patriot Act. In the non-legal zone of Guantanamo Bay people are de-humanised as 'unlawful combatants' and therefore outside of the basic protections afforded to prisoners of war. They are held incommunicado, indefinitely without charge and routinely subject to torture. Arbitrary Executive power, invoked under the guise of a 'state of emergency' (in response to the attack on 9/11), is no longer the exception, and the suspension of the rule of law for political expediency is the norm.

As global power relations of wealth and race are intensified against the back drop of permanent war, civil society and the associated rights accorded to citizens are a hollow echo against the authoritarian assault against non citizens (asylum seekers, refugees, foreigners from suspect states.) Likewise, against other 'bad' citizens whose human rights are precarious (witness the continuing genocide of indigenous peoples, and the racial violence and criminalisation as terrorist experienced by Muslim, Middle Eastern and Sikh people in western countries.) Hence the subordination of citizenship rights to the war on terror is a continuation of the precarious civil rights of 'bad' citizens.

In the aftermath of the tragic events of September 11, 2001 ('9/11'), the United Nations ('UN') Security Council proclaimed that the attacks on New York and Washington were a threat to international peace and security, and an attack on democracy. They called on all nation-states to increase their efforts to prevent and suppress the commission of

<sup>1</sup> Zen Dochterman *An Anarchist Analysis of the detention of immigrants and war post 9/11*, Aporia Journal, <http://aporijournal.tripod.com>

terrorist activities.<sup>2</sup> Following this call, and under the guise of both preventing or reducing the likelihood of future terrorist attacks and to make populations feel allegedly safer, governments around the world have introduced counter-terrorism measures. Australia is among those nations that have taken steps to address the threat of terrorist activities through the law. However, many of these provisions in Australian legislation restrict or severely limit internationally recognised civil rights and some of these fundamental principles of democracy the war on terror seeks to preserve. Some of these principles are embedded in our common law system, such as the principle of natural justice and that of due process, while others are entrenched in international human rights standards developed following World War II, and which nation-states voluntarily commit to.

The UN also called on countries to be restrained in the introduction of counter-terrorism measures and to achieve a balance between the protection of human rights and national security.<sup>3</sup> Given such restraint has been absent, and law has been surrendered to executive whim, herein lies the crisis for human rights frameworks.

Unlike other industrialised nations, Australians do not have the formal legal protection of human rights afforded by a constitutional or legislative bill or charter of rights. The ACT has legislated a bill of rights and Victoria is considering the same.

Do we call for a more humane administration of the nation state whose concepts of rights are based on exclusionary practices, or do we challenge the order that enacts racist power and repression and decides whose civil liberties to protect?

## **2. Domestic Context: An overview of anti-terrorism laws and their impact.**

The anti-terrorism legislation enacted in Australia after the September 11 attacks rests on three key planks. First, a range of 'terrorism' offences came into existence. At the base of these offences is the broad statutory definition of a 'terrorist act'; a term which, at its margins, embraces certain acts of industrial action like picketing by nurses.<sup>4</sup> These offences go far beyond acts like bombing and hijackings to not only criminalise 'terrorist acts' but also actions which are seen to be connected to 'terrorist acts'.<sup>5</sup>

Second, powers have been conferred on the government to ban 'terrorist' organisations. Part 4 of the *Charter of the United Nations Act 1945* (Cth) requires the Foreign Minister to determine that a person or entity is involved in a 'terrorist act'; a term that is not defined by the Act.<sup>6</sup> Such a listing will mean that it becomes illegal to use or deal with the assets of the listed person or entity. It will also be an offence to in/directly provide assets to a listed person or entity.<sup>7</sup> Moreover, under the *Criminal Code Act 1995* (Cth), regulations can be passed listing an organisation as a 'terrorist organisation' so long as the Attorney-General is satisfied, on reasonable grounds, that the organisation is 'directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur)'.<sup>8</sup> Such a listing means that the 'terrorist organisation' offences under this Act will apply to the

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<sup>2</sup> Security Council, *Resolution on Threats to international peace and security caused by terrorist acts* UN Doc S/Res/1368 (2001) and Security Council, *Resolution on Threats to international peace and security caused by terrorist acts* UN Doc S/Res/1373 (2001).

<sup>3</sup> Commission on Human Rights, *Protecting human rights and fundamental freedoms while countering terrorism*, 60th sess, UN Doc. E/CN.4/2004/91 (2004).

