

## **The Draft Anti-Terrorism Bill 2005**

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At the Council of Australian Governments (COAG) meeting on 27 September 2005 draft anti-terrorism legislation drawn up by the Howard Government was provided by the Prime Minister on an 'in confidence' basis and agreed in principle by State Premiers and Territory Chief Ministers.<sup>1</sup>

Last week, just before the federal parliament adjourned, the Leader of the Government in the Senate revealed that the Senate Legal and Constitutional Legislation Committee would effectively be given only about one day to review the legislation or conduct public hearings. A deadline has been set of 8 November 2005, and the legislation will not be introduced until after parliament resumes sitting on 31 October. Consequently, the ACT Chief Minister Jon Stanhope decided to break ranks and post the 'in confidence' draft legislation on his website, to initiate a process of public consultation over it.<sup>2</sup>

Normally important legislation is made available for extensive parliamentary scrutiny and public discussion before its passage. This certainly occurred with the ASIO Legislation Amendment (Terrorism) Act of 2003, which was much amended before being passed. But the federal government was not then in control of both houses of parliament. Limiting the current draft anti-terrorism legislation to State premiers and Territory chief ministers on the basis of confidentiality was an attempt to co-opt their support for implementation outside the formal powers of the Commonwealth. Neither the ACT Chief Minister nor anyone else has revealed their secret briefing from security agencies at the COAG meeting, which would raise quite different issues.

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<sup>1</sup> <http://www.coag.gov.au/meetings/270905/index.htm>

<sup>2</sup> [http://www.chiefminister.act.gov.au/whats\\_new.asp?title=What's%20New](http://www.chiefminister.act.gov.au/whats_new.asp?title=What's%20New)

Much of the 107-page draft Bill is concerned with amendments to the *Criminal Code 1995*, from which it takes an unchanged definition of terrorism. The Bill is lengthy and complex. Its longest sections deal with detention without charge, restrictions on communication, locational monitoring and other controls on terrorist suspects (*Schedule 4*). These will breach several long-standing protections such as the right to consult a lawyer of the suspect's choice and to advise relatives or employers of the grounds for detention. Not only is no such advice allowed, but passing on this advice (however gained) to others will also bring penalties for them (*105.31-105.38*).

The draft legislation limits the period of arbitrary detention to 48 hours, but this is one area where State co-operation will allow for extensions. Stop and search legislation includes the highly controversial 'shoot to kill' power, which is allowed in special situations (*105.23 (2) (b) ii*). These powers are mainly to be exercised by the Federal Police with the approval of the Attorney General and by order of a judge (*105.43-105.47*).

Other provisions detailed at length include methods for blocking financial support to terrorist organisations or activities (*Schedules 3 and 9*). These are necessarily complex as they include controls on international transfers and, in some cases, donations from foreign governments. The central problem is the definition and identification of terrorist organisations. There is considerable international movement of funds for cultural, charitable and promotional causes, some of which may leak away, deliberately or not, to terrorist groups. As with the drug trade, there are very large and well disguised sums available to some terrorist groups.

Perhaps the most controversial and difficult proposals are towards the end of the draft. These prohibit and punish the advocacy of terror. Unlike the United States there is no constitutional protection of free speech in Australia, which is already limited by

defamation laws and, to some extent, by laws against racial (and in some States religious) vilification.<sup>3</sup>

Sedition and treason are ancient crimes (*Crimes Act 1914*) here defined as including 'bringing the Sovereign into hatred and contempt'; urging disaffection against the Constitution, the Government of the Commonwealth or either House of the Parliament; promoting 'feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth' (*Schedule 7-4, 80.2*). While there is provision for acts done in 'good faith' as opposed to 'recklessness' (*80.2* and *80.3*), this is a rich potential field for the suppression of opinion. If applied equitably it might catch republicans, religious fundamentalists, talk-back radio hosts, reactionary and racist politicians and journalists and who knows who else. If not applied equitably, but only to Muslims, it might quickly create a whole new army of martyrs. The power to proceed rests with the Attorney General (*80.5*).

Australia has not had any terrorist incidents and has no significant history of such events,. Few would deny the need to modify the law to cope with such recent developments as suicide bombing, public transport destruction or the recruitment and funding of militants both here and overseas. The role of ASIO is redefined but is already considerable under the *ASIO Act 1979*, as amended in 2003, as are the powers of the Department of Immigration. Some elements of the draft are ambit claims, which will disappear in the final Act. But the problems will come with how they are implemented.

If Australia's 300 000 Muslims are targeted while others are ignored this will breed justifiable resentment. Stop and search powers have been a legitimate cause for concern in Britain, France and other democracies. Trying to limit the availability of the draft, and thus to inhibit wider discussion, is not reassuring. There are bound to be serious errors in implementation (as there have been in the detention without trial of asylum seekers). These are not just of concern to 'civil libertarians' or the 'Muslim community'. Unlike

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<sup>3</sup> See <http://democratic.audit.anu.edu.au/Papers-2005/RiceVilificationLawsSept05.pdf>

other Westminster democracies, Australia does not have a Bill of Rights (except in the ACT), making it difficult to challenge some of these proposals and their implementation.

**Further Reading**

Steve Lewis, 'Be candid on anti-terror act', *Australian* 18 October 2005.

Christopher Michaelson, 'Democracy wilts easily when conducted behind closed doors', *Canberra Times* 18 October 2005.