

Rights Australia is a national campaign organisation working towards increased protection in Australia of the human rights recognised in the Universal Declaration, and the international human rights instruments to which Australia is a signatory. Formed in October 2004, it aims to bring to the community's attention situations where:

- . human rights are being neglected and abused;
- . lives could be improved if human rights were protected; and
- . support can be given for better and lasting protection of human rights.

Through the efforts of our large support base, we plan to:

- . Sustain a campaign for long term change;
- . Assist with the current human rights challenges in Australia; and
- . Provide a loud and sensible voice in the media on the issues which need a human rights perspective.

### **Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005**

Because of the speed of the inquiry, this submission is based on my own opinions and experience, together with a contribution from my colleague Greg Barns. In it, we outline three areas of concern with the Bill being considered by your Committee:

- Σ Too much haste;
- Σ Too much reliance on trust, which has been lost; and
- Σ Absence of human rights protections.

Our recommendations to the Committee are:

1. Legislative measures to counter violence from religious and ideological extremists need longer consideration, and need to be considered with other community programs that have proved effective in the past.
2. Flaws in the legislation should be fixed before its passage, as there is little trust that it will be used with judgement and respect for people's rights.
3. The Committee should give further and substantial consideration to the benefits of increased human rights protections in Australia, which would both reassure the community about the operation of the proposed new legislation, and indeed provide a reaffirmation of some of the core values of our society.

Too much haste

We welcome the arrests of certain members of the community allegedly engaged

in planning for acts of violence. I have long supported police action against those who use perverted religious or ideological justifications for acts of violence, and for action by community leaders to disavow these extremist views. In 1982, I was involved in actions to counter the extremist views of the Festival of Light, particularly its attempt to import the extremist "Moral Majority" views through a speaking tour by fundamentalist Jerry Falwell. Later I was involved in the development of the National Inquiry into Racist Violence, which looked at the connection between extreme "nationalist" groups and attacks on Asians and Aborigines. The police arrest and subsequent conviction of certain extremists were also welcome. In both cases, the strong disavowal and condemnation of violence from the mainstream - Church and religious leaders in the first case; other organisations and individuals strongly identified with nationalist sentiment in the latter - were instrumental in isolating and subsequently minimising these acts of violence. Indeed, Senator the Hon Ron Boswell's long campaign of exposure of extreme nationalist organisations is an example of the lasting benefit of exposure and scrutiny of those who justify violence.

That there are certain people in the community who would use Islamic texts to justify acts of violence is no surprise, as there have regularly been cases of the use of Christian texts to do the same. Earlier this year, I visited a large Islamic bookshop in Haldon Street, Lakemba, and amongst the books found the anti-Semitic classic "Protocols of the Elders of Zion", and an interesting little book "Prohibitions which are taken too lightly", which laments how little regard there is to the "teachings" to put homosexuals to death by sword.

Extremist positions, and actions, have long been with us. The labelling of them as part of a grand coalition of forces opposed to our way of life through a "war on terror" is what is new in this country. Deaths from terrorist attacks in Australia have so far been minimal, arguably less than the number of deaths from gay-bashing, incontrovertibly less than deaths from suicide (over 2000) a year, drug abuse, or alcohol abuse. Each of these are similar in that they may be minimised by government actions or preventative programs, but lead to death and other serious consequences to the community regardless of these programs. They are different in that they are not currently the subject of hasty, ill-considered and hysterical campaigns.

Among the tumult and shouting that the uncovering of a suspected terrorist cell in Australia has generated, there is a quiet question: why do Prime Minister John Howard and the eight state and territory leaders need quickly to pass new anti-terrorism laws when the security and police agencies have been able to carry out this apparently massive exercise under existing laws? What ASIO, the federal and state police forces and the politicians ought to focus on is that this 16-month exercise in surveillance, intelligence-gathering, arrests and raids shows the adequacy of the current state and federal anti-terrorism laws. With the exception of the one-word

amendment rushed through Federal Parliament, which now enables people to be charged with preparing a terrorist attack without the prosecution having to specify the exact nature of the attack, there is no evidence that the police and security agencies have been hamstrung in any way in this exercise by the existing laws.

The 400 officers of ASIO, and the federal and state police forces involved in this operation, have used existing legal powers to watch, tap telephones, intercept e-mails, search properties and seize evidence as well as make arrests.

The evidence so far seems to be that this complex secretive operation was able to be carried out with no legal impediments. If the recent arrests and raids are any guide, there is no evidence that the police or ASIO need any more powers than are now available to them to carry out their task of combating alleged terrorist activity. Now that there is a will, there is a way.

