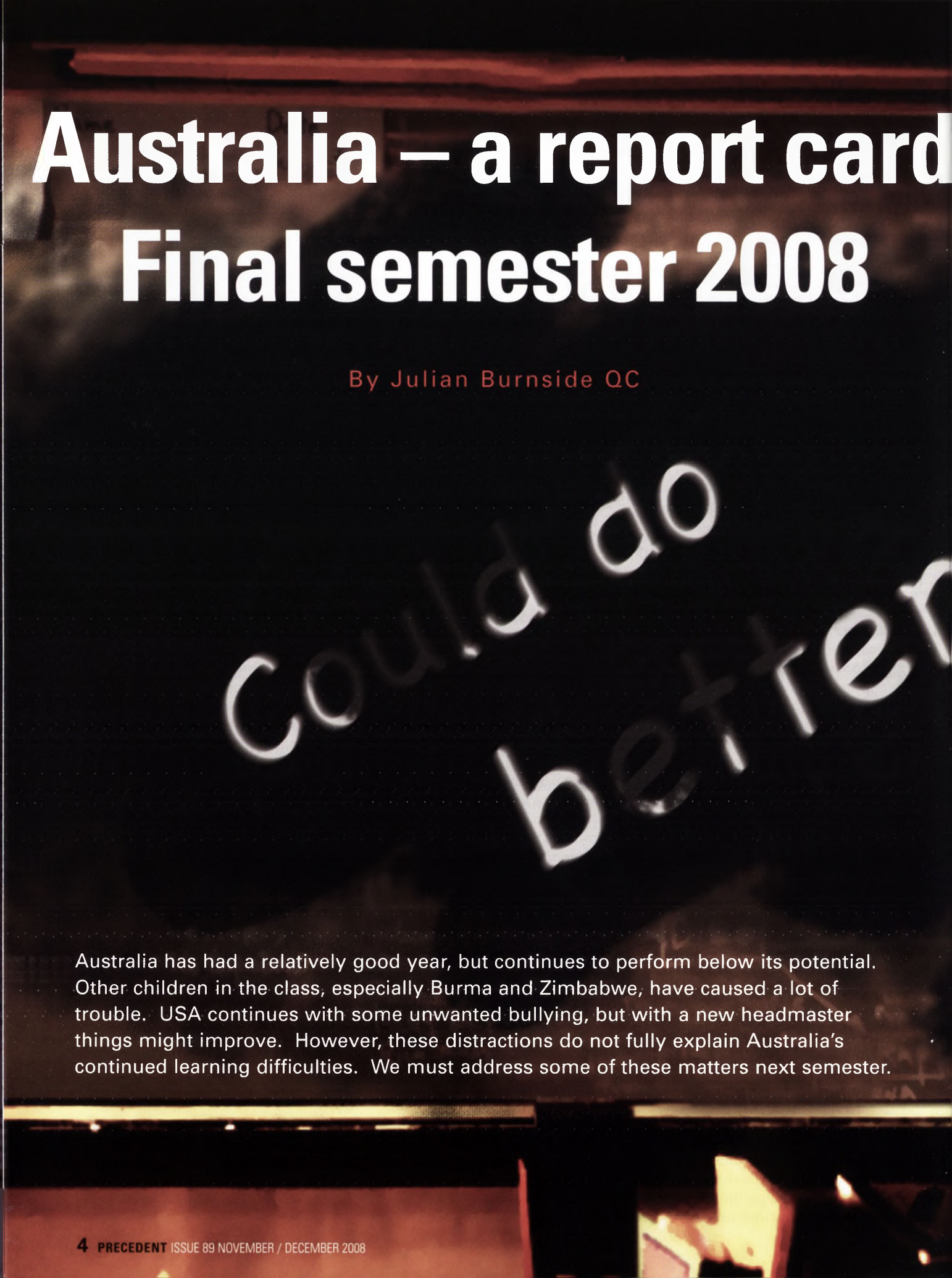
Australia – a report card
Final semester 2008

By Julian Burnside QC



Australia has had a relatively good year, but continues to perform below its potential. Other children in the class, especially Burma and Zimbabwe, have caused a lot of trouble. USA continues with some unwanted bullying, but with a new headmaster things might improve. However, these distractions do not fully explain Australia's continued learning difficulties. We must address some of these matters next semester.

REFUGEES AND OTHER NON-CITIZENS

In the treatment of refugees, Australia may be emerging from a seriously bleak period, but how far it emerges remains to be seen. Temporary protection visas (TPVs) have been abolished. This is cause for general celebration. TPVs were first suggested by Pauline Hanson in 1996. Her proposal was criticised by Philip Ruddock as 'unconscionable'. It is hard to disagree with that assessment. It is equally hard to understand his wholehearted embracing of TPVs three years later, when they were introduced by the Howard government in 1999.

