

30 years since Sydney's Hilton Hotel bombing—"a tragic entrée to an age of terror"?

Thirty years on, a host of unanswered questions remain about the Sydney Hilton bombing. At 12.40 am on February 13, 1978, a bomb exploded in a garbage bin outside the Hilton Hotel, the venue for the Commonwealth Heads of Government Regional Meeting (CHOGRM), a gathering of government leaders from former British colonies. The blast killed two garbage collectors, Alex Carter and William Favell, and a police officer, Paul Birmistriw.¹

Backed by the media, Prime Minister Malcolm Fraser and New South Wales Premier Neville Wran ordered the military onto urban streets for the first time in contemporary Australia, claiming that a new era of terrorism had arrived. Without any clear legal or constitutional authorisation², the federal Liberal government and the state Labor government deployed nearly 2,000 heavily-armed troops, some with bayonets fixed, accompanied by armoured personnel carriers and helicopters. Units took up positions along a major highway on Sydney's outskirts and patrolled the Southern Highlands towns of Bowral and Mittagong, near the site of a scheduled CHOGRM leaders' summit.³ The *Sydney Morning Herald* declared: "Australia this week had a new and shocking experience. It was our first full taste of Twentieth Century terrorism."⁴

Over the ensuing 18 months, Fraser's government, with the Labor opposition's basic support, used the Hilton bombing as the pretext to carry through a far-reaching expansion in the powers and resources of the police and security apparatus. As detailed later in this article, the changes included legalised surveillance powers for the Australian Security Intelligence Organisation (ASIO), the formation of the Australian Federal Police (AFP), the creation of para-military SWAT-style units in state police forces and domestic Special Air Service (SAS) units in the Australian Defence Forces (ADF) and the establishment of Crisis Policy Centres with the authority to take control over parts of the country in times of alleged emergency.

Today, the Hilton bombing is being used to justify the further extension of these powers and measures by the federal and state governments under the rubric of the "war on terror". A memorial plaque was unveiled at the site of the blast in Sydney's George Street on the 30th anniversary, and to mark the occasion, NSW Premier Morris Iemma wrote an article for the *Sydney Daily Telegraph*, in which he stated:

On today's 30th anniversary of this gutless and cowardly attack, the whole NSW community honours the victims, their families and the survivors. They are not forgotten. The Hilton bombing was terrorism, pure and simple. Then prime minister Malcolm Fraser and 11 visiting Commonwealth leaders were staying in the hotel at the time. This was a carefully timed attack on their meeting. The Hilton bombing was one of those moments when our community lost its innocence. It brought Australia into the terrorist era...

For Australians, the idea of groups pursuing political goals through blood and violence was a deeply disturbing and deeply foreign change to our way of life. Today, terrorism is sadly anything but foreign, though it remains disturbing to think that there are groups around the world who would love nothing better than to inflict another urban bombing on Sydney, only with many more casualties. By definition,

¹ For an account of the events see J. Hocking, *Terror Laws: ASIO, counter terrorism and the threat to democracy*, Sydney, UNSW Press, 2004, pp. 82-85.

² See M. Head, 'The military call-out legislation — some legal and Constitutional questions', *Federal Law Review* 29, 2001, pp. 1-22, especially pp. 10-13. See also A. Blackshield, 'The Siege of Bowral — The Legal Issues', *Pacific Defence Reporter* 4, 1978, p. 6; and 'Current Topics: Legal and constitutional problems of protective security arrangements in Australia', *Australian Law Journal* 52, 1978, p. 296.

³ Hocking, p. 86. See also D. Cahill and R. Cahill, 'Civilian responses to peace-time military occupation: the 1978 Bowral call-out and its implications for the "war on terrorism"', History Cooperative, Australian Society for the Study of Labour History Conference Proceedings <http://www.historycooperative.org/proceedings/asslh/cahill.html>, accessed 18 February 2008.

⁴ Editorial, 'Terrorism', *Sydney Morning Herald*, 14 February 1978, p. 6.

these terrorists, like the Hilton bombers, train and prepare in secret, wreaking their havoc when it is least expected...