Of course, it may be that as the cases against those arrested last Tuesday wend their way through the courts, gaps in the existing laws are exposed. That is often the way laws are reformed in a democracy. Judges find the gaps and flaws in laws and parliaments move to fill them. And there should be no exception to that general principle here - particularly given the gravity of the damage that will be done to individual freedoms by the proposed anti-terrorism laws.

What is needed now is a sense of perspective. We believe we would all benefit if police chiefs and their political masters stop their public back-slapping and allow the legal process to run its course unhindered by commentary.

The violence that was perpetrated by Christian fundamentalists and nationalist extremists in the last two decades has been overcome by a combination of police action, community leadership and political exposure, without recourse to removal of key human rights for the entire community. A more considered approach than this legislation - developed in collaboration with key sectors of the community, and with a little more time than has been allowed in the current rush - is likely to have a greater impact.

We recommend that:

Legislative measures to counter violence from religious and ideological extremists need longer consideration, and need to be considered with other community programs that have proved effective in the past.

Too much reliance on trust, which has been lost

Why the urgent rush by the Prime Minister and the State and Territory leaders to have their respective parliaments pass by Christmas more anti-terror laws that they acknowledge infringe the liberties of Australians and overturn freedoms?

Laws which will allow for people to be held for 14 days without facing charges; laws which will make it a criminal offence to leave your bag unattended at an airport; laws which will force journalists and others to hand over documents to police and security agencies without the need for a

court order; laws which are "draconian" (Premier Beattie), but for which there has been no convincing case made for their necessity.

It is unfortunate that the response to the increasing fears about terror attacks is being led by the same team that handled the arrival of boats fleeing the Iraq, Afghan and Iranian terror regimes: Prime Minister Howard and now Attorney-General Ruddock. Rather than being simply "hysterics" (Prime Minister Howard), many of us concerned about the new laws have lost trust in the statements from them. It was with largely un-remarked irony that the last but two of the hundreds kept in long term detention on Nauru since the period of the Tampa crisis were brought to Australia on the day that the "urgent" anti-terrorism legislation was introduced. Those of us, who have worked to overcome the denial of human rights to the thousands of refugees who fled Iraq, Afghan and Iran and arrived in Australia by boat, have seen:

Σ Political statements demonising a class of people, or attempting to bluff or deceive groups of people;

Σ Un-attributed or untested assertions to media, ultimately found to be false, but with no-one brought to account, with prevention of ministerial staff from appearing before inquiries; and

Σ The failure of processes of accountability or human rights protection, leading to long term denial of rights, without compensation.

The inflation of what was at most a difficult humanitarian challenge - the increase in refugee boats to the end of 2001 - into a national crisis which then became a test of leadership and a central issue to the 2001 election, demonstrated the ease, and the rewards, of playing politics with fear of "aliens". And no-one has been brought to account for the damage done, and still being done, to the health and security of the thousands of refugees who went through the harsh isolated detention system. Indeed, to ask us to believe that there will be a measured and responsible approach to the use of these new laws, respecting people's rights, is really a denial of the reality of the abuses done to hundreds who went through Nauru, Manus Island,

Curtin, Woomera and Baxter.

The lack of judgment, a willingness to deceive as an instrument of policy, and even a disregard for national security as political expediency, can be seen in examining a particular case in the administration of the immigration portfolio over the last three years.

On 12 March 2003, then Immigration Minister Philip Ruddock announced a memorandum of understanding with the Islamic Republic of Iran, which purported to allow for the involuntary return of Iranians in Australian detention centres to Iran, unless they quickly volunteered to be returned home. It was fairly easy to establish through immediate inquiry that the "memorandum of understanding" really was just an agreement from Iran to discuss on a case-by-case basis involuntary returns. But in return for allowing the Iranian Government to choose several hundred students to send to Australia each year, it would cooperate with the Australian Government's creation of a "credible threat" to the detainees, to try and get them to choose to return. In the upshot, I understand that only a handful of the

then Iranian detainees were returned involuntarily, and primarily those who had other charges against them. The majority of those who were threatened with involuntary return have since been given refugee status. But to do a deal with what was then an "axis of evil" nation to help threaten people who had fled it, in return for allowing them to send their own to Australia, struck me then, and still does, as very poor judgement in the pursuit of policy goals. It also concerns me that the MOU was never presented to the Senate, has not been subject to scrutiny by the Joint Standing Committee on Treaties, is not the subject of monitoring by the Department of Foreign Affairs, but is still discussed in bi-lateral meetings between Immigration Department officials and Iranian officials, without oversight, and despite the deterioration in credibility of both parties.