TPVs provide asylum-seekers with three years' protection only, and they deny the visa-holder the right to be reunited with their family. If one member of a family makes it to Australia and satisfies the authorities of their status as a refugee, then it is likely that other members of their immediate family are also refugees. The TPV regime made it impossible for such people to bring their families out to Australia to join them; the circumstances that justified their protection make it impossible for them to return to their country of origin; and even meeting in a third, neutral, country was impossible because if a holder of a TPV left Australia for any reason at all, they were denied re-entry. The Rudd government abolished TPVs in 2008.

But it has not moved to abolish the less well-known but equally problematic bridging visa E. A bridging visa, as its name suggests, is held pending resolution of an application for a substantive visa (for example, a protection visa, a spouse visa, or a humanitarian visa). It is disfigured, however, by the fact that the holder is forbidden to work and is not eligible for Centrelink benefits or Medicare. A person may be on a bridging visa E for a number of years. It is difficult to understand the logic of a government that acknowledges a person's right to be in the community for the time being, and perhaps permanently, but to deny them the ability to secure the basics of existence, except by recourse to private charity.

Furthermore, the government has not abolished indefinite detention of unauthorised arrivals. A person who arrives in Australia without a visa must be detained, and must remain in detention until they receive a visa or are removed from Australia. In 2004, in the case of *Al-Kateb v Godwin* (2004) 219 CLR 562, the High Court held that a person who is refused a visa, but cannot be removed from Australia because no country can be found that will take him, can be held in administrative detention for the rest of his or her life. The Rudd government has said, however, that it will review all cases where a person has been in detention for more than two years.

On 29 July 2008, the immigration minister, Senator Chris Evans, announced significant changes to the system of immigration detention. It was a profoundly important announcement. It included the following:

The government's seven key immigration values[1] are:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
   a. all unauthorised arrivals, for management of health, identity and security risks to the community;
   b. unlawful non-citizens who present unacceptable risks to the community; and
   c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions;
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).
4. Detention that is indefinite or otherwise arbitrary is not acceptable, and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in IDCs is only to be used as a last resort, and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.

One proposition should be self-evident: indefinite detention – that is, detention for no fixed duration – can never be justified. It seems that, finally, an Australian government has embraced this idea. The Rudd government deserves special credit for the fact that it is turning away from a policy that was introduced by an earlier Labor government. >>

At the time of writing, however, it is not clear how the changes will be implemented; whether by amending the Act, by amending the regulations or by adding new visa categories. The method adopted will determine how effective the changes are, and whether they are sufficiently robust to withstand shifts in the public mood.

While the announcement deserves to be welcomed by everyone who is interested in human rights in Australia, it is taking a long time to see real change where it matters. People are still held in detention for months on end, with no idea how long they will be there; Christmas Island is still used as a detention place of first resort for the small number of boat-people still arriving; the minister's new immigration values were announced five months ago, but there is no trace of them in his use of the discretionary powers to relieve the hardship suffered by people whose permanent residency visas have been cancelled under s501.

Report: can do much better, and must be serious about submitting assignments on time.

Entering Australia

A non-citizen who enters Australia without a visa is liable to be detained. Such people may or may not have identification papers, and they may or may not be seeking asylum.

Those who are not seeking asylum are likely to be returned peremptorily to their country of origin, but may need to be held in detention for a short time while travel arrangements are made.

In rare cases, removing such people may present practical difficulties. In such cases, immigration detention should be limited to one month and the person should be released into the community on conditions equivalent to bail to ensure that they remain available for removal once it becomes a practical possibility. Such conditions would avoid another case like Mr Al-Kateb's.

Those who are seeking asylum are, at present, held until they receive a visa or until they are removed from Australia. The reasons behind this system appears to be either that:

1. applicants for protection will disappear into the community unless detained; or
2. indefinite detention is a deterrent that will warn others not to seek asylum in Australia, except by the 'proper channels'.

Both reasons are flawed. The first because, over the past few decades, a very high percentage of unauthorised arrivals have subsequently been successful in their claim for asylum. There is little or no incentive for genuine refugees to disappear into the community pending processing of their claim for protection. Furthermore, bail works effectively in the criminal justice system to secure the appearance of approximately 95 per cent of criminal accused who, by definition, may have a good reason to avoid appearing in court.

The second reason involves punishing innocent people in order to deter others, which is morally indefensible.

A legitimate purpose for initial detention, however, is to carry out health and security checks. But much depends, in practice, on how long is considered necessary for these checks to be made.

I would propose that mandatory detention on arrival be limited to one month, to enable health and security checks to be performed. That period should be capable of extension by a judge or magistrate if, in a particular case, the court is persuaded that a longer period of detention is justified. The criteria governing the court's discretion could include:

1. the age and sex of the applicant;
2. the applicant's physical and mental health;
3. whether the applicant is accompanied by family members;
4. the applicant's country of origin;
5. whether any person is willing to offer a surety to secure the applicant's continued attendance for processing; and
6. any other factors which the court considers relevant in the particular circumstances.

The period of detention should be extended for no more than three months at a time, and should never extend

beyond 12 months, in keeping with the government's stated principles.