<sup>4</sup> While the definition of a 'terrorist act' excludes 'industrial action' (*Criminal Code Act* s 100.1), this is unlikely to afford any protection to picketing which has been found not to be 'industrial action' under the *Workplace Relations Act 1996* (Cth): *Dauids Distribution Pty Ltd v National Union of Workers* (1999) 165 ALR, 550, 575 per Wilcox and Cooper JJ (with whom Burchett J agreed at p. 586). For commentary on this case, see John Howe, 'Picketing and the Statutory Definition of 'Industrial Action'' (2000) 13 *Australian Journal of Labour Law* 84-91. The ruling in *Dauids* has subsequently been applied in *Auspine Ltd v CFMEU* (2000) 97 IR 444; (2000) 48 AILR ¶4-282 and *Cadbury Schweppes Pty Ltd v ALHMWU* (2001) 49 AILR ¶4-382.

<sup>5</sup> *Criminal Code Act* (Cth) ('*Criminal Code Act*') s 101.4.

<sup>6</sup> *Charter of the United Nations Act 1945* (Cth) s 15 and *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* (Cth) reg 6(1).

<sup>7</sup> Such conduct is not illegal if authorised by the Foreign Minister: *Charter of the United Nations Act 1945* (Cth) ss 20-1.

<sup>8</sup> *Criminal Code Act* s 102.1. This power was conferred by the *Criminal Code Amendment (Terrorist Organisations) Act 2004* (Cth).

organisation. For example, membership of such organisations is punishable by a maximum of 10 years in prison.<sup>9</sup>

Thirdly, the Australian Security Intelligence Organisation ('ASIO') now has unprecedented powers to question and detain persons *suspected of having information* related to a 'terrorism' offence.<sup>10</sup> Furthermore, the exercise of such powers by ASIO is now cloaked with secrecy, with the law now making it illegal to disclose information relating to most of ASIO's activities.<sup>11</sup>

This survey demonstrates the breadth of current anti-terrorism measures. Built upon the base of a 'terrorist act' is a superstructure of broad criminal offences and sweeping executive power. The former imposes guilt by association and criminalises conduct peripherally connected with extreme acts of ideological/religious violence. The net of criminal liability has grown even wider since the enactment of the *ASIO Legislation Amendment Act 2003* (Cth). It is now an offence to *disclose information* relating to *ASIO's investigations into persons suspected of having information* concerning a 'terrorism' offence. There are more than seven degrees of separation between such offences and acts like bombing and hijackings.

Moreover, the panoply of sweeping executive powers means that Australia now has a detention without trial regime with respect to 'terrorism' offences; a regime that is veiled by a thick shroud of secrecy. It also has a proscription regime under the *Criminal Code Act* that bears 'disturbing similarity' to the *Communist Party Dissolution Act 1950* (Cth).<sup>12</sup>

The breadth of these measures also reveals how these laws have departed from established community standards. They make 'serious inroads into long-standing principles such as the prohibition on detention without trial, the presumption of innocence and the freedom of speech and association.'<sup>13</sup> This is apparent with ASIO's compulsory questioning and detention powers. These powers differ only in modest ways from that originally proposed by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No 2] (Cth); a Bill that has been denounced as not being 'out of place in former dictatorships such as General Pinochet's Chile'.<sup>14</sup> The undemocratic impact of these powers have also been deepened with the newly-enacted secrecy offences; offences that were condemned by the major media organisations as:

pos(ing) a grave threat to Australian democracy, by gagging the media and its ability to report on national security issues involving ASIO and totally remove from public scrutiny, all discussion of ASIO's activities in relation to terrorism.<sup>15</sup>

The departure from established community standards is similarly evidenced by the government's power to proscribe 'terrorist' organisations under the *Criminal Code Act 1995* (Cth); a power which bears close parallels with the proposal previously condemned by the Senate Legal and Constitutional Legislation Committee on the basis that it conferred a 'broad and effectively unreviewable power'.<sup>16</sup>

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<sup>9</sup> *Criminal Code Act* s 102.3.

<sup>10</sup> Division 3, Part II, *Australian Security Intelligence Organization Act 1979* (Cth).

<sup>11</sup> These offences were inserted by the *ASIO Legislation Amendment Act 2003* (Cth).

<sup>12</sup> George Williams quoted in Senate Legal and Constitutional Legislation Committee, *Consideration of Legislation Referred to the Committee: Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] etc* (2002) 47.

<sup>13</sup> Michael Head, 'Counter-Terrorism' Laws: A Threat to Political Freedom, Civil Liberties and Constitutional Rights' (2002) 26 Melbourne University Law Review 666, 688.

<sup>14</sup> George Williams, 'Australian Values and the War Against Terrorism' (2003) 26 *University of New South Wales Law Journal* 191, 196.