To seek the community's trust, and to disparage those who are not trusting, is not a great basis for the passage of flawed legislation. If there were less haste, and more open discussion of a problem that is likely to be with us for some time, then maybe some of that trust could be re-established. Until that time, we do not accept that the Attorney-General's discretion as to whether to proceed with a sedition prosecution, based on laws which are admitted to need review, is a sufficient safeguard.

We recommend that:

Flaws in the legislation should be fixed before its passage, as there is little trust that it will be used with judgement and respect for people's rights

#### Absence of human rights protections

In the justification of these new laws, comparisons are made by the government with laws in the United Kingdom and the United States. Both countries, and others with similar legal systems and challenges like Canada and New Zealand, have clear, powerful and effective protection of key human rights standards. These protections rightly apply to both their citizens and others who come into contact with their governments and legal systems. Australia's laws will not interact with any strong protection of rights, as they must in those other countries. And this lack of protection is in our view, the most serious failure of these proposed laws.

As the Member for Moncrieff, Mr Ciobo said in the House of Representatives last 8 November,

"We find ourselves under attack from terrorists who seek to exploit the very freedoms we enjoy in the attempt to inflict murder and mayhem on our society. Together, we desire protection from this threat. This protection requires strong intelligence and law enforcement and has seen incursions in certain freedoms we enjoy. Incursions that are required in order to promote collective security. I propose that while recognising the need for these incursions on individual rights to help secure our society, we should also be looking to affirm our view of the importance of recognising the individual rights we believe to be central to Australian society."

The balance between the limitations on individual rights and the protection of the greater good in certain circumstances is a long and continuing dialogue in liberal philosophy. Mill's discussion on poisons in "On Liberty"

is still well worth a read and particularly fresh if you read "hydrochloric acid" for poison.

But the Australian legislature continues to operate, practically alone amongst western democracies, without the benefit of the human rights standards that have come from this dialogue - indeed, ignoring the contributions made by many members of this legislature in the past. Britain still detains suspects and failed asylum seekers. The United States operates a detention facility on Guantanamo Bay - but eventually their governments have to argue cases and actions before the judiciary. Human rights protections are not perfect. But their absence in Australia is remarkable. There is no bottom line of accountability.

Mr Ciobo is the latest of many MPs, and many in the community, who have called for statutory or constitutional protection of our human rights in tandem with measures to counter acts of violence and terror.

We recommend that:

The Committee give further and substantial consideration to the benefits of increased human rights protections in Australia, which would both reassure the community about the operation of the proposed new legislation, and indeed provide a reaffirmation of some of the core values of our society.

I would be happy to discuss this submission with the Committee.

Yours sincerely

Howard Glenn  
Executive Director  
Rights Australia

14 November 2005

Our vision

We declare our commitment to create an Australia where;

- . Everyone has a widespread understanding of their basic human rights;
- . These rights are monitored and protected against the actions or neglect of government;
- . The quality of our lives is enhanced by the knowledge that these standards exist and can be enforced.

What rights do we mean?

We speak of the fundamental rights and dignities which are part of the human condition, to which all people are entitled equally, but which are protected or observed in different ways in different parts of the world. We speak of universal rights, applied to our everyday lives, which are not determined by our nationality or our citizenship.

In Australia, our current economic prosperity blinds many of us, and our governments, to the weakness of the laws which protect our human rights. With fading memories of the human misery which drove the world to adopt and enhance the Universal Declaration of Human Rights; with faith in the various human rights, anti-discrimination and equal opportunity commissions; and

with a belief in the elusive "fair go"; we have let our standards slip.

Why does it matter?

Every day there are too many examples where people in Australia are denied their lawful human rights and as a result are living disadvantaged lives in unnecessary hardship.

Too many people are detained for too long without judicial review; too many children suffer from curable, untreated disease; too many children don't get primary schooling; too many people wander the streets without care or treatment; there is too much interference in our lives by Government; too little respect for our rights and dignity. We have lost so many of the checks and balances of our democratic system, and even our High Court has said it cannot protect our inherent rights against bad laws.

Our mission

To bring to the community's attention situations where:

- . human rights are being neglected and abused;
- . lives could be improved if human rights were protected; and
- . support can be given for better and lasting protection of human rights.

To achieve this we will work in ways which are positive and uniting, not divisive or driven by fear. We will be honest and direct, as we have seen that it is not good enough to pretend that we have human rights protections, or that because some of us enjoy these rights, everything is fine.

We will remind ourselves, and our governments, that the protection of human rights is an issue for all of us.