RESEARCH ONLINE

University of Wollongong
Research Online

Sydney Business School - Papers

Faculty of Business

2006

Australia's anti-terrorism legislation: the national security state and the community legal sector

Mark Rix
University of Wollongong, mrix@uow.edu.au

Publication Details

This is a preprint of an article whose final and definitive form has been published as: Rix, M, Australia's anti-terrorism legislation: the national security state and the community legal sector, Prometheus, December 2006, 24(4), 429-439. Copyright 2006 Taylor & Francis. Prometheus is available online here through Taylor & Francis.

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

RESEARCH ONLINE

Australia's anti-terrorism legislation: the national security state and the community legal sector

Abstract
This paper considers the implications for the community legal sector of the Australian Government's recent national security and anti-terrorism legislation. Critics of the legislation have deep concerns that, by giving the police and intelligence services considerable new powers in the areas of arbitrary arrest and detention, it will lead to the significant erosion of rights and freedoms that Australians have long been able to take for granted. Other concerns with the legislation relate to the use of force, sedition, and legal representation for those held in preventative detention. In addition, the legislation has no adequate protection against the intelligence services and police misusing or abusing their new, extended powers. Community legal centres (CLCs), that comprise the community legal sector, have the important role of informing citizens of their basic rights and assisting them in exercising these rights in their dealings with government and its agencies. This paper will consider what effects the anti-terrorism legislation will have on the community legal sector's effectiveness in playing this role. The sector, which the Australian government relies on and funds to provide legal services to some of the most disadvantaged members of the Australian community, has as its raison d'être improving access to justice and equality before the law for all Australians. The paper will also consider the impact of the anti-terrorism legislation on the relationship between the government and the sector.

Keywords
Terrorism, anti-terrorism legislation, national security state, community legal sector; citizenship, access to justice

Disciplines
Business

Publication Details
This is a preprint of an article whose final and definitive form has been published as: Rix, M, Australia's anti-terrorism legislation: the national security state and the community legal sector, Prometheus, December 2006, 24(4), 429-439. Copyright 2006 Taylor & Francis. Prometheus is available online here through Taylor & Francis.

This conference paper is available at Research Online: http://ro.uow.edu.au/gsbpapers/5

Australia's Anti-Terrorism Legislation:
The National Security State and the Community Legal Sector

Dr Mark Rix
Graduate School of Business
University of Wollongong NSW 2522
Australia
mrix@uow.edu.au

This paper considers the implications for the community legal sector of the Australian Government's recent national security and anti-terrorism legislation. Critics of the legislation have deep concerns that, by giving the police and intelligence services considerable new powers in the areas of arbitrary arrest and detention, it will lead to the significant erosion of rights and freedoms that Australians have been able to take for granted. Other concerns with the legislation relate to the use of force, sedition, and legal representation for those held in preventative detention. In addition, the legislation has no adequate protection against the intelligence services and police misusing or abusing their new, extended powers. Community legal centres (CLCs), that comprise the community legal sector, have the important role of informing citizens of their basic rights and assisting them in exercising these rights in their dealings with government and its agencies. This paper will consider what effects the anti-terrorism legislation will have on the community legal sector's effectiveness in playing this role. The sector, which the Australian government relies on and funds to provide legal services to some of the most disadvantaged members of the Australian community, has as its *raison d'être* improving access to justice and equality before the law for all Australians. The paper will also consider the impact of the anti-terrorism legislation on the relationship between the government and the sector.

Key words: anti-terrorism legislation; national security state, community legal sector; citizens

Introduction

This paper considers the implications of the Australian Government's recent national security and anti-terrorism legislation for the community legal sector. The legislation, in particular, The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 and the Anti-Terrorism Bill (No. 2) 2005 which passed through both houses of the Australian Parliament in December 2005, are without precedent in this country in that they respectively provide ASIO and the Australian Federal Police with the new power to detain those suspected of posing a terrorist risk to the community. Thus, they allow for detention without charge or trial. In other words, the authorities will have the power to detain a person they do not have sufficient evidence to charge with a criminal offence. The control order, preventative detention and sedition provisions of the 2005 Bill are also of great concern, allowing much scope for misuse and abuse by the authorities under the pretext of protecting Australia's national security. The paper will consider what impact this legislation will have on the community legal sector and its relationship with the Australian Government. The sector is funded by the Government to provide legal services to some of the most disadvantaged members of the Australian community, but has as its self-declared *raison d'être* the improvement of access to justice and equality before the law of all Australians. Thus, in informing and educating members of the Australian community about the provisions of the national security and anti-terrorism legislation the sector will run the risk of coming into conflict with the Government. This may put the sector in danger of funding cuts or other restrictions affecting its ability not only to provide assistance to the poor and disadvantaged but also of effectively performing its important community legal education role.

