Australia's Anti-Terrorism Laws on Trial

I rise this afternoon to speak about Australia's anti-terrorism laws.

Last night SBS aired an excellent documentary - The Trial- which examined Australia's biggest terrorism trial. The documentary was aired across Australia, except for Victoria where appeals from the case examined are underway.

I will not be discussing the details of the case except to pay tribute to the dedicated and extremely hard working members of the legal profession who have spent literally years of their lives trying to uphold the democratic values and rights that have been eroded by the corrosive, acidic nature of the anti-terror laws passed by this parliament.

Greg Barns, Rob Stary, Fiona Todd and Grace Morgan are among those people who have asked juries, media outlets and politicians to thoroughly examine the costs and benefits of the anti-terrorism laws. They have asked how far are we prepared to go before decision making around perceived threats undermines the foundations of our justice system?

They have asked how far are we prepared to let authorities provide very frail bases for decisions around people's classification and detention, and who should be overseeing this decision making?

They have asked how much do we value our right to a fair trial, and is it fair for paltry legal aid representation to be up against an army of silk, many QCs with the seemingly unlimited resources of government departments, law enforcement and surveillance agencies?

These issues were drawn out and discussed in the SBS documentary last night. One of the key points raised is that there is more at stake than just the fate of the accused.

The senior British judge, Lord Hoffmann said, in the landmark Belmarsh ruling : "The real threat to the life of the nation . . . comes not from terrorism but from laws such as these. It calls into question the very existence of an ancient liberty of which this country has, until now, been very proud - freedom from arbitrary arrest and detention."

He continued in his ruling to say that, "Terrorist crime, serious as it is, does not threaten our institutions of government or the existence as a civil community. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism, but from laws such as these. That is the true measure of what terrorism may achieve. It is for parliament to decide whether to give the terrorists such a victory."

The Australian parliament in passing many of the anti-terrorism laws was set up to fail. Mistakes were made when laws that seriously curtail human rights, civil rights and fair trials were hastily enacted following the crimes of 11 September.

Mistakes were inevitable when the government of the day would not allow the parliament to debate each bill individually, even though the anti-terrorism legislative package constituted some of the most dramatic changes ever made to Australia's security and legal environment.

Mistakes were made when amendments were made available to the Senate less than 24 hours before the commencement of debate in that Chamber. This stripped the parliament of the time necessary to ensure that the laws were adequate to prevent, deter and pursue terrorist networks while ensuring that any limits on our civil liberties were transparent and properly understood. I was working for Senator Siewert in the week those laws were rammed through this chamber and I can well remember the pressure cooker environment in which the Senate was deprived of its most basic accountability role.

This is history. But we live with the mistakes. The documentary last night showed only too clearly: fantastically expensive court cases - many of them thrown out of court, unworkable laws, structural asymmetries between prosecutors and defendants.

The government is moving impossibly slowly on the long overdue proposal to establish an Independent Reviewer of Terrorism Laws - a tentative first step to acknowledging that voting blindly with the Howard Government to avoid being wedged over the fear of terrorism was a terrible mistake.

This is no more than an office to assess whether the laws are effective and proportional. It was first proposed when the major body of terror laws were being rammed through the parliament at the end of 2005, drawing partly from the British model which was legislated for.

The proposal was raised again in 2007 by Mr Petro Georgio and Senators Troeth and Trood in their private Senators Bill, and the Senate inquiry in which drew out lively debate and expertise. The Greens participated fully in that process and made a number of contributions to strengthen the bill.

Despite the government's sulky absence, a fruitful debate was also held when the Bill was passed last year by the Senate. 11 months ago. Of course the Government used weight of numbers to bury the legislation in the House of representatives and no such office exists to this day.

The government finally delivered their own Bill to establish what they quaintly call a Monitor. The government sees this as one part time reviewer drawing on two staffers in the Prime Minister's office, with sketchy reporting responsibilities and an ambiguous mandate.

That is, the government views the reviewing of 30 new laws and more than 80 incredibly complex amendments to the Criminal Code and the Crimes Act introduced in the name of the 'war on terror', as a part time position.

This office has the potential to play an essential accountability role reviewing for the Government and the broader public whether these laws are necessary, proportionate and effective at meeting their stated objective.

