SECURITY? first secure human rights

By Jon Stanhope

ACT Chief Minister, Jon Stanhope, did not endear himself to the Howard government when he posted the draft anti-terror Bill on his website in the interests of public information and to generate wider debate. In this article based on his address to the Human Rights and Equal Opportunities Commission/HRO anti-terrorism forum on 31 October 2005, he further sets the case for protecting hard-won human rights, arguing that in the absence of a federal bill of rights, sacrificing our fundamental rights in the war on terror will not make us more secure.

When the nations of the world came together in the 1940s to codify an agreed list of fundamental human rights, they weren't devising a charter to guide the behaviour of humanity in the good times, in times of peace and plenty. The impetus for the Universal Declaration wasn't humanity at its best and most civil, but humanity at its most degraded and desperate.

The catalyst for the great human rights charters of the 20th century was global war and, in particular, the Holocaust.

These charters – the Universal Declaration, and the international covenants that followed – are standards to be upheld at the worst of times, at the times when the temptation to scapegoat, marginalise and victimise is greatest.

It is precisely during times of war – even times of pseudo-war, like the present period – that human rights become most precious and most vulnerable.

At the time the ACT was first thinking of incorporating the International Covenant on Civil and Political Rights (ICCPR) into its law, there were some who scoffed. What need had we for such a document, they asked? What rights of Mr and Mrs Jones of Wanniassa were being breached on a sunny Canberra afternoon, in a time of peace and plenty?

It is no coincidence that it is those very same critics – usually white, middle-class, middle-aged, educated, employed, unencumbered by any physical or mental ailment – who are now arguing that human rights are all very well for the good times, but they are things we ought to willingly trade away for the duration of the war on terror.

So are we saying that at the very time when we most need the protection of the rule of law and the shield of articulated human rights, we should paradoxically revert to bigotry, unfairness, injustice?

I believe that, with these proposed measures, that *is* what we are saying.

When we say that the right to a fair trial ought to be abandoned, what we're saying is that it is alright to subject someone to an *unfair* trial.

When we suspend the right to know what we are accused of and the right to appeal on the merits, aren't we effectively saying there no longer is a rule of law?

And when you consider that the suspension of these rights could persist for a decade, what we are really proposing is a *permanent* cultural and philosophical shift. Does anyone really imagine that any rights given up in the name of the war on terror will be handed back with a thank-you note from the government of the day, a decade from now?

I agree that we need tough anti-terror laws. But the approval I gave at the heads-of-government meeting on 27 September was for laws that were proportionate, that involved proper judicial oversight and, in the absence of a national bill of rights, that met Australia's international human-rights obligations.

I have never been shown any piece of advice that would entitle the Commonwealth to persist in claiming that the laws it has drafted are consistent with that covenant. What I have seen is compelling evidence, from multiple sources, to the contrary.

Thanks to the public and political debate generated over the draft Bill, significant concessions have been made by the Commonwealth.

The introduction of a two-step process for issuing control orders – the issuing of an ex parte order, followed by a court hearing at which the order can be judicially confirmed – is a significant and welcome change. So was the removal of a couple of the more unreasonable aspects of the preventative

detention regime – one parent can now tell the other that their child has been detained; and a continued preventative detention order can now be made only where a terrorist threat is imminent, and not to preserve evidence.

Changes were also made to the Bill to apparently reduce the risk of its being found to be unconstitutional, although these amendments of themselves have created new complexities regarding judicial oversight.

Still, numerous ambiguities and flaws remained by the date upon which the states and territories were asked to sign off the draft Bill. For example, there is no set deadline by which an interim control order has to be confirmed by a court, raising the spectre of a 12-month interim order.

It is hard to see how access to independent legal representation will be effective if neither the detainee nor their lawyer knows the full reasons for the detention, and if all communication between them can be monitored.

The new offences of advocacy will have serious implications for free speech. Because the definition encompasses past acts, individuals such as Nelson Mandela and Xanana Gusmao could be classified as terrorists under the proposed laws. If these laws had been in place in the days of apartheid, praise for the ANC could well have fallen foul of the law. If they had been in place in the even more recent past, praise of the Fretilin, during the Indonesian occupation of East Timor, could have been deemed criminal.

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There are other aspects of the package that have received relatively little attention. The proposed extension of the laws of sedition, to give just one example, seem far more concerned with muzzling criticism of government actions than of tackling real and credible risks to the community.

I believe that with a little more time and greater consultation, Australia could have secured anti-terrorism legislation that was proportionate, that complied with our international human-rights obligations, and that involved proper judicial safeguards. ■

Jon Stanhope *is the ACT Chief Minister and Attorney-General.*
PHONE *(02) 6205 0104* **EMAIL** *stanhope@act.gov.au*