

# Liberties rest in the hands of the vigilant

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THE threat of a terrorist attack has changed Australian law in ways that were unimaginable four years ago. Before September 11, 2001, we had no federal law on terrorism. Today, that law criminalises terrorists and their associates, bans organisations and provides for people who might know something about terrorism to be detained at the behest of ASIO for up to a week. The draconian nature of some of the measures adopted cannot be justified.

The Government's website ([www.nationalsecurity.gov.au](http://www.nationalsecurity.gov.au)) says "there is presently no known specific threat to Australia" and contains a four-level alert system (low, medium, high and extreme) that assesses Australia as being at a medium level, which has been the case since September 2001.

This assessment is at odds with community beliefs. One Newspoll conducted in April 2004 found that 68% of adults agreed that terrorists would "strike before too long" and that a terrorist attack in Australia is inevitable. Options open up if people believe an attack is on its way. This is why many aspects of the new laws go far beyond what can be justified.

These include a five-year jail term for speaking about or reporting the detention of a person by ASIO, including where that person has been mistreated. Another example is that non-suspect Australians can be detained for one week, whereas suspects can only be held for 24 hours before being charged. Indeed, it even seems possible that the three-year sunset clause will be removed and these exceptional powers made a permanent part of the law.

A reason for these laws is that, even though our political system has many strengths, it also has a key weakness: human rights lack legitimacy in political debate. When they are needed most, they can be simply absent. This can be because human rights are not generally part of our law. Unlike every other democratic nation, Australia must search for answers to fundamental questions about civil liberties and national security without the benefit of a bill of rights.

As other nations have shown, a bill of rights is not an impenetrable barrier to bad laws. However, it can be especially important when, as after September 11, new laws are made and old laws amended with great haste. At such a time, legal systems, and the principles that underlie them, such as the rule of law and the liberty of the individual, can come under considerable strain.

A bill of rights can remind governments and communities of a society's values and of the principles that might otherwise be compromised at a time of grief and fear. After new laws have been made, it can also allow courts to assess the changes against human rights principles. This can provide a final check on laws that, with the benefit of hindsight, ought not to have passed.

Unfortunately, from 1 July 2005 when the Federal Government gains control of the Senate, the limited capacity of our political system to protect rights is about to be lessened and our lack of a bill of rights further exposed.

Unless individuals in the governing parties take a stand, Australians will be left vulnerable to the sorts of laws that were rejected in the months after the September 11 attacks.

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