<sup>15</sup> Letter from Bruce Wolpe, Manager, Corporate Affairs, John Fairfax Holdings Limited; Warren Beeby, General Editorial Manager, News Limited; Julie Eisenberg, Head of Policy, Special Broadcasting Service; Joan Warner, Chief Executive Officer, Commercial Radio Australia Limited; Professor Ken McKinnon, Chairman, Australian Press Council and Stephen Collins, Corporate Counsel, Australian Broadcasting Corporation to the Senators, 3 December 2003 (copy on file with author). See also Sophie Morris, 'More terrorists on loose, ASIO warns', *The Australian*, Sydney, 4 (available at [http://www.theaustralian.news.com.au/common/story\\_page/0,5744,8056307%255E2702,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,8056307%255E2702,00.html) on 5 December 2003).

<sup>16</sup> Senate Legal and Constitutional Legislation Committee, above n 10, 58. The *Criminal Code Act's* proscription regime prior to the enactment of the *Criminal Code (Terrorist Organisations) Act 2004* (Cth) has also been

In sum, the 'terrorist' legal infrastructure established since the September-11 attacks is based on broad criminal liability and sweeping executive powers; both of which involve significant departures from established community standards.

### **The racialised impact of the laws**

It is relevant that historically, counter insurgency, then counter terrorist policing in Australia has actively targeted trade unionists, political activists and those considered 'subversive' by the state. In comparison, significant violent acts by the right wing Yugoslav nationalist separatists, the Ustashi, were ignored by ASIO due to their anti communist sympathies.<sup>17</sup> Now, it is the Muslim that occupies the figure of the pervasive and dangerous threat to western democracy. While we are told that 'terrorism' threatens 'our way of life' and 'our freedoms', it is communities racialised as 'Other' who are made insecure, fearful, terrorised and who embody the enemy within.

The Human Rights and Equal Opportunity Commission's *Isma report: Eliminating Prejudice against Arab and Muslim Australians* documents a marked upsurge in racist violence and discrimination experienced since September 11: mosques firebombed, racist graffiti, Muslim people attacked in the street, mainstream media hysteria about dangerous Muslims, and reports of indiscriminate profiling by police and security services.

The series of armed ASIO raids on the homes of Muslim families in Sydney's western suburbs in 2001, 2002, and reported since then, have lead to no charges by police. The raids in 2001 were described as heavy handed and involved people being forced to the floor with guns pointed to their heads.<sup>18</sup> Such raids operate to intimidate entire communities and demonstrate the function of the terrorism laws on the level of surveillance, threat and fear.

### **3. Community Responses and Campaigns**

In response to the introduction the anti-terrorism laws detailed above, a number of existing community organisations have undertaken work around the issues raised by the laws and their impact. In addition, a number of groups have been formed for the express purpose of organising and campaigning in response to this legislation. Here is a brief outline of some of the initiatives the authors are aware of:

#### **Australian Muslim Civil Rights Advocacy Network**

The Australian Muslim Civil Rights Advocacy Network (AMCRAN) is an organisation dedicated to preventing the erosion of the civil rights of Australia's 300,000 Muslims, and providing a Muslim perspective in the civil rights arena. It does this through political lobbying, contributions to legislative reform through submissions to government bodies, grassroots community education to increase awareness of civil rights issues, and communicating with and through the media. It actively collaborates with both Muslim and non-Muslim organisations within the community to achieve its goals.

AMCRAN produced the first plain English introduction to the terrorism laws "ASIO, the police and you" in July 2004, in partnership with UTS Community Law Centre and the NSW Council for Civil Liberties. AMCRAN and UTS CLC are currently updating the Guide and translations into Arabic, Indonesian and Urdu. More information about AMCRAN can be found at <http://www.amcran.org>

#### **Civil Rights Network**

The Civil Rights Network Victoria (CRN) was established with the aim of bringing together people from activist, academic, legal, trade union, religious and political organisations to respond to parliamentary inquiries and reviews of the anti-terrorism laws. The group also works to organise and campaign around issues relating to the anti-terrorism laws.

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criticised as for being 'subversive of the rule of law': Jenny Hocking, *Terror Laws: ASIO, Counter-Terrorism and the Threat to Democracy* (2003) 211.

<sup>17</sup> See: Jude McCulloch, *Blue Army: Paramilitary Policing in Australia*, (2001) Melbourne University Press and Jenny Hocking, *Beyond Terrorism* (1993) Allen & Unwin, Sydney

<sup>18</sup> Poynting, S et al, *Bin Laden in the Suburbs*, Sydney Institute of Criminology, Sydney, 2004

The CRN has a comprehensive website at <http://www.civilrightsnetwork.org> which provides detailed information on the anti-terrorism laws and the work of the CRN, as well as discussion of the issues surrounding the anti-terrorism laws. The CRN also produces a bulletin on these topics.

