

10th November 2005

Submission on the *Anti-Terrorism Bill (No 2) 2005*

No doubt the pressure to endorse the proposed new legislation, or at least some form of it, will be intense. After all, the apparent benefits appear obvious -- and not only politically -- while the dangers are long term and far more subtle.

I'm also sure that the members of the *Inquiry* are acutely aware of most aspects of the debate and so don't propose to burden you by repeating here what has already been more than adequately covered in a number of other submissions, the most comprehensive and thoughtful of which appears to be that from the *Gilbert + Tobin Centre of Public Law* (No 80). My own earlier submission (No 37) concentrated solely on what I considered the most egregious problem areas in the proposed bill, those which in my view have the greatest capacity to inflict injustice and to interfere with the open, critical discussion so vital to the functioning of a free society.

Quite apart from these detailed criticisms of the bill, however, there are grounds to question whether new legislation is necessary. *Civil Liberties Australia (ACT)* make what seems to me an important point: "We refer your attention to the Parliamentary Joint Committee on ASIO, ASIS and DSD hearings on ASIO's detention and questioning powers of 19 May 2005. The Attorney-General's Department, ASIO and the AFP stated in public that they did not require any additional powers." ⁱ

I've seen no convincing evidence that the intervening few months, despite July 7th, have so changed matters as to warrant the introduction of this bill. Indeed, the arrests of recent days suggest that the existing law is working rather well. Not only does the proposed legislation sweep away many of the hard won safeguards we as a nation have long cherished, it could also stifle the very public debate that is so vital to any long term resolution of the tensions and misunderstandings from which disaffection and even at times terrorism may grow.

Let me conclude with two quotes from an article by Baroness Helena Kennedy QC: ⁱⁱ

"The mistake government ministers make is that they think they are "the state" and, since they are all nice folk, any concern about "thin ends of wedges" is dismissed as intemperate. The myth is that the modern state is benign: dictatorial methods are deemed unsustainable in western democracies and we should therefore be prepared to revisit legal principles created when democracies were more fragile. By the same logic, civil libertarian objections are seen as outmoded, the product of a different political reality."

and:

"Former Conservative ministers say that these ideas would regularly emerge when the Irish Troubles were rife but were rejected as unsellable to British people. What has changed since then is the global context. The anxiety that globalisation brings has been crowned by fear-inducing rhetoric about international terrorism."

The public are always sold the erosion of civil liberties on the basis that decent citizens have nothing to fear. And we, the citizens, can easily feel the current move is all about the "other" - terrorists, paedophiles, anti-social yobs, Muslims, young blacks, the mentally ill. We always think it is other people's liberty that is being traded, which somehow makes it all right. We do not realise that liberty is not divisible in this way.

Anti-terror laws cannot be vacuum packed; they seep into the policing culture and create new paradigms of state power."

A more crucial *Inquiry* can scarcely be imagined. Whether this bill is passed and, if so, the form it takes will go far towards setting the temper of our society for many years to come.

May wisdom and understanding guide the hearts and heads of those burdened with this heavy responsibility.

Ingolf Eide
Guluguba QLD

ⁱ Submission from *Civil Liberties Australia (ACT)* (No 59) – p 2

ⁱⁱ Baroness Helena Kennedy QC for the Guardian
<http://politics.guardian.co.uk/queensspeech2004/comment/0,15521,1360903,00.html>