An Australian National Security State?

Even a cursory visit to the Australian Government's national security website http://www.nationalsecurity.gov.au (hosted by the Attorney-General's Department) is an instructive, and unsettling, exercise. Some years ago Australians were urged by Prime Minister John Howard and his government to *be alert, but not alarmed* when coming to terms and preparing to deal with the threat of terrorist attack. This message was contained in a series of television advertisements that were screened following the Bali bombings of October 2002. However as Matt McDonald points out, the most important initiative of the Government's 'National Security Public Information Campaign' "was the anti-terrorism kit and specifically the *Let's Look out for Australia* booklet, which the government attempted to distribute to all Australian homes in February 2003 (McDonald 2005: 177)." In any event, the vast quantities of alarming information available on the national security website suggest that the Government should soberly heed its own advice. For, the amount and type of information provided there give the distinct impression that the Government believes the terrorist threat to be so serious and imminent that the most effective way of dealing with it is to drastically curtail the rights and freedoms of the Australian people. Much of this information introduces and explains the extensive amounts of anti-terrorism legislation that has been passed into law over the past three years or so.

Four noteworthy aspects of this legislation are that it "(1) defines terrorism in sweeping terms; (2) permits the banning of political groups; (3) allows for detention without trial; and (4) shrouds the operations of the intelligence and security agencies in secrecy and provides for semi-secret trials (Head 2005: 210)." According to Christopher Michaelson, the anti-terrorism legislation is a "clear overreaction" to a terrorist threat that remains relatively minor. This is in spite of Australia's involvement in the invasion and occupation of Iraq, its continued military role in Afghanistan, and more generally its support for the global war on terrorism led by the United States. Such factors as Australia's geographical isolation, the border protection and immigration control system that it has put in place, and the absence of a "human infrastructure" capable of organising and mounting a major terrorist attack mean that there is only a low probability of such

an attack occurring within Australia. Comments Michaelson, "Many of the new laws are not only ill-conceived but also constitute a disproportionate legal response to the threat Australia is currently facing from international terrorism (Michaelson 2005: 334)."

Clicking on the legislation link on the national security website opens a chilling vista onto a truly remarkable collection of national security, in particular anti-terrorism, legislation that aims to deal with the threat of terrorist attack whether it is 'home grown' or foreign-based. The collection is an impressive tribute to the energy and determination of Australia's law makers when it comes to what they obviously regard as their chief responsibility and highest public duty, namely, tightening Australia's 'national security' system thus protecting the country and the Australian people from terrorism. The notion that there might be other, equally or more pressing priorities to which the law makers should urgently be directing their energies to improve national security, such as the chronic problems with the health system, a massively under-funded tertiary education sector, an often dysfunctional justice system, to name just a few, seems to have been largely overlooked by them. Similarly, that the terrorist threat may not be quite as imminent or massive as suggested by the legislative onslaught is evidently not to be taken as a serious proposition.

Australia's anti-terrorism laws

In the section headed 'Australian Laws to Combat Terrorism' on the legislation link, it is stated that "Australia has long played a leading role in the development of laws to combat terrorism", the Australian government having introduced "an extensive legislative regime around counter-terrorism, national security and other cross-jurisdictional offences ('Australian Laws to Combat Terrorism' n.d.)." This could be something of an understatement, because it is also made clear that the many acts listed are only "key pieces" of national security and anti-terrorism legislation. Not only has legislation such as the Crimes Act 1914 recently been amended to render it more effective in dealing with terrorist threats, "new legislation has been enacted to ensure Australia and Australians are protected from *emerging threats* ('Australian Laws to Combat Terrorism' n.d.; emphasis added)." The following brief review of Australia's anti-terrorism laws does not investigate the entire "extensive legislative regime" in detail. Instead, it selects for discussion and analysis those acts that are most representative of the worrying tendency of the Federal Government to trample on the rights and liberties of Australian citizens in the name of protecting the country's national security.

