

Bevan Ramsden

Submission-to-IPAN-Inquiry-on-democratic-rights-under-attack

The Anti-Terrorism Act and other Acts strip us of many civil liberties we thought we had.

The recent intimidatory police raids on the ABC and a journalist's home for making public, matters of community concern, is a wake-up call that press freedoms can no longer be taken for granted. But looking wider, personal freedoms we thought we enjoyed are also fast disappearing thanks to the anti-terrorism act and other laws passed last year.

Never has an Australian government talked so much about freedom while doing so much to undermine it. When it comes to national security and refugees, we are increasingly pathetic, writes Ben Saul. Ben Saul is Professor of International Law at The University of Sydney. He has written on this subject as follows: "The truth is that Australia already has enough laws to deal with terrorism. Since 9/11 the Parliament has been amongst the most hyperactive and invasive counter-terrorism lawmakers on the planet. Much of it is never used, or goes too far - from preventive police detention, to ASIO's incommunicado detention of non-suspects, to control orders."

"The new laws also go too far," he has said. "They *criminalise innocent travel* to places the Foreign Minister does not want you to go. They *criminalise free speech*. They *criminalise whistleblowers and the media* that report them. They allow *mass surveillance of innocent Australians* on the internet. They *deny procedural fairness*. They *violate the right to social security* and therefore potentially leave people destitute. All of this comes without the binding human rights safeguards that every other self-respecting democracy imposes on its security agencies."

Prof George Williams, Dean of Law, University of NSW spoke last year at a meeting of the NSW Council for Civil Liberties made the following points which arise from the Terrorism Act:

- 1 The possession of a "thing" that could be used for a terrorist act is punishable by 15 years in jail. "Thing" is not defined. It could be a pamphlet.
- 2 The definition of terrorism as causing widespread harm is very wide and could be interpreted as including protest against the government.
3. Joining or attempting to join an organisation that is a "prohibited organisation" carries a jail term of 15 years even if you don't do anything.
4. The Act gives ASIO power to detain for questioning a person who is not connected to any crime but is detained for intelligence; and can be held for up to 7 days
5. Metadata on persons can be accessed by government without a warrant.
6. There are a range of laws which allow searches without a warrant
7. ASIO can ignore criminal law except for torture

8. Any journalist who writes a story about a particular use of these laws can be subject to jail for 5 years
9. The government can remove a citizen even if a court makes no finding of guilt but the government believes a crime has been committed.

“In the witness- K case”, Prof Williams said, “the court is closed and the judicial officer is required to give the greatest weight to the protection of the community over the right of the individual to a fair trial. In the United States much of this Australian Terrorist Act would be illegal because the United States has a Bill of Rights protecting individuals from such laws. We do not have such a Bill of Rights (USA) or Charter of Rights (UK) in Australia, although a survey has showed that 61% of Australians think we have one.”

The ALP has on its policy platform consideration of a national bill of rights.

Prof Williams also said that a surprisingly high number of Australians think they can take the 5th Amendment to protect themselves from being required to say something which might later be used in court against them. The 5th Amendment is part of the US Constitution not Australia’s. Perhaps this finding says something about the influence of American TV dramas such as SVU and NCIS on community understandings.

Apart from the Terrorism Act, other Acts on the books remove or restrict some fundamental freedoms and rights which we associate with democracy. The NSW Council for Civil Liberties released a media statement in June, 2018 condemning regulations banning public gatherings. An extract from its statement reads as follows: “On 1 July 2018, new regulations came into effect, granting the NSW State Government incredibly wide powers to disperse or ban protests, rallies, and virtually any public gathering across approximately half of all land across the state. CCL strongly opposes these regulations.

On 16 March last year, the NSW State Government published the *Crown Land Management Regulation 2018* (NSW). Included was a provision which provided that public officials would have broad power to “direct a person” to stop “Taking part in any gathering, meeting or assembly”, This means that Police, Local Council officials, and even so-far unspecified categories of people or government employees will have the power to ban people from holding public gatherings on public land. The territory where these incredibly broad powers apply are called Crown Land - land owned by the State Government. This includes town squares, parks, roads, beaches, community halls and more.”

Police powers to stop peaceful protest became real to one member of the public last year on Armistice Day. He is a member of the Marrickville Peace Group and was “escorted” by police away from the War Memorial in Hyde Park, Sydney and told by the police to stay away from the War Memorial for 6 hours. He was wearing around his neck a sign simply saying: “Honour the dead by ending war”

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