

Hugh White

**Without answers, terror laws should be rejected**

The Age

31 October, 2005

We can all agree that terrorist attacks need to be prevented. And we can all agree that civil liberties need to be protected. So beneath the legal and constitutional technicalities, debate over the Government's proposed terrorism legislation involves striking a balance between two opposing risks. One is the possibility that the proposed powers will be misused. The other is the danger that without extra powers the Government would not be able to stop a terrorist attack.

So far we have seen a lot of talk about the first of these risks — that new ASIO and police powers could be intentionally or unintentionally misused in ways that grossly infringe our civil liberties. This is a serious issue. Even so, I think a lot of people would support new detention and control powers, if they could be convinced that these powers would really help prevent a terrorist attack.

But this side of the question has not received much attention. The Government has not tried to explain to us exactly what the powers it is seeking are for, how they would contribute to the fight against terrorism, and why they are needed. Until we know all this, we cannot judge whether the benefits of the new laws outweigh the costs.

The best way to start looking for an answer is by asking where the weakness is in our present legal framework for tackling terrorism. What is the problem that the new powers are supposed to fix? The way the Government has spoken about its proposals, it sounds as if it is worried that they would not be able to detain people who were planning a terrorist attack. They conjure up a scenario of the police and ASIO knowing of a planned attack, but powerless to stop it because they do not have the power to detain the perpetrators.

Obviously, if that is the situation, it needs to be fixed. The Government should be able to lock up people who are planning to commit terrorist attacks, to prevent them from carrying out their plans. But we do not need new laws to do that. Our police already have the power to interdict a terrorist plan if they discover it. Any act of planning or preparation for a terrorist attack is a criminal offence. If the police have evidence that someone is planning or preparing an attack, they can be arrested, charged and held until the case is brought to trial.

Until a few months ago, the Government apparently believed these powers were sufficient. In 2002 and 2003 they passed laws to increase their powers to combat terrorism, but they did not try to strengthen the existing detention powers. So why were those powers thought to be sufficient then, but not now?

The Government argues that the London bombings in July made the new laws necessary, because they showed that we face a risk of home-grown terrorism. But that's not right. We have known of the risk of home-grown terrorism since 9/11. Long before the London bombings, the Government had already caught and tried Australia's own would-be home-grown terrorist, Jack Roche.

If anything, the London bombings showed the opposite. Detention powers like the ones proposed in our new laws would not have helped the British police stop the London bombings, because British authorities had not identified the bombers as a significant risk. Their problem was not a lack of police powers to detain terrorists, but a lack of information about who to detain.

The same is true here. If the police have information that someone is planning a terrorist attack, they can arrest them already. If they do not have that information, they will not know who to detain under the proposed powers.

So what are the new powers to be used for? It sounds as if the Government wants the power to detain people even when there is no information that they are planning a terrorist attack. That is in line with a hint that Attorney-General Phillip Ruddock gave on *Lateline* last week. He said that the new laws would target people who trained with terrorist organisations before September 11, 2001. That would be illegal now, but it wasn't then. ASIO naturally suspects that such people may become involved in future terrorist operations, but as long as there is no evidence they are planning anything, all it can do is watch them.

That takes a lot of effort. So it may be that the main reason the Government wants more detention and control powers is to make it easier to keep an eye on these people. If so, then I am unpersuaded that the risks to our civil liberties are justified by the benefits to our safety from terrorism. There seems no need to introduce such sweeping and open-ended provisions to deal with a narrow class of cases, when more targeted and specific measures would be much less risky and might well be more effective. The harsh provisions to preserve a screen of secrecy around such operations seem especially unnecessary.

On the other hand, if the Government's focus is not limited to these people, who else do they have in mind? And how widely do they intend to use the new powers? Would we really be made much safer by ASIO and the AFP detaining people who they think might one day plan a terrorist attack?

Or would we be better protected if they concentrated instead on finding those who are already plotting? If the Government does not have really good answers to these questions, their new laws do not deserve our support.

**Hugh White is a visiting fellow at the Lowy Institute and professor of strategic studies at ANU.**