Since 2001, investment by the Federal and State governments in counter-terrorism has more than doubled. We have sacrificed a share of our civil liberties so police can thwart the sneaky, insidious methods of the terrorists. And, unlike 1978, we are all much more aware. Thirty years down the track, it is clear the Hilton bombing wasn't just an historical one-off but a tragic entree to an age of terror that remains with us.⁵

Yet, the question of who actually carried out the Hilton bombing remains unresolved. Twice, the police and intelligence agencies effectively framed-up people, who were convicted and jailed in connection with the explosion, only to have those frame-ups later fall apart ignominiously. Then came a series of judicial and political reviews that failed to provide any answers, or hold anyone to account for the wrongful prosecutions. No genuine inquiry has ever been conducted into the Hilton affair. A careful review of the evidence, all the unanswered questions and the political background points to the distinct possibility that the crime was committed by the security agencies themselves.⁶

The explosion

Many issues are raised by the Hilton blast itself and the police and intelligence operations surrounding it. An overflowing rubbish bin containing some form of explosive material blew up when the bin was thrown into a Sydney City Council garbage compactor truck. The explosion scattered pieces of the truck for 30 to 40 metres and killed the two council workers, Favell and Carter, instantly.⁷

Officially, nothing is even known about the bomb's materials or how they were detonated. According to the police, no explosive residue could be detected. Calling for a Federal-State royal commission, Independent MP John Hatton told the NSW Legislative Assembly in 1991: "Despite extensive investigations by Federal and State authorities no forensic evidence has been forthcoming about the types of explosives used in the blast. One has to stop and wonder in sheer amazement that such a statement could be made so many years later."⁸

There is evidence that whoever planted the explosives in the bin intended them to be found before they were detonated. Two anonymous warning calls were made to the media just before the blast. One to the *Sydney Morning Herald* said: "You'll be interested in what the police are going to be doing down at the Hilton soon," followed by a garbled reference to a bomb. At 12.30 am, a man rang the Sydney police CIB headquarters and said: "Listen carefully. There is a bomb in a rubbish bin outside the Hilton Hotel in George Street."⁹

⁵ M. Iemma, 'Remembering the Hilton Hotel bombing', *Daily Telegraph*, 13 February 2008, <<http://www.news.com.au/story/0,23599,23206442-5007146,00.html#>> accessed 18 February 2008. At the ceremony to unveil the plaque, similar remarks were made by Sydney Lord Mayor Clover Moore and NSW Police Commissioner Andrew Scipione. See 'Sydney remembers Hilton bombings' *Sydney Morning Herald*, 13 February 2008 <<http://www.news.com.au/story/0,23599,23206442-5007146,00.html#>>, accessed 18 February 2008.

⁶ See Hocking, pp. 116-119, and T. Molomby, *Spies, Bombs and the Path of Bliss*, Sydney, Potoroo Press, 1986, pp. 409-412.

⁷ Hocking, pp. 82-86.

⁸ *Hansard*, NSW Legislative Assembly, 9 December 1991, p. 5939.

⁹ Molomby, pp. 409-412.

In the lead-up to the blast, police and security officials inexplicably prevented council garbage trucks from emptying the bin. It appears that Favell and Carter arrived ahead of schedule, just after 12.30 am, and proceeded to pick up the bin before the police could intervene.¹⁰ The prior failure by police to search the bin was in breach of NSW police permanent circular 135, dated 28 November 1972, which clearly stipulated that all waste bins should be searched in any potential bomb situation.¹¹

Other unanswered questions include: Why did the agencies responsible for CHOGRM security—ASIO, the Commonwealth Police, the ADF and the NSW state police—fail to detect the explosive material earlier? Why were established security protocols, which require the searching of rubbish bins, breached? Why were military sniffer dogs, whose services had previously been requested, not used? These were among the questions asked by independent MP Ted Mack in federal parliament in 1991.¹²

Only two explanations appear to exist for such elementary breaches of security. One is complete police and intelligence service incompetence and dereliction of duty. The other, more plausible, explanation is that the explosive materials were placed in the bin by, or with the connivance of, security officials, with the intention of having the explosives discovered by the police or ASIO in the midst of the CHOGRM conference. Such a discovery could have been used to claim a police “success”, while creating a terrorist scare to justify the build-up of the police-military apparatus.