When asylum-seekers are released from detention before their claims for protection are complete, they should be released on conditions calculated to secure their continued availability for processing. Those conditions could include one or more of the following:

1. residence in an open detention centre;
2. residence at an agreed address, with a requirement to give advance notice of any proposed change of address; and
3. reasonable reporting requirements.

By 'open detention centre', I mean a detention centre where residents are free to come and go during the day, but must return each night.

In recent years, asylum-seekers have been held in immigration detention for extended periods – in some cases, up to seven years – before being given a protection visa or humanitarian visa. Given that the circumstances justifying the grant of the visa generally involve trauma or torture, the added anguish of years of uncertainty behind razor wire is simply unconscionable.

Exiting Australia

A non-citizen may be required to leave Australia in the following circumstances:

1. where a visa is cancelled for breach of conditions (typically, student or tourist visas);
2. where a permanent residency visa is cancelled on character grounds (s501 cancellation);
3. where a visa has expired (visa overstayers – typically tourist visas); and
4. others.

In each case, the theory justifying immigration detention is that, while arrangements for departure are made, the person may disappear into the community to avoid removal. That is a legitimate reason, but justifies only a very limited period of detention, since arranging removal should not be unduly time-consuming.

In some cases, notably visa cancellations under s501, people who have lived in Australia for many years and who have Australian families have been held in immigration detention for substantial periods before being removed from Australia. One man presently in immigration detention in Victoria has lived in Australia for nearly 30 years, and has spent the past nine years in immigration detention. His family lives in Perth.

People whose presence in Australia was once authorised by a visa, and who are to be removed because their visa has been cancelled or has expired, should not be held in immigration detention for more than one month under any circumstances. If their removal is problematic, then they should be released back into the community on conditions equivalent to bail, but adjusted to suit the circumstances of the particular case. In appropriate cases, the conditions could include a surety.

In the case of s501 cancellations, in particular, the person should be allowed to live with their family until removal is an immediate practical possibility. The human hardship and misery inflicted on individuals and families in s501 cases can scarcely be overstated.

Court oversight

At present, the *Migration Act* 1958 (Cth) positively forbids courts to order the removal of a person from immigration detention.

Courts should have this power if they are satisfied that, in the particular case, continued detention is unjustified. This would enable courts to balance the humanitarian concerns of prolonged detention against the prudential interests that detention is intended to serve.

Detention costs

Section 209 of the *Migration Act* provides that a person is liable for the cost of their detention. Australia is the only country in the world to charge innocent people the cost of incarcerating them.

A person held in detention for six months will typically owe the Commonwealth something between $30,000 and $40,000. Some people presently living in the Australian community owe more than $200,000 for their detention. It is chilling to recall that time spent in solitary confinement in a detention centre is separately billed at a higher rate, and that the detention bill has GST added to it.

Report: Must do better. Go to the bottom of the class. >>

JUSTICE SYSTEM

The judiciary

We have a skilled and genuinely independent judiciary, despite periodic attempts by politicians to denigrate the courts. Regrettably, attorneys-general, at both state and federal level, appear to have forgotten that one traditional role of their office is to defend the courts, when they are attacked. On a number of occasions in recent years, attorneys-general have remained silent while the press have attacked the courts. Or they have promised various reforms to the law, implicitly embracing the criticism and missing the larger point: public confidence in the judicial system is essential in a well-functioning democracy.

It is interesting to note that, in 1948, the High Court decided the bank nationalisation case against the government's interests. The following year, the Privy Council affirmed the decision. It was a major political reverse, yet the government did not criticise the courts. By contrast, when the Wik decision (*Wik Peoples v State of* Queensland (1996) 187 CLR 1) was handed down in 1996, the government was ferocious in its attack on the High Court.

It is now commonplace to hear public criticism of judges in connection with sentencing decisions in criminal cases. The courts are an easy target for the media in sentencing matters, because the media never report the full scope of material that the judge took into account in determining sentence. Even though sentencing is one of the most obvious and significant areas where judicial discretion is essential, governments regularly react by seeking to circumscribe it by introducing tariffs or simply by embracing public criticism of particular sentencing decisions.

Australian attorneys-general should publicly acknowledge the fact that, with rare exceptions, judges of all courts at all levels act diligently and skilfully in a very demanding job. They are effectively powerless to defend themselves against public criticism. The judicial system is damaged if public confidence in the system is eroded. Ultimately, it is far more important to protect the status of the judicial arm of government than it is to protect the government of the day from a momentary shift in the polls.

Equality before the law depends on a number of factors, one of which is a court system that is allowed to function at full capacity, and which is generally respected by the public. In a number of jurisdictions, courts are disadvantaged by short-staffing, under-resourcing, and a general lack of support from executive government.

All of that said, recent events in Pakistan (where judges of the Supreme Court were sacked and replaced by people considered more friendly to the government) show how lucky Australia is.

Report: Can do much better.

Legal Aid

In Australia today it is not necessarily a blessing to