The Anti-Terrorism Act 2004, for example, amongst other things amends the crimes Act 1914 "to strengthen the powers of Australia's law enforcement authorities, setting minimum non-parole periods for terrorism offences and tightening bail conditions for those charged with terrorism offences" ('Australian Laws to Combat Terrorism' n.d.). It introduces the new offence of training with a terrorist organisation that has been proscribed, an offence that carries a maximum penalty of 25 years imprisonment. The Anti-Terrorism Act (No. 2) 2004 amends the Criminal Code Act of 1995 making it an offence "to intentionally associate" with someone who is a member of a listed terrorist organisation. It thus builds on the provisions of the Security Legislation Amendment (Terrorism) Act 2002 which is analysed below. For its part, The Anti-Terrorism Act (No. 3) 2004 amends the Passports Act 1938, the Australian Intelligence Security Act 1979 and the Crimes Act 1914 with a view to improving the Australian legal framework relating to counter-terrorism ('Australian Laws to Combat Terrorism' n.d.).

The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 gives ASIO the power "to obtain a warrant to detain and question a person who *may have* information important to the gathering of intelligence in relation to terrorist activity ('Australian Laws to Combat Terrorism' n.d.; emphasis added)." The Act defines a warrant "issuing authority" as a person appointed by the Minister, who can be a federal magistrate or judge or "another class of people nominated in regulations" (Michaelson 2005: 326) As Christopher Michaelson points out, this act empowers ASIO to "detain people without judicial warrant for up to seven days and

interrogate them for up to 24 hours within that seven-day period (Michaelson 2005a: 178).” Thus, persons can be detained without charge, and do not even have to be suspected of having committed any offence to be taken into custody. While being interrogated, a detainee has to answer all questions and provide all the information or material requested of them. A detainee also has to prove that they do not have the material requested. If the detainee is unable to do so and does not provide the material they can be imprisoned for up to five years. Michaelson concludes that “In effect, these provisions abandon several fundamental principles of the rule of law: they dilute the prohibition of arbitrary detention, they obliterate the right to habeas corpus, they remove the right to silence, and they reverse the onus of proof (Michaelson 2005a: 178).”

The Security Legislation Amendment (Terrorism) Act 2002 amends the Criminal Code Act 1995 thereby modernising treason offences and creating new terrorism offences and offences relating to “membership or other specified links to terrorist organisations” (‘Australian Laws to Combat Terrorism’ n.d.). In amending the Commonwealth Criminal Code, the Act creates the offence of associating with a terrorist organisation. Power is granted to the Governor-General (the executive branch of the Australian state) “to make regulations (delegated legislation) declaring an organisation to be a ‘terrorist organisation’ (Jackson 2005: 134).” The Act defines a ‘terrorist act’ so broadly that it criminalises, and subjects to severe penalties, any actions taken in support of a political movement which engages in “physical resistance” against an existing government (in Australia or overseas). By denying Australians the right to associate with such movements, the Act “threatens to undermine the very democracy which these offences seek to protect (Jackson 2005: 138).”

The already much-amended Crimes Act 1914 is further amended by The Crimes Amendment Act 2005 with the effect of enabling participating Commonwealth agencies “to request assumed identity documents from State and Territory issuing agencies in accordance with legislation in force in those jurisdictions (‘Australian Laws to Combat Terrorism’ n.d.).” The National Security Information (Criminal Proceedings) Act 2004 was amended by the National Security Information Legislation Amendment Act 2005 to extend the protection from disclosure of “security sensitive information” by including “certain civil court proceedings” (Australian Laws to Combat Terrorism’ n.d.). The National Security Information (Criminal and Civil Proceedings) Act 2004 is the result. The amendments to the original national security information bill have only served to strengthen its provisions. As Patrick Emerton notes, “The purpose of the Bill…is to permit the prosecution and conviction of individuals on the basis of information which, for reasons of national security, is not itself tendered in evidence against them at trial (Emerton 2004: 143).” Amongst other things, the Bill also allows for partially, or even completely, secret trials, evidence to be censored, and defendants and their lawyers to be excluded from trial proceedings (Head 2005: 211).

The Anti-Terrorism Bill (No. 2) 2005

Beneath the list of key pieces of Australian legislation to combat terrorism comes a disclaimer and stern warning: “Because the global security environment is dynamic, the Australian Government is continually responding to ensure our legislative regime is current, comprehensive and appropriate” such that “at any time, further initiatives may be under consideration by Parliament” (‘Australian Laws to Combat Terrorism’ n.d.). As it happens, one of the key, and certainly one of the most draconian, pieces of anti-terrorism legislation has only recently been included on the national security website.