### **Community Legal Centres**

The Federation of Community Legal Centres Victoria ('the Federation') is the peak body for forty-nine community legal centres across Victoria. The Federation has formed an Anti-Terrorism Laws Task Group ('the Task Group'). This is an issue specific working group comprised of workers from various member centres. The aims of the Task Group are:

1. To support community legal centres in providing targeted community legal education to communities affected by the anti-terrorism laws;
2. To support community legal centre lawyers to provide up-to-date legal advice to clients affected by the anti-terrorism laws;
3. To make submissions on behalf of the Federation to the reviews of anti-terrorism legislation which are to take place in 2005/2006.

Community legal centres work very closely with local communities and the Task Group is keen to incorporate community feedback on the anti-terrorism laws into any submissions it makes. The Task Group is therefore working with the CRN to make contact with communities affected by the anti-terrorism laws in order to get community feedback. In this regard the provision of community legal education, which is a regular practice of community legal centres, has a two-fold advantage. Firstly, education on the laws in community languages and contexts will hopefully work to combat the misinformation and confusion surrounding these extremely complex laws in the broader community. Secondly, in providing this community legal education and meeting with affected communities, it is hoped that people who have been affected by the laws may be empowered to tell their stories or to make submissions themselves.

The Task Group is also working to encourage community organisations and individuals to make submissions on their own behalf. To this end, a campaign kit has been produced. The kit contains some basic information on the anti-terrorism laws, a proforma submission and proforma letter to a Member of Parliament.

In NSW the University of Technology, Sydney Community Law Centre has recently produced a detailed information kit on the anti-terrorism laws. This kit was designed to explain the anti-terrorism laws and to provide guidance on how to make written submissions to the committees to review the laws. The kit is available at [www.utscommunitylaw.org](http://www.utscommunitylaw.org)

### **Spaces for resistance**

Community-level projects addressing prejudice and fear directed at Muslim, Arab and Sikh Australians generated during the 'war on terror' are varied, ongoing and defy homogenous characterisation, as do concepts of 'community'. Strategies which seek to address systemic racism operate at the level of community organisations, peak bodies and informal networks. Strategies range from cultural education programs in schools, interfaith networks and building networks between Muslim organisations and other community groups to strengthen solidarity and communication. Cultural production through mediums such as art and film are relied on by community organisations in programs for 'at risk' young people as a means to both empower and as a form of self representation for social change.

A key issue identified by a range of Muslim groups at a Sydney anti racist community forum in 2004 is a high level of fear and sense of siege felt by communities as a result of being collectively targeted. For example the Afghan community organised the physical self-defence of mosques in Western Sydney after 9/11 as an urgent grassroots response to persistent racist attacks.

Community organisations also noted how they feel very isolated in their work with effected Muslim, Arab and Sikh communities in NSW, particularly in terms of the lack of

contact they have with mainstream community organisations. This is exacerbated by the fact that during the 'war on terror', a large proportion of the anti-racism activities have fallen on their shoulders, which they have limited resources for addressing. In addition, the identified pressure to constantly publicly defend Islam as not condoning terrorism, can be viewed as symptomatic of the precarious citizen needing to prove their national loyalty as a peace loving Australian.

Links must be forged between broadly dispersed community groups on the basis of their common interest in fighting the politically motivated attack on community values and freedoms that these laws epitomise. Community building, extending support and linking multiple spaces for resistance to racism are long term strategies and critical sites for developing counter-power to the war on terror.

## Further readings

**[www.civilrightsnetwork.org](http://www.civilrightsnetwork.org)**

**[www.amcran.org](http://www.amcran.org)**

Hoh, B, 'We Are All Barbarians: Racism, Civility and the War on Terror', (2002) vol 1, no 1, *Border lands e-journal* [www.borderlandsejournal.adelaide.edu.au](http://www.borderlandsejournal.adelaide.edu.au)

McCulloch, J, Tham, J 'Secret State, transparent subject: The Australian Security Intelligence Organisation in the age of terror' (2004) *Australian and New Zealand Journal of Criminology* (forthcoming)

Poynting, S, et al *Bin Laden in the Suburbs –Criminalising the Arab Other*, (2004) Sydney Institute of Criminology, Sydney

Tham, J, 'Casualties on the domestic 'war on terror': a review of recent counter-terrorism laws' (2004) 28 *Melbourne University Law Review*

This briefing paper was written by Joocheong Tham for a workshop at the third national Now We The People conference: Advance Australia Fair – Building sustainability, justice and peace, 30-31 July 2005, Melbourne Trades Hall.

For more information about the conference, how to register, this particular workshop and the Now We The People network, please visit [www.nowwethepeople.org](http://www.nowwethepeople.org).

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