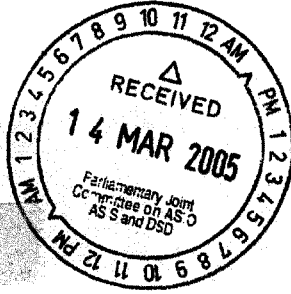


Pat Finegan



Submission No:.....7
Date Received: 14-3-05
Secretary:

**The Secretary
Parliamentary Joint Committee on ASIO, ASIS and DSD
RE Review of Division of Part III of the Australian Security Intelligence
Organisation Act 1979**

I wish to make a submission on this matter.

It appears to me that in making this submission it should be made clear that the Australian public need to be protected from any possibility of abuse by any government body or instrumentality.

My understanding is that the various organisations listed above currently operate to a large extent under a veil of secrecy, and they are only required to report to Parliament under very limited circumstances. Consequently they should not be provided with powers which could curtail further the civil liberties and democratic rights of the citizens of Australia.

It already seems that there is more than sufficient powers in the hands of these bodies to question and interrogate people whom they suspect may be of danger to Australian security.

Of great concern is the fact that by detaining 'suspects' for questioning, then this process can open the interrogation process to abuse, for it allows any questioning to be carried out in a situation which can be unaccountable and hidden from view.

It seems that, as a democratic society, if we go down that path we are only copying the practices of those agencies and countries whom we criticise as 'evil' and who are clearly in breach of any recognised 'Human Rights' agreements.

We surely must take regard of the recent events in Iraq and Guantanamo Bay where prisoners were humiliated and tortured in situations where they were only suspected of being involved in so called crimes against the State.

We need to be alert to the fact that the situations described above were indeed executed under the 'gaze' of a country which professes to subscribe to the basic tenets of 'justice' and yet the whole world was scandalized by the fact that people who were in prison awaiting trial, and hence considered 'to be innocent before the law', were subjected to degrading treatment.

SUCH EVENTS AS THIS MUST NOT BE ALLOWED TO HAPPEN IN AUSTRALIA!!!!

The gathering of information and any questioning of suspects can be carried out and must be carried out without detention.

A further concern is the proposal that these suspects will be unable to have access to a lawyer.

Given our history and the fact that our legal processes are based upon the 'rule of law', then everybody, no matter what their alleged crime, must be allowed access to legal advice and this access must be private and confidential to enable the 'due process' to take place.

The lessons of history have shown that the introduction of legislation intended to whittle away at the civil and legal rights of ordinary citizens can and has led many times to extraordinary excesses being executed under the guise of legal processes. I am sure that Australians would not wish to see such effects from the current legislation, hence I suggest the following recommendations.

1. The revocation of the detention of individuals for questioning by ASIO.
 2. The power to compulsorily question individuals should also be revoked.
 3. If for some reason these recommendations are not acceptable then at the very least, protection of the rights of suspects must be secured by removing the secrecy provisions regarding the detention and interrogation aspects of the legislation.
 4. The establishment of a public body easily accessible to the media should enable the public to become aware of the full details of any investigation immediately.
 5. Because the central tenet of our legal system depends upon the presumption of innocence, the onus of proof should be upon the investigating body to prove that a 'defendant' is in possession of information etc. rather than that person having to prove that they are not in possession of matters in connection with a 'terrorist' act.
 6. Any person subjected to investigation, interrogation or questioning by ASIO must have independent access to legal advice unconstrained by and without monitoring by that organisation.
 7. Any subsequent review of the legislation as required must have any decision regarding the outcome of that review subjected to the full parliamentary processes and not just left in the hands of the Executive arm of the Government.
 8. The circumstances of any person detained under this legislation should be subjected to constant review by human rights observer/s and independent psychiatrist/s. Their subsequent reports should be made available to a responsible body which has the power to intervene in the incarceration of the suspect especially where there is evidence of human rights abuse and/or mental treatment being necessitated.
- Finally, it is extremely important that in trying to protect Australian interests that we do not curtail the human rights of individuals who might be caught in any net which is set to protect those interests.

Yours sincerely

Pat Finegan