On the evening of 6 December 2005 Coalition and Opposition (and Family First) Senators voted together to pass the Anti-Terrorism Bill (No. 2) 2005. This capitulation by the Opposition was hardly surprising given that on September 28, Labor leader Kim Beazley had announced that in the Opposition’s view the new anti-terrorism laws proposed by the Government “did not go far enough” (Beazley quoted in Hocking 2005). Mr Beazley had also recommended even stronger

powers "'allowing police to lock down entire suburbs and carry out house, vehicle and people searches without judicial approval'" (Beazley quoted in Nettheim 2005: 7). Greens and Democrat Senators voted against the Bill, but they were heavily outnumbered. In a Press Release announcing the passage of the Bill through both houses of the Australian Parliament, Attorney-General Philip Ruddock described it, and the measures it includes, as a "proportionate and appropriate response" to the terrorist threat facing Australia. According to Mr Ruddock, the new bill and related legislation "place Australia in a strong position to prevent new and emerging threats and to stop terrorists carrying out their intended acts (Ruddock 2005a)". The Bill's "key features" include:

- a regime that will enable courts to place controls on persons who pose a terrorist risk to the community
- arrangements to provide for the detention of a person for up to 48 hours to prevent an imminent terrorist attack or preserve evidence of a recent attack
- an extension of the stop, question and search powers of the Australian Federal Police (AFP)
- powers to obtain information and documents designed to enhance the AFP's ability to prevent and respond effectively to terrorist attack (Ruddock 2005a).

The 2005 Bill's preventative detention, control orders and sedition provisions

Unfortunately, the Attorney-General omitted from his Press Release important aspects of the "key features" that are rather more disquieting than his bland statement would suggest. For example, in issuing a control order a court can impose conditions on an individual including a requirement that the person wears a tracking device, a prohibition or restriction on the person talking to other people including their lawyer, and a prohibition or restriction on the use of a telephone or the internet by the person (Walton 2005: 4). As for preventative detention, the police can detain without charge a person who they suspect will carry out an imminent terrorist act or is planning to carry out such an act. They can also hold someone who they suspect "has a 'thing' that will be used in an imminent terrorist act (Walton 2005: 4)."

Prior to the passage of the Anti-Terrorism Bill (No. 2) 2005 through the Parliament, Mr Ruddock announced that the Government had accepted amendments suggested by the Senate Legal and Constitutional Legislation Committee and "other government members" (comprising a special backbench committee) that would "improve and strengthen" the Bill (Ruddock 2005). There is not the time or space here to run through all the amendments, but several of the most important will briefly be discussed.

The amendments to the Bill's preventative detention and control orders that were accepted by the Government will require anyone that is subject to a continuing order to be provided with a full statement of the allegations that led to the invoking of the orders in the first place. However, for John North, President of the Law Council of Australia, these amendments would still not pass a crucial legal test. While the amendments would give a person subject to preventative detention and control orders the ability to repudiate the orders, because there is insufficient evidence to formally charge them with an offence they would not know precisely what they were opposing or challenging (North 2005). In other words, even with the amendments the inclusion of these orders in the Bill is tantamount to the legalisation and legitimisation of detention without evidence or trial. And in an important caveat, the provision allowing for a person subject to a control order to be informed of about why the restrictions were imposed "would not require the disclosure of any information that is likely to prejudice national security, be protected by public interest immunity, put at risk ongoing law enforcement or intelligence operations or the safety of the community" with similar requirements applying to an AFP request for variation of a control order ('Details of Amendments'; attachment to Ruddock 2005).

Even though the Bill was subjected to sustained criticism from within and outside the Government (not including Opposition Leader Beazley) for its inclusion of a newly-defined

crime of sedition, the sedition provisions were retained in a 'softened' form. The softening of these provisions makes it clear that a so-called seditious intention in essence involves the intention to use or threaten the use of force or violence to achieve a specified outcome. Another significant amendment removed the phrase "'by any means whatsoever' in the offences of urging a person to assist the enemy and urging a person to assist those engaged in armed hostilities". The government also accepted an amendment allowing for an "additional good faith defence in relation to publishers of material who do so in good faith and in the public interest" ('Details of Amendments'; attachment to Ruddock 2005). Nevertheless, critics remain concerned that the crime of sedition is open to abuse and misuse by the Government just as it has been in other countries. In a lame concession to opponents of the Bill, Attorney-General Ruddock also announced that the crime of sedition would be subject to "detailed review".