Frame-ups and cover-ups

After the bombing, the authorities and the media immediately pointed the finger of blame at Ananda Marga, a religious sect opposed to the government of Indian Prime Minister Morarji Desai, who attended the CHOGRM summit.¹³ On February 14, a heading on the Australian’s front-page reported, “Massive hunt for three suspects in bomb attack” and there was a link to a feature article, entitled “Baba – the clerk who has sparked a crusade”, about the founder of Ananda Marga.¹⁴ During 1977, members of the sect had been accused of several acts of violence in Australia directed against the Indian government, and ten days before the bombing the group had lodged a complaint with the Commonwealth Ombudsman about some 17 police actions against the sect, including false arrests and police perjury.¹⁵

ASIO later claimed to have no forewarning of the Hilton bomb, a claim that was upheld in 1993 by the Inspector-General of Intelligence and Security (who also reported that, “I have not seen or heard anything which substantiates rumours regarding ASIO involvement in the bombing”).¹⁶ If Ananda Marga were indeed responsible for the blast, this claim is hardly credible. An intensive surveillance and infiltration operation had been mounted against Ananda Marga prior to the bombing, orchestrated from the highest levels. Federal cabinet papers for 1977, released on January 1, 2008, reveal that Fraser’s cabinet had considered outlawing Ananda Marga, and was told the organisation was under close monitoring by ASIO and the state police Special Branches.¹⁷ Cabinet Decision number 4252, dated 1 November

¹⁰ Ibid.

¹¹ J. Hatton MP at *Hansard*, NSW Legislative Assembly, 9 December 1991, p. 5940.

¹² *Hansard*, Parliament of Australia, House of Representatives, 8 October 1991, p. 1481.

¹³ Molomby, pp. 11-14.

¹⁴ Ibid.

¹⁵ Molomby, pp. 18-22.

¹⁶ IGIS Annual Report 1992-93, <http://www.igis.gov.au/annuals/92-93/pg8.cfm#COMPLAINTSASIO> accessed 18 February 2008.

¹⁷ National Archives of Australia, 1977 Cabinet Records – Selected Documents, Submission 1848, ‘Report on Ananda Marga’, pp. 320-330.

1977, directed that "ASIO and police inquiries continue to be pursued, as vigorously as possible".¹⁸ In January 1978, the Minister for Immigration and Ethnic Affairs, acting on security advice, banned sect members, except for Australian citizens, from entering the country.¹⁹ By 1977, agents had permanent taps on telephones in five of Ananda Marga's State headquarters, they were using listening devices, reading mail, engaging in "physical surveillance", running informants inside the cult, and had circulated a "substantial paper" to regional ASIO offices and all State police special branches.²⁰

Four months after the bombing, a police agent named Richard Seary, who had joined the Ananda Marga after the blast, convinced two members of the sect, Paul Alister and Ross Dunn, to accompany him to paint graffiti on the home of the extreme right-wing National Front leader Robert Cameron. Unknown to the pair, Seary had planted explosives in the car. The three were arrested on the way to Cameron's house and charged with conspiracy to murder. Ananda Marga's media spokesman, Tim Anderson, was also charged. Seary later claimed that, while in the car on the way to Cameron's house, the Alister and Dunn had boasted of the Hilton bombing. Anderson, Alister and Dunn were convicted in the NSW Supreme Court, with the media widely depicting their jailing for 16 years as punishment for the Hilton blast.

In 1982, a belated NSW coronial inquest into the Hilton deaths heard testimony from a police officer injured in the blast, senior constable Terry Griffiths, who tendered six items of evidence pointing to ASIO and/or NSW police Special Branch involvement in the bombing.²¹ Two items indicated that the police had concealed the time at which police headquarters had received the warning call, and that it had been made at 12.30pm, ten minutes earlier than reported. Other items indicated that ASIO and police Special Branch officers had known in advance about the bomb, and that military personnel had placed the explosives in the rubbish bin.

Before this evidence could be probed, the inquest was closed down by the coroner after Seary testified once more. His evidence led the coroner to find a prima facie case against Alister and Dunn for having murdered the Hilton Hotel victims, obliging the coroner to terminate the inquest,²² even though the police knew that Alister had not been in Sydney at the time of the bombing. No charges ever went to trial, but the inquest was never re-opened.

