

Counter Terrorism Legislation Amendment Bill-2014

We write to you with serious concerns regarding the potential violations of human and civil rights and the ramifications that this may have on the community by way of targeted profiling.

We are perplexed to understand as to why the existing Legislation, which are comprehensive enough are being introduced when the various State and Federal Police Commissioners have repeatedly stated that there is no imminent threat to Australians in Australia. According to the Law Council of Australia (2013), “Since 2001 the Commonwealth Parliament has passed over 50 separate items of legislation dealing with terrorism and security, accompanied by significant budget increases to fund these new security measures”. The Australian Government introduced the first set of counter – terrorism legislation in July 2002 which included:

- Security Legislation Amendment (Terrorism) Act 2002 (Cth);
- Border Security Legislation Amendment Act 2002 (Cth);
- Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002 (Cth);
- Suppression of the Financing of Terrorism Act 2002 (Cth);
- Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 (Cth);
- Crimes Amendment Act 2002 (Cth);
- Criminal Code Amendment (Offences against Australians) Act 2002 (Cth);
- Telecommunications Interception Legislation Amendment Act 2002 (Cth); and
- Criminal Code Amendment (Terrorism) Act 2003 (Cth).

Further counter-terrorism measures were introduced during 2004, including:

- Anti-Terrorism Act 2004 (Cth);
- Anti-Terrorism Act (No. 2) 2004 (Cth);
- Anti-Terrorism Act (No. 3) 2004 (Cth);
- Surveillance Devices Act 2004 (Cth);
- Australian Federal Police and Other Legislation Amendment Act 2004 (Cth);
- National Security Information (Criminal Proceedings) Act 2004 (Cth);
- Anti-Terrorism Act (No. 2) 2005 (Cth); and
- Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005 (Cth). (Law Council of Australia, 2013)

Human Rights

There are serious concerns that these laws may infringe on an individual's human rights, civil liberties and freedom. The Australian Human Rights commission have listed some of these concerns and we, the community, echo their concerns. They include:

- The right to a fair trial
- The right to freedom from arbitrary detention and arrest
- The right not to be subject to torture
- The right to privacy
- The right to freedom of association and expression
- The right to non-discrimination
- The right to an effective remedy for a breach of human rights

It is also worth noting, that the above rights are protected under the International Human Rights Treaties, and will put Australia in breach of these Treaties, they include:

- The International Covenant on Civil and Political rights
- The Convention against torture and cruel, inhumane and degrading treatment or punishment

Unprecedented Powers

In addition to Australia not having an Australian Human Rights Charter, it is even more difficult to ensure that the above mentioned rights will be protected and upheld. Without a Human Rights Charter we do not have a safeguard against abuses which may be exploited by elements within government agencies, for example by the Australian Securities Intelligence Organisation (ASIO).

Actually, it gets worse; these abuses are permitted under this legislation as ASIO officers are also provided with "immunity" from prosecution. This has created a situation where civil rights and human rights are no longer protected under the National Security Legislation, and inevitably we will see more and more abuses of Australian citizen's rights. In addition, these laws give ASIO significantly more power which will allow them to:

- Exert force while executing a search warrant;
- Detain an individual on the basis of "suspecting" a risk. The word "suspect" has no clear definition in the Legislation and this can be taken advantage of by ASIO and can create further human rights violations;
- A Constable is also permitted to arrest an individual without a warrant if the Constable "suspects" there is a risk or a criminal offence might occur.

Foreign Fighters

It is also concerning that under the Counter Terrorism Foreign Fighters Bill amended proposals, it can be seen as an offence for an individual to travel to a designated area as being of “terrorist activity” even though an individual might be traveling for other reasons other than humanitarian aid purpose or simply visiting family i.e.: business trip.

- There is also no clear definition of what “armed hostilities” are even though the reviewed bill does define “armed forces and engaging in hostile activities”;
- Imminent threat is also not defined;
- ASIO or the Immigration Minister is not required to notify a person/individual of the cancellation of travel documents;
- Passports can be suspended up to 14 days without an individual being notified

Under the Foreign Incursion and Recruitment Act 1978- It is an offence for an Australian citizen to engage in hostile activities in a foreign country and is punishable for up to 20 years. So why was this section reviewed if nothing new was introduced?

Under the Criminal Code – ASIO already had the power to remove passports, prevent travel and enact preventative detention orders. So why was this section reviewed again?

It is extremely concerning and very alarming to know that “natural justice” is also denied under the review of this legislation.

The legislation specifically states: “Natural justice does not apply to a decision made under Subdivision FB- “Emergency cancellation under security grounds”.

Natural justice is an essential process of:

- Fairness
- Transparency
- Equality before the law
- Freedom from bias
- The right to be heard

After identifying all the above human rights violations and with the introduction of new legislation we feel that these will lead to additional violations of the International human rights treaties. Moreover, under these new reviews an individual who might be adversely affected is denied an opportunity to be heard. We call upon the Government to act upon the following:

1. The Australian government has to ensure that an individual's human rights and civil rights are protected.
2. The Australian government has to also ensure that freedom of speech and freedom of expression is not violated under the aspect or notion of an individual being a "suspect".
3. A clear definition of a "suspect" should be defined.
4. A clear definition of "imminent threat" should be defined.
5. The Australian government has to ensure that ASIO and/or the Australian Federal Police (AFP) are not over stepping on an individual's personal freedoms and right to privacy.
6. The Australian government has to ensure that an individual has access to a fair trial/ hearing since "natural justice" does not exist.
7. We stress the importance of ensuring that torture and inhumane treatment is not inflicted on an individual by ASIO and/or AFP and is monitored by a government body.
8. Under these reviews ASIO is provided with immunity from prosecution. Does that mean ASIO has the right to do what they believe is right even if it impedes on a person's human and civil rights? This needs extensive monitoring and regulations.
9. There needs to be more elaborations on why a person can be detained for 14 days without the right for that individual to seek assistance from a Lawyer within these 14 days.
10. There is a belief that these "Laws" will cause more damage than good. The government needs to ensure that these laws can play a positive role in civil society without infringing on people's freedom of religion.
11. The Australian government must ensure that these laws are not giving ASIO the right to target one ethnic group, race or religious group.

Whilst deciding upon amendments to the legislation we urge you to take into consideration all the above mentioned. We also ask you to be mindful of previous cases such as the Dr. Haneef case, David Hicks, East Timor, and the Indonesia spy case. As concerned citizens of this country we plead with you NOT to deprive Australians of essential freedoms which make Australia a democratic country.

Regards

Dave Andrews, 03/10/2014