Australian anti-terrorism legislation: what are the implications for the community legal sector?

In the following section, the implications for the community legal sector of Australia's anti-terrorism laws will be considered. This sector, which the Australian government relies on and funds to provide legal services to some of the most disadvantaged members of the Australian community, has as its *raison d'être* improving access to justice and equality before the law for all Australians. Thus, even though in providing legal services to disadvantaged individuals and groups the sector is acknowledged to be a key part of the Australian Government's social justice strategy, the sector often finds itself in conflict with the Government and its agencies when seeking to improve access to justice and equality before the law for its clients. The recently introduced anti-terrorism legislation is likely to mean that the conflict and tensions between the Government and sector will become more intense and difficult.

The community legal sector: roles and responsibilities

There are more than 200 community legal centres (CLCs) across Australia, 129 of which are funded under the Commonwealth Community Legal Services Program (CCLSP). Under this program, the sector is funded to provide legal services to "disadvantaged" members of the Australian community. The national data reporting system used by the Commonwealth-funded CLCs yields statistics which demonstrate the important role played by CLCs in the Australian community: "In the last 8 years, these 129 centres have provided services to more than 1.5 million people throughout Australia in urban, regional and remote areas, and provided over 2.5 million instances of legal advice, information and case assistance (NACLC 2003: 11)." In addition to their community legal education, law reform and policy activities, the 129 centres tallied an impressive 450,000 individual service interactions which included provision of legal advice and information and opening of new cases (Rix 2005).

The Commonwealth Community Legal Services Program

According to the CCLSP Program Guidelines, the Program is part of the Commonwealth's contribution to legal aid and forms "a vital part of the Commonwealth's multi-layered approach to addressing the legal needs of the disadvantaged members of the community (AGD 2005)." The CCLSP has a number of specific and significant objectives:

- Community legal services assist people, individually or collectively, as well as the community overall. Assistance is directed towards people who experience some form of systemic or socio-economic barrier to accessing legal services and/or whose interests should be pursued as a matter of public interest.
- Community legal service clients receive early assistance through the provision of appropriate information and referral.
- Community legal service clients gain a practical and improved understanding of legal and other options available to them through the provision of appropriate advice.

- Community legal service clients, through the provision of appropriate casework, gain an increased opportunity to pursue outcomes consistent with their legal rights or entitlements and community legal service resources (AGD 2005).

In addition, community legal centres undertake community legal education (CLE) and law reform and policy work. CLE is designed to provide individuals and groups, and other service providers and agencies, with information to improve their knowledge and understanding of the legal system. It is also meant to enhance people's ability to engage with the legal system and to use legal processes effectively. No less important, CLE activities inform people of the rights they have and educate them about how to exercise their rights. The law reform and policy work undertaken by CLCs is designed to enable them more effectively to meet the legal and related needs of the members of the communities they serve.

CLCs thus play an important role in maintaining social order and preventing social fragmentation. On this, the National Association of Community Legal Centres (NACLC) pointed out in a 2003 discussion paper that all Australian governments had failed to acknowledge just how important legal citizenship is in modern democracies like Australia's. In essence, legal citizenship refers to the right of all citizens to have "fair and effective access to the justice system (NACLC 2003)." Legal citizenship requires governments to put in place policies and programmes enabling all citizens to give effect to this right. Legal citizenship is fundamental to the maintenance of social order and stability, and to the prevention of social fragmentation, for the idea that "each citizen is equal before the law and should have access to justice is essential to the community's confidence and compliance with the law (Federation of CLCs Vic 2003)." Such confidence in and compliance with the law are absolutely essential because the law is what establishes "the shape of society and its character (NACLC 2003)."

Maintaining confidence in and compliance with the law has become an increasingly daunting challenge as the number of laws encroaching on citizens' everyday life has proliferated making the justice system more complex and difficult to negotiate. NACLC estimates that, since the 1970s, there has been a doubling of legislation affecting the daily lives of citizens without any corresponding increase in resources and funding for legal advice, representation and community education. "Ordinary citizens", observes NACLC, "are now expected to understand, interpret and negotiate the legal landscape alone in a climate of increasing complexity and reduced government commitment to civil society (NACLC 2003a)."