In 1983, Anderson, Alister and Dunn unsuccessfully sought special leave to appeal to the High Court against their convictions.²³ By three-to-two, the judges held that the trial judge had erred in law by setting aside a subpoena directed to ASIO requiring it to produce all files relating to Seary's involvement in Ananda Marga activities. The majority judges decided to inspect the ASIO documents subpoenaed by the defence, despite a ministerial certificate claiming public interest immunity on national security grounds. Nevertheless, upon inspection, a differently-constituted majority (with only Murphy J dissenting) held that none of the documents was relevant to the issues at the trial. Given that this exercise was conducted in absolute secrecy, it is difficult to give credence to this outcome. In any case, ASIO's relations with Seary remained hidden from public scrutiny.

¹⁸ Ibid, p. 329.

¹⁹ Molomby, p. 23.

²⁰ B. Hills, "The Hilton fiasco", *Sydney Morning Herald*, 12 February, 1998

<<http://www.benhills.com/articles/articles/SCM38a.html>>

²¹ Molomby, pp. 409-412.

²² Under s 19 of the *Coroners Act* (NSW).

²³ *Alister v R* [1983] HCA 45, (1984) 154 CLR 404.

After a seven-year public campaign, Anderson, Alister and Dunn were finally pardoned by the NSW government in May 1985, although denied compensation. A judicial inquiry headed by Justice James Wood ruled that Seary had lied on at least 50 occasions. Wood described Seary as “a person of considerable intelligence and imagination who craved recognition and status and who was willing to exaggerate, bend the truth and lie in appropriate circumstances”.²⁴ Yet, the judge made no findings against the police. Instead, he sanctioned the use of highly dubious undercover agents:

While some criticism can be levelled at the police in hindsight for an inadequate investigation of Seary before his recruitment, I am left in no doubt as to the bone fides of the officers who were concerned in the inquiry, and who made the necessary decision to operate him in the field. I am satisfied that police engaged in the shadowy area of intelligence have to work with the personnel and inside sources available. In very few cases will a potential informer or non service agent be a person of unblemished character.²⁵

Four years later, in 1989, the NSW police mounted another frame-up of Anderson, arresting him for the Hilton blast. This time the two key police witnesses were a prison informer, Raymond Denning, who claimed that Anderson had admitted the bombing while in jail, and an ex-Ananda Marga member, Evan Pederick, who testified that Anderson had instructed him to plant the explosives in the garbage bin. When Anderson was convicted by a Supreme Court jury in October 1990, the *Sydney Morning Herald* ran the headline “Guilty: the Hilton bomber” and the newspaper declared the bombing to be “finally solved”. Anderson was sentenced to 14 years jail on three counts of being an accessory before the fact to murder.

Eight months later, however, in June 1991, Anderson was released after the NSW Court of Criminal Appeal found obvious flaws in the evidence. Prison records showed that Denning and Anderson were not even in the same prison on one of the days Denning claimed Anderson had confessed to him. As for Pederick, he and the police advanced three different versions of his story, all supposedly related to Desai’s arrival and departure times from the Hilton. An examination of the movement times demolished each version. The appellate court concluded that Pederick had been entirely discredited:

On any view of the matter, his account of the events of 12 February 1978, and in particular of the circumstances relating to his actual attempt at assassination, is clearly unreliable. He is incapable of giving a description of those events which does not involve serious error.²⁶

Perversely, the sole person remaining in jail was Pederick, who was convicted of murder in 1989 after the Director of Public Prosecutions rejected his application for immunity in return for giving evidence against Anderson. Following Anderson’s acquittal, Pederick unsuccessfully appealed against his own conviction.²⁷ In rejecting his appeal, the NSW Court of Criminal Appeal insisted that its decision “cannot be validly interpreted as casting doubt upon its previous decision to acquit Anderson”.²⁸ Despite the court’s earlier finding that Pederick’s account was “clearly unreliable,” Hunt CJ argued that Pederick’s confession to having placed the bomb in the bin was “extraordinarily strong evidence against him”.²⁹ Pederick remained in jail for about eight years. Questions also remain about his relations with ASIO. He had first come to ASIO’s attention in late 1977, when he was arrested at a demonstration, and was employed at the Department of Foreign Affairs in Canberra a year after the bombing, with a security clearance up to “secret: level. According to his 1979 ASIO

²⁴ Molomby pp. 365-373.