How many more times will the debate on establishing this office be delayed? The Australian greens have had sensible amendments ready for months. The bill has sat forlornly on the shelf for months, it suits on the order of business for debate tomorrow, and I don't think there's a person in this building who believes the Senate will get time to debate it before next February at the very earliest. It will sit to one side, and every word of the Howard-era terror laws will stay on the statute books. Instead, we endure a fortnight of contrived debate over what kind of failed emissions trading scheme Australia should adopt.

When exactly will the government respond to the several thousand inputs received on the Attorney's National Security Legislation Discussion Paper?

At the time of its release, we commended the Attorney General for providing an opportunity for public comment on the 448-page National Security Legislation Discussion Paper and encouraged community engagement - it was certainly a more honest opportunity to engage than the community was given in 2005.

However, in substance, the paper was a careful demonstration that the government intends to deepen rather than reverse key aspects of the Howard-Ruddock terror laws.

The Greens recognised the possibility of the Rudd Government following in the same unthinking groove as its predecessor, and spent a year consulting, drafting, and then participating in the Senate Inquiry into a bill to cut through the silence and delay that characterises this sometimes shallow debate.

The proposals in the Anti-Terrorism Laws Reform Bill are those which we believe lack the merits of

even being deserving of review by the national terrorism monitor.

The Greens joined others on the Committee in hoping that the expertise and debate generated by this inquiry will feed into the government's discussion paper process on the anti-terrorism laws - the process was a valuable lesson for me in how productive and collaborative senate committee work can be, with the Legal and Constitutional Affairs committee putting a lot of work into engaging with the real issues.

The government should note the high degree of agreement among the submitting parties in supporting the direction of this Bill, and that legal experts and organisations making submissions to the Attorney's discussion paper process have also commended the approaches taken in this Bill. The recommendation of committees around private senators bills are often along the lines of "this legislation should be locked in a box for eternity and never seen again, or sent to COAG, whichever will take the longer". In this case, the Committee did no such thing; it recommended that the bill and its accompanying submissions and transcripts be referred to the Attorney General for consideration as part of their process, I think at least a tacit acknowledgement of the value of some of the proposals we've made.

The big question of course, is will the Government listen?

I know of at least 1500 submissions made outlining concerns with the approach taken by the Government in its discussion paper, or the fact that there is still no sign of the counter-terrorism white paper which you would assume should underpin law reform proposals, rather than the other way around.

Another issue that must come under more public scrutiny is the massive expenditure of public money on the prosecution of the cases against Dr. Hanneef, David Hicks, Mamdouh Habib, Jack Thomas and others like Operation Halophyte. The amounts at stake are staggering when you add up what the Attorney General's department, the CLth Department of Public Prosecutions, the QCs engaged, their travel, the AFP investigations, and the ASIO snooping. And compare this to the legal aid provided for defence- we are talking about 10%, not to mention the plethora of administrative hoops that have to be jumped through to get it.

As the Inquiry into my Anti-Terrorism Reform Bill has flagged, there are some laws which are so extreme, so repugnant, redundant or otherwise inappropriate that should be abolished and do not deserve the dignity of being subject to review.

These laws include those that allowed the Haneef scandal to unfold, and include excessive 'dead time', undue surveillance and invasion of privacy. The laws relating to sedition and the 'reckless possession of a thing' are also amongst the laws that should be abolished. Such laws simply need to be removed, to allow the solid criminal laws and procedures to continue doing the job they did before 2001 in prosecuting and penalising anything that can be sensibly described as terrorism.

Australia's parliament and community did not get an opportunity to hold a thorough and considered debate over the terrorism laws when they were introduced; nor did they consent to the substantial reallocation of resources away from healthcare, environmental protection and education to carelessly defined security imperatives and the entrenchment of a massive internal surveillance effort.

Now is the time for this thorough and considered debate about methods for reducing the risk of terrorist violence while strengthening our democracy and upholding the values which these laws were supposed to defend.

While some leaders and commentators deeply fear the accusation of being "soft on terrorism" believing it to be corrosive of their public perception, standing, or perhaps masculinity, the Greens believe that to maintain these laws in their current form is corrosive of democracy itself and the rule of law upon which it is based.

The benefit of hindsight and the passage of time have revealed some of the terror legislation as

irrational, unusable and extreme.

Terrorism is a horrendous crime. There is no need to discuss the importance of prosecuting terrorism, or whether or not to resource the people who do this important work. What is in dispute is how we fight these crimes, and whether our current approach is actually working.

We cannot afford to delay the reform of our anti-terror laws a day longer.

- Human Rights & Justice
- Access to Justice
- Justice System
- Legal Aid