The community legal sector: protecting Australia's national security

In ensuring that people have confidence in the law so that they are willing to comply with it, and in this way preserving social order and peace and preventing social fragmentation, the community legal sector actually plays an important, but largely unheralded, role in protecting Australia's national security. Indeed, its role in doing so is at least as important as the Government's when, by enacting draconian anti-terrorism laws, it claims to be defending the national security of the country. The Government's manifold anti-terror legislation joins the long list of laws affecting the daily lives of citizens that have been enacted over the past 30 years or so. The inclusion in the most recent piece of such legislation of detention and control orders and the crime of sedition, and associated severe restrictions on the disclosure of information, has further increased the complexity of the justice system and made it even more difficult to negotiate successfully. This will have the effect of increasing the importance of the community legal sector's role in protecting the national security of Australia. For, the sector will with greater frequency and urgency be called upon to ensure that ordinary Australian citizens have access to justice and enjoy equality before the law in the face of the Australian Government's curtailment of these rights. This is a function that the sector will have to perform even while it continues to

undertake the indispensable activities prescribed for it in the Community Legal Services Program Guidelines.

In meeting the challenges with which community legal sector will be confronted by the anti-terrorism legislation, the importance of the Community Legal Education work undertaken by the sector will become even more pronounced. The sector's CLE work will have to focus on the legislation that makes it possible for the authorities to detain people without trial. In this respect, the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 deserves special mention. Also deserving wide exposure and careful explanation are those aspects of the Anti-Terrorism Bill (No. 2) 2005 that make it possible for the Australian Federal Police and other national security authorities to use preventative detention and control orders for the detention of individuals without evidence or trial. As seen above, this in effect gives the authorities the ability to detain people even where there is insufficient evidence to charge them with a criminal offence. Thus, the authorities can hold people whom they suspect of posing a terrorist 'risk' to the community. Just as worrying are the Bill's provisions allowing the authorities to withhold information from a person subject to a control order when they believe that disclosure would, amongst other reasons, prejudice national security. The claim of protecting national security thus gives the authorities *carte blanche* to withhold information in any and all cases in which preventative and control orders are employed. For, the authorities' decision to do so could never be effectively challenged because the information that could provide the grounds for an appeal remains secret and hidden. It will be important for the community legal sector through its CLE activities to inform and educate members of Muslim communities and groups whose members are of Middle Eastern origin, and other so-called 'suspect' groups, about the Bill's provisions. After all, it is these communities and groups who are most at risk from the persecution, harassment and arbitrary detention permitted in the legislation under the pretext of preventing terrorism and protecting national security. As Luke Howie observes, "As long as Australians victimise Muslims and allow latent xenophobic urges to surface, extremist attitudes will gain in popularity (Howie 2005: 23)."

It is not only the provisions allowing for preventative and control orders to be invoked by the authorities that will have to be emphasised in the sector's CLE activities, the crime of sedition contained in the 2005 Bill also requires its implications to be highlighted and explained to members of suspect groups. The authorities have only to suspect a person of seditious intent to use, "urge" or threaten the use of force for them to be able to invoke the applicable provisions of the Bill. This 'softening' of the sedition provisions contained in an earlier draft of the Bill (which had referred simply to a "seditious intention") provides very little comfort for members of the communities who are likely to be targeted by the authorities. Just as with the detention and control order provisions, the crime of sedition can be used by the authorities to persecute and harass members of the communities they regard as posing a threat to Australia's national security. This will have the effect of further dividing the Australian community into those who are regarded as posing no actual or potential threat of terrorism and those who are suspected of posing such a threat in a general climate of suspicion and threat creating resentment and hostility among targeted groups and individuals. This runs the distinct risk of converting resentment and hostility into violent and terroristic intent, a sort of self-fulfilling prophecy providing the government and national security authorities with a ready-made defence against charges that they are unfairly targeting certain groups and individuals. A more deeply and dangerously divided Australian community will be the result. Thus, the community legal sector will have to be vigilant and energetic in defending the national security of the country from the national security authorities whose efforts to protect national security may in fact only serve to undermine it.