²⁵ *Ibid.*, p. 374.

²⁶ *R v Anderson* (1991) 53 A Crim R 421 at p. 444.

²⁷ *Rv Evan Dunstan Pederick* [1996] NSWSC 623

²⁸ *Ibid* at p. 13.

²⁹ *Ibid* at p. 12.

security clearance, it could find “no evidence of Pederick’s involvement in acts of violence”.³⁰

Despite the collapse of two police frame-ups, the state Liberal and federal Labor governments effectively blocked demands for an official inquiry into the Hilton affair. In October 1991, the Hawke government’s Attorney-General Michael Duffy refused to answer questions from independent MP Ted Mack about ASIO’s role in the bombing. Invoking a bipartisan practice, he refused to confirm or deny matters relating to ASIO’s operations. Duffy asserted that simply because the Hilton bomb involved offences against NSW law (when Commonwealth law was also clearly breached), it was up to the state to convene an inquiry:

While the Commonwealth had a direct responsibility for and interest in the safety of the visiting delegates at the 1978 CHOGRM, the bomb explosion outside the Hilton Hotel in Sydney in fact involved offences against the laws of New South Wales. Therefore, it is for that State and not the Commonwealth to decide whether another inquiry might be warranted. If the New South Wales government were to decide that there should be a further inquiry, the Commonwealth would, of course, co-operate fully.³¹

Duffy’s suggestion that NSW might conduct an inquiry was never taken up. Two months later, the NSW parliament passed a resolution, moved by independent MP John Hatton, calling for a joint federal-state inquiry. Hatton stated that two questions remained about the Hilton bombing and the Cameron case:

[W]ho was responsible and, of more importance, was there a cover-up? The answers lie with the Commonwealth and State officials who failed in their duty, were incompetent, dishonest and devious, obfuscated the truth, abused the due process of the courts, and knowingly lied and presented false evidence.³²

The motion meant little, given the federal Labor government’s insistence on burying the issue. NSW Attorney-General Peter Collins told parliament that the state government did not need to be convinced of the need for an inquiry but “I have not been successful in my requests for the Federal government to join us.”³³

Who benefited?

The Hilton bombing occurred in a period of ongoing social and political turmoil, following the “Canberra Coup” of November 1975, when Governor-General Sir John Kerr invoked the prerogative powers of the monarchy to dismiss the elected Labor government of Gough Whitlam. In 1976, the trade unions called Australia’s first-ever official general strike, a one-day stoppage against the Fraser government’s dismantling of the Medibank health scheme, and 1977 saw a number of significant strikes and work bans.³⁴ Unemployment was a major issue, with the official jobless rate rising from 5.1 percent in May 1977 to 6.2 percent a year later.³⁵ Throughout 1977, opinion polls indicated that the Fraser government faced defeat.³⁶ Although the government was re-elected at the end of that year, it remained extremely concerned about the depth of opposition to its policies.

³⁰ B. Hills, “The Hilton fiasco”, *Sydney Morning Herald*, 12 February, 1998
<http://www.benhills.com/articles/articles/SCM38a.html>

³¹ *Hansard*, Parliament of Australia, House of Representatives, 8 October 1991, p. 1481.

³² *Hansard*, NSW Legislative Assembly, 9 December 1991, p. 5938.

³³ *Ibid.*, p. 5941.

³⁴ J. Stokes, ‘1977 Cabinet records – the historical context and issues of interest’, National Archives of Australia, <http://www.naa.gov.au/collection/explore/cabinet/by-year/historian.aspx>, accessed 20 February 2008.

