

# Australian Greens Minority Report

*No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.*

Magna Carta 1215

The greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty and lose its own liberty in the process.

Sir Robert Menzies, 7 September 1939

1.1 The *ASIO Legislation Amendment (Terrorism) Bill 2002* should not be supported, nor should the proposed powers be provided elsewhere. The existing powers and processes of the criminal justice system can be used to address the problem of terrorist crimes.

1.2 The *ASIO Legislation Amendment (Terrorism) Bill 2002* would enable ASIO to detain people for questioning

- incommunicado;
- in the absence of any suspicion of involvement in criminal activity;
- purely to seek “information that is or may be relevant to intelligence;”<sup>1</sup>

1.3 If someone fails to answer questions they can receive terms of imprisonment of up to five years. The right to silence, a bedrock of our criminal law would be overturned.

1.4 ASIO would move from a spy agency to become a secret police. The long standing prohibition against arbitrary arrest - that is, the requirement that only those reasonably suspected of crimes should be able to be detained would be overturned.<sup>2</sup> Indeed the bill seeks to enforce a harsher detention and questioning regime than exists for suspects under existing criminal law.

1.5 In seeking such significant and far reaching changes to fundamental civil and political rights the onus is on the government to justify such changes.

1.6 However, the government, ASIO and the AFP have failed to make a case for why such a fundamental change is necessary. Changes that even the US and Britain have not enacted.

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1 Liberty Victoria, *Submission 242*, p.3

2 Article 9, *International Covenant on Civil and Political Rights*. G.A. Res. 2200A (XXI)

1.7 Further, while international human rights law does allow limited derogation from certain rights, this is only when the whole of the nation is threatened and then only in a circumscribed manner.<sup>3</sup>

1.8 We are not in that situation.

1.9 While terrorist crimes are horrible and appalling they do not constitute a threat to the whole nation's existence. The Attorney General has not revised his advice that no specific threat of terrorism exists in Australia.

1.10 What the Government has proposed is far-reaching and unlimited in time. The range of people who could be detained is extensive and could include journalists, doctors and financial workers as well as neighbours, friends and colleagues of anyone about whom ASIO says it needs to collect information.

1.11 The scope of these powers is substantially widened by the extraterritorial character of the definition of terrorist act recently enacted<sup>4</sup>, anyone remotely connected to any form of political violence in any place in the world could be potentially targeted. We heard concerning evidence in the Committee from Damien Lawson, spokesperson for the Federation of Community Legal Centres (Vic) Inc. that;

Any offence anywhere in the world that falls within the scope of that legislation could be the basis on which ASIO could seek a warrant to hold someone merely to seek information. An obvious example would be a supporter of West Papuan independence in Australia who may have information about the activities of the OPM. Such a person could potentially be subject to this type of warrant and questioning regime. Similarly, anyone from a Kurdish background who may have information about the activities of the Kurdish independence movement may be subject to it—and so on.

1.12 ASIO, the Australian Federal Police and state and territory police already have extensive powers to investigate and prosecute criminal offences, including terrorism. They are able to tap phones, faxes and email; search homes and premises, open mail and collect extensive financial and private information.

1.13 Anyone reasonably suspected of involvement in terrorist offences can be arrested, questioned and detained until trial. Given the broad nature of terrorist offences recently enacted this would include anyone remotely connected to any planned terrorist acts.

1.14 The existing criminal law and processes can deal with terrorist crimes, without destroying fundamental civil and political rights and ultimately threatening democracy.

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3 Article 4, *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI)

4 See Schedule 1, section 3 *Security Legislation Amendment (Terrorism) Act 2002*.

1.15 Almost all of the 404 submissions to the committee concur with this view and opposed the proposed bill.

1.16 This reflects concerns expressed to and by two previous parliamentary committees that have examined these matters.<sup>5</sup>

1.17 Submissions have come from unions, religious, student, environment and community organisations opposing the bill. Several prominent legal groups and legal practitioners have also opposed these powers.<sup>6</sup>

1.18 Many ordinary Australian's have expressed their abhorrence at what has been proposed. Individuals expressed to the Committee their astonishment that the Australian parliament is even considering the strip searching of children, the removal of a right to a lawyer, the removal of the right to silence, the reversal of the burden of proof and the detention of innocent people.

1.19 It is clear that civil society does not want these laws.

1.20 While the recommendations contained in the majority report are significant improvements and should be supported they do not and cannot address the central problem of the *ASIO Legislation Amendment Bill 2002*, which is the unprecedented creation of the power to deprive innocents of their liberty. This problem will remain whether or not the power remains with ASIO or is given to the AFP or another body.

1.21 The existing powers and processes of the criminal justice system have for some time been able to be used to address the problem of terrorist crimes. Recently, the Government and Opposition have significantly extended the capacity of law enforcement and intelligence agencies to deal with terrorism through the establishment of the Australian Crime Commission. The coercive questioning regime powers given to the ACC would be able to achieve many of the purposes articulated by the government and ASIO for this legislation.

1.22 The *ASIO Legislation Amendment (Terrorism) Bill 2002* is unnecessary and dangerous. While the recommendations contained in the body of this Committee's report can improve aspects of the governments proposal, the core premise that innocent people can be detained and compelled to answer questions make the bill unsupportable in any form.

Senator Kerry Nettle

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5 See Senate Legal and Constitutional (Legislation) Committee, *Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 [No.2]*, May 2002 and Related Bills; Parliamentary Joint Committee on ASIO, ASIS and DSD, *An Advisory Report on the Australian Security Intelligence Organisation Amendment (Terrorism) Bill 2002*, June 2002.

6 Ibid, also list of submissions contained in this report.