Conclusion

The Australian Government's recent national security and anti-terrorism legislation presents considerable challenges for the community legal sector. The series of bills enacted since September 11 2001, the culmination of which is the Anti-Terrorism Bill (No. 2) 2005, removes many of the freedoms and rights that Australians have for many years been able to take for granted. In particular, the detention and control orders degrade the importance of the role of formal trials and the production of credible evidence by the prosecution in the administration of justice in this country. The newly-defined crime of sedition provides the Australian Government and national security authorities with the ability to further centralise power in their hands under the pretext of protecting Australia's national security. Suspect groups are likely to be the targets of these provisions leading to resentment and hostility among them, emotions and attitudes that can easily be inflamed into a lust for revenge and violence by community leaders with the will and the means to do so. The community legal sector, despite its meagre resources, will be required to play a crucial role in informing and educating the Australian people about the implications of the legislation for their freedoms and rights. Just as with the legislation itself, the sector will have to 'target' its CLE activities on suspect groups and individuals without compromising its ability to provide basic legal services to other poor and disadvantaged Australians. This is the routine, unglamorous role it is funded to perform by the Government. The sector will thus have to avoid being drawn into self-destructive conflict with the Australian Government. This could be a very tall order indeed.

References

Attorney-General's Department (AGD) (2005) Commonwealth Community Legal Services Program Guidelines (August). Available at http://www.ag.gov.au/agd/WWW/cclsphome.nsf/Page/Guidelines. (Accessed 23 January 2006)

Australian Government (n.d.) 'Australian Laws to Combat Terrorism'. Available at http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument. (Accessed 27 April 2006)

Emerton, P (2004) 'Paving the Way for Conviction without Evidence—A Disturbing Trend in Australia's "Anti-Terrorism" Laws', *Queensland University of Technology Law and Justice Journal*, vol. 4, no. 2, pp. 129-166

Federation of Community Legal Centres (Vic) Inc. (2003) Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice, September

Head, M (2005) 'Orwell's Nineteen Eighty-Four 20 Years On: "The war on terrorism", "doublethink" and "Big Brother"', *Alternative Law Journal*, 30: 5 (Oct), pp. 208-213

Hocking, J (2005) 'The Anti-Terrorism Bill (No. 2) 2005: When scrutiny, secrecy and security collide', *Democratic Audit of Australia*, November: 1-4. Available at http://democratic.audit.anu.edu.au/ (Accessed 23 January 2006)

Howie, L (2005) 'The threat of terrorism and social change', *Human Rights Defender* Special Issue: The Anti-Terrorism Bill (No. 2) 2005. November/December: 22-23

Jackson, H (2005) 'The power to proscribe terrorist organisations under the Commonwealth Criminal Code: Is it open to abuse?', *Public Law Review*, 16: 134-151

McDonald, M 'Be Alarmed? Australia's Anti-terrorism Kit and the Politics of Security', *Global Change, Peace and Security*, vol. 17, no. 2 (June), pp. 171-189

Michaelson, C (2005) 'Antiterrorism Legislation in Australia: A Proportionate Response to the Terrorist Threat?', *Studies in Conflict and Terrorism*, 28: 321-329

Michaelson, C (2005a) 'Security Against Terrorism: Individual Right or State Purpose?', *Public Law Review*, 16: 178-182

NACLC (2003) *Doing Justice: Acting together to make a difference*, Sydney South, NSW

NACLC (2003a) Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice, September. Sydney South, NSW

Nettheim, G (2005) 'Terror Australis: the "debate" to date', *Human Rights Defender* Special Issue: The Anti-Terrorism Bill (No. 2) 2005. November/December: 6-8

North, J (2005) Interviewed by Tanya Nolan on the AM Program, Thursday, 1 December 2005. Available at http://www.abc.net.au/am/content/2005/s1520535.htm (Accessed 20 January 2005)

Rix, M (2005) 'Divided Loyalties? The New Public Management of Community Legal Centres', *Third Sector Review*, vol. 11, no. 1, pp. 51-66

Ruddock, P (2005) 'Government Enhances Anti-Terror Bill'. Media Release 222/2005. 1 December 2005. Available at: http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases (Accessed 20 January 2006)

Ruddock, P (2005a) 'Passage of Anti-Terrorism Bill (No. 2) 2005. Media Release 230/2005. 7 December 2005. Available at: http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases (Accessed 20 January 2006)

Walton, M (2005) 'The Anti-Terrorism Bill (No. 2) 2005: An Overview', *Human Rights Defender* Special Issue: The Anti-Terrorism Bill (No. 2) 2005. November/December: 3-5