³⁵ *Ibid.*

³⁶ *Ibid.*

There is evidence that Ananda Marga became a convenient target for a “terrorist” scare campaign that could justify expanded police and intelligence agency powers. In September 1977, the Indian military attaché in Canberra and his wife were attacked, allegedly by a member of the sect, and “ASIO had its knuckles rapped for taking six weeks to produce an urgent threat assessment”.³⁷ ASIO was instructed to send the assessment to the Prime Minister and, as noted earlier, the Cabinet considered an 11-page “Report on Ananda Marga” from Administrative Services Minister Reg Withers.³⁸

Whoever was responsible for the Hilton bombing, it became a vehicle for the government to implement a sweeping build-up of the police-intelligence apparatus, the basis for which had been laid by the Whitlam government. Facing hostility in the labour movement over the openly right-wing activities of ASIO and the police Special Branches, Prime Minister Whitlam had commissioned a royal commission headed by Justice Robert Hope. In his report, ultimately delivered to the Fraser government in mid-1977, Justice Hope found that there may have been times when ASIO departed from the principles of legality, propriety and staying within its charter.³⁹ Specifically, he concluded that ASIO was operating with questionable legality in some operations, such as intercepting other forms of telecommunications, opening mail, using listening devices and entering and searching premises.⁴⁰ It was also committing errors in security vetting, producing a risk of “a grave and permanent injustice ... to the person the subject of the assessment”.⁴¹

Despite suggesting that ASIO had broken the law, Hope did not reveal any of the transgressions, let alone call for prosecution. Instead, he urged legislation to make its operations lawful. He also recommended a strengthening of the intelligence apparatus, via the establishment of the three new institutions: (1) the Protective Security Coordination Centre (PSCC) to coordinate police, intelligence and military operations; (2) the Office of National Assessments (ONA), a central security and intelligence agency, located in the office of the Prime Minister; and (3) the Cabinet Committee on Intelligence chaired by the Prime Minister. Worried that ASIO was casting its net too widely, Hope recommended that it recruit or train university experts in Marxism to concentrate on the real “subversive” threat. He warned: “It may be said that the radical or extreme pot is simmering but not boiling.”⁴²

In the meantime, Whitlam’s government had been removed. That dismissal fuelled further concerns about the role of the security services. In November 1977, Premier Don Dunstan’s Labor government in South Australia commissioned an inquiry by Justice White, which reported that the state’s police Special Branch, with the assistance of ASIO, maintained files or index cards on 40,000 people, including Labor MPs, union members, civil libertarians and peace protestors.⁴³ Labor MPs were even placed under physical surveillance at public meetings, and there were index cards on judges, magistrates, clergy and at least one former governor of South Australia.⁴⁴ The Hope and White reports re-ignited calls within the Labor Party and wider labour movement for the abolition of ASIO. Just four days before the Hilton bombing, NSW Premier Wran was forced to announce an inquiry into the links between ASIO and the NSW Special Branch. As a result of the bombing, Wran dropped the inquiry.

³⁷ Ibid.

³⁸ National Archives, 1977 Cabinet Records, pp. 320-330.

³⁹ R. Hope, The Royal Commissioner, *Intelligence and Security*, Fourth Report, Canberra, AGPS, 1977, Vol 1, pp. 70-71.

⁴⁰ Ibid, Volume II pp. 150-174.

⁴¹ Ibid, Second Report, pp. 22-61.

⁴² Ibid, Fourth Report, Volume II

⁴³ Acting Justice White, “Special Branch Security Records”, Initial Report to the Honourable Donald Allan Dunstan, Premier of South Australia, 21 December 1977.

⁴⁴ P. Grabosky, *Wayward Governance: Illegality and its Control in the Public Sector*, Canberra, Australian Institute of Criminology, 1989, pp. 113-128.

After the Hilton blast, two reports, one by former London police chief Sir Robert Mark⁴⁵ and another by Justice Hope,⁴⁶ recommended a significant boost to the powers of ASIO, the establishment of the Federal Police, wider domestic use of the SAS, and the creation of “anti-terrorist” and SWAT-style squads in state police forces. In addition, Mark’s report revealed that Crisis Policy Centres had been set up to facilitate the provision of “military aid to the civil power”. The centres were to be activated by PSCC, which included representatives of the Prime Minister’s National Security Council, ONA, ASIO, ASIS, the military and the federal and state police.⁴⁷

Three weeks after the explosion, an ASIO Bill was introduced into federal parliament. As proposed by Hope, the legislation, which became the 1979 ASIO Act, authorised ASIO to intercept mail and telecommunications, use bugging devices, and carry out searches and seizures. The Act’s definition of “security” was effectively widened by replacing the word “subversion” with the phrases “politically motivated violence”, “promotion of communal violence” and “attacks on defence and security”.⁴⁸ The Director-General could obtain warrants to enter and search premises, remove records, use listening devices, and gain access to postal articles. He need only “suspect a person of being engaged in, or of being likely to engage in, activities prejudicial to security”.⁴⁹ It became a serious offence for anyone to make public the identity of any ASIO officer, employee or agent, with a penalty of a fine of \$1,000 or imprisonment for one year.⁵⁰

