

**SUBMISSION TO PARLIAMENTARY  
JOINT COMMITTEE ON ASIO, ASIS  
AND DSD**



**REVIEW OF ASIO'S QUESTIONING AND DETENTION POWERS**

**JOINTLY PRESENTED BY THE UNITED NATIONS ASSOCIATION OF  
AUSTRALIA (UNAA) AND THE UNITED NATIONS YOUTH ASSOCIATION OF  
AUSTRALIA (UNYA)**

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**1. Background.**

- 1.1 The Joint Parliamentary Committee on ASIO, ASIS and DSD has invited submissions for its review of the operation, effectiveness and implications of the new provisions in the ASIO Act 1979 that allow questioning and detention warrants in relation to persons believed to have information about terrorist offences.
- 1.2 This submission is presented by the Executive Committee of the United Nations Association of Australia (UNAA).
- 1.3 The primary focus of this submission is on the international human rights standards that affect the ASIO legislation.

**2. Questioning and Detention Warrants**

- 2.1 According to the information provided by the Joint Parliamentary Committee, the ASIO powers have specified limits in terms of the length of time anyone can be detained and questioned, and there are protocols about how the questioning is done (eg before a 'prescribed authority ' such as a judge).
- 2.2 There is a sunset clause, so that the legislation will lapse after three years unless re-enacted.
- 2.3 The debate on the legislation was intense and there were numerous amendments, such as those referred to in 2.1 above, finally inserted into the legislation to meet many community concerns about the extent to which the legislation put at risk human rights of Australians.
- 2.4 The Parliamentary Committee itself found that the bill as originally drafted would undermine rights and erode civil liberties.

### 3. United Nations Response to Terrorism

- 3.2 On 17 June 2004 the UN Secretary-General, Kofi Annan, spoke on the subject of terrorism. He said "Terrorism strikes at the very heart of everything the United Nations stands for. It is a global threat to democracy, the rule of law, human rights and stability, and therefore requires a global response. The United Nations has an indispensable role to play in providing the legal framework within which the international campaign against terrorism can unfold. To assist Member States in enhancing their capability to fight terrorism, the United Nations Security Council has established the Counter-Terrorism Committee, provided for in resolution 1373. The United Nations Office of Drugs and Crime has launched a global programme against terrorism as a framework for operational activities. I am confident that the commencement of work of the Regional Counter-Terrorism Structure Executive Committee of the SCO will help to substantively strengthen those efforts"
- 3.3 On 10 March 2005, at the International Summit on Democracy, held in Madrid, Spain, Kofi Annan, called on member states to adopt a common approach to fighting terrorism, and announced the creation of a special task force in his office to review the handling of terrorism throughout the UN system. He identified the following priorities for a "principled, comprehensive strategy": (a) dissuade disaffected groups from choosing terrorism, (b) deny terrorists the means to attack, (c) deter states from supporting terrorism, (d) develop state capacity to prevent terrorism, and (e) defend human rights in the struggle against terrorism.
- 3.4 In the context of this submission, the UN Secretary-General's remarks on human rights are significant: "(Upholding) human rights is not merely compatible with a successful counter-terrorism strategy. It is an essential element of it". UNAA believes that all states must work hard not to undermine the very rights which terrorists seek to destroy..
- 3.5 The United Nations has adopted a comprehensive range of conventions on terrorism, and guidelines that are consistent with the UN Charter. These provide a valuable framework for action by member states. These cover areas such as crimes against diplomats, the taking of hostages, terrorist bombings, and the financing of terrorism. Other conventions cover aircraft and maritime terrorism.
- 3.6 There are also regional agreements, on action to prevent terrorism, adopted by such groups as the European Union, the Organisation of African Unity, the Arab League, the Islamic Conference, the South Asian Association for Regional Cooperation, and the Organisation of American States.
- 3.7 The UN Commission for Human Rights, meeting in Geneva last year, passed a resolution (2004/87) called *The protection of human rights and fundamental*

*freedoms while countering terrorism.* The resolution, adopted by consensus, urged states to ensure that “any measures taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law”. It further encourages states to take into account relevant UN resolutions and decisions on human rights, and to raise awareness of such human rights issues within their own countries.

#### **4 UNAA Policies**

- 4.1 UNAA believes that, as far as possible, Australia’s approach to terrorism should be consistent with the international (especially United Nations) provisions and protections enshrined in conventions and other aspects of international law.
- 4.2 UNAA Federal Council in 2004 passed a resolution asking the Australian Government to (a) examine its recently passed anti-terrorism legislation, (b) indicate the extent to which it upholds the obligations of Australia under international law and human rights instruments, and (c) what steps will be taken to ensue this compliance is fully achieved. A response from the Government is awaited.
- 4.3 UNAA has long had a policy of supporting a Bill of Rights for Australia. The Association believes that such a Bill of Rights would enshrine international human rights principles and become a touchstone for checking proposed domestic legislation before it is passed into law.

#### **5. The United Kingdom and Australia.**

- 5.1 In an article in *The Canberra Times*, 22 December 2004, Christopher Michaelson (a lawyer undertaking a PhD at ANU’s Strategic and Defence Studies Centre) reported on the decision of the House of Lords that the Blair Government’s Anti-terrorism Crime and Security Act 2001 was inconsistent with the EU’s Convention of Human Rights. He argued that Australia’s anti-terrorism legislation is more severe than the UK legislation, in that it allows ASIO to detain people who are not suspects. He believed this should be reviewed in the light of the UK decision. The recent controversy in UK that has led to passing a new anti-terrorism law in March 2005 indicates the ongoing problem posed by such legislation, and Parliament insisted upon a right to review the legislation in a year.
- 5.2 UNAA shares the view outlined in the article that the ASIO legislation in its present form tends to remove the very freedoms that we as a country seek to defend against terrorists. The absence of a Bill of Rights, and of domestic

legislation enshrining Australia's commitment to the international human rights covenants, makes this trend more risky.

## **6. The Impact of the Australian Legislation.**

- 6.1 The information supplied by the Parliamentary Committee in relation to this Review includes some details from the ASIO Annual Report 2003-2004. The number of warrants issued and requests made is low. On one level, this is encouraging, as it suggests the legislation is being administered with care. On another level it raises the question whether the legislation has really been necessary, given the various existing laws that enable authorities to investigate crime.
- 6.2 There is a perception in the community, including among UNAA members, that the range of legislation now in place to combat terrorism exceeds the need, and that people are being reported or detained on the basis of their association with a particular minority ethnic or religious group rather than because of any particular criminal activity. This is reinforced by the ongoing controversy about the detention of asylum seekers.

## **7. Conclusion.**

- 7.1 UNAA supports the United Nations approach to terrorism as the most appropriate framework within which member states like Australia should develop their own anti-terrorism legislation and procedures.
- 7.2 The protection of human rights when countering terrorism is a major challenge, and Australia should be guided by the relevant UN resolutions and instruments, including the UNCHR resolution 2004/87 referred to in clause 3.7 above.
- 7.3 UNAA supports the creation of a Bill of Rights in Australia to add strength to international human rights standards and to be a touchstone against which legislation involving ASIO and other similar agencies can be measured.
- 7.4 UNAA believes that the ASIO legislation is sufficiently controversial to warrant review on a regular basis.
- 7.5 UNAA hopes that the Committee will consider the extent to which the legislation has been used to harass particular ethnic and religious minorities.

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