The “war on terror”

These measures, the greatest expansion of the powers and resources of the police-intelligence apparatus since World War II, helped lay the foundations for the even more draconian provisions introduced since 2001 on the pretext of combating terrorism.⁵¹ By the end of 2005, more than 40 pieces of Federal “anti-terrorism” legislation had been introduced. All the measures had basic bipartisan support, and most are mirrored in matching State and Territory legislation. In 2002 the leaders of the State and Territory Labor governments agreed to formally refer their constitutional powers over terrorism to Canberra. Their decision has the potential to give the Commonwealth substantially unfettered law-making and police enforcement power over politically-related crime for the first time since Federation in 1901.

The legislation also seems to give the Federal government the unchallenged constitutional power to call out the troops in civilian areas, as it did in 1978. The *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006* (Cth) considerably expanded military call-

⁴⁵ Robert Mark, *Report to the Minister for Administrative Services on the organisation of police resources in the Commonwealth area and other related matters* (1978).

⁴⁶ Robert Hope, *Protective Security Review Report* (1979).

⁴⁷ Mike Halliday, ‘Crisis Policy Centres’ (12, 19, 26 January 1980) *Workers News* Parts I, II, III. See also Hocking, above note 3, 177.

⁴⁸ ASIO Act 1979, Section 4.

⁴⁹ Sections 25-28.

⁵⁰ Section 92.

⁵¹ M. Head, Editorial: ‘Detention and the Anti-Terrorism Legislation’ *University of Western Sydney Law Review*, No. 9, 2005, 1-8. M. Head, ‘Counter Terrorism’ Laws: A Threat to Political Freedom, Civil Liberties and Constitutional Rights’ (2002) 26 *Melbourne University Law Review* 666 and M. Head, ‘Another threat to democratic rights: ASIO detentions cloaked in secrecy’ (2004) 29 *Alternative Law Journal* 127.

out powers first enacted in 2000.⁵² The Constitutional scope to use the military call-out provisions was extended in 2007 when the High Court upheld the validity of an interim “control order” imposed on a Melbourne worker, Jack Thomas, sanctioning one of the central features inserted into the *Criminal Code* (Cth) by the *Anti-Terrorism Act 2005* (Cth).⁵³ In effect, by a 5 to 2 majority, the court legitimated the anti-terrorism legislation that the Howard government and its state Labor counterparts have introduced since 2002. In doing so, by a margin of 6 to 1 (Kirby J dissenting alone on this aspect) the court also condoned the extension of the Commonwealth parliament’s defence power under s 51(vi) of the Constitution beyond war and external threats.

The Rudd Labor government has signalled its commitment to protect and legitimise the powers of the security agencies, pledging to maintain the Howard government’s “anti-terrorism” laws. In October 2007, for example, Rudd called a media conference to declare that his “hardline” view was that “every measure should be deployed to track down, to hunt down and to destroy terrorists and terrorist cells wherever they are in our part of the world”.⁵⁴

The unanswered questions left by the Hilton affair, and the subsequent cover-up by the previous Federal Labor government, underscore the need to constantly challenge the claims being made by governments about the “war on terror” and to oppose every erosion of civil liberties and basic legal rights being carried out in its name. Rather than “an entrée to an age of terror”, the Hilton bombing was a highly dubious event that demands a full independent investigation.

⁵² M. Head, “Militarisation by Stealth: Should Domestic Security be a ‘Core Business’ of the Armed Forces?” (2007) 188 *Overland* 68-73; M. Head, ‘Australia’s Expanded Military Call-out Powers: Causes for Concern’, *University of New England Law Journal*, No. 3, 2006, 145-150.

⁵³ *Thomas v Mowbray* [2007] HCA 33.

⁵⁴ *Age*, 10 October 2007: <http://www.theage.com.au/news/national/rudds-metoo-policy-mess/2007/10/09/1191695909938.html?page=fullpage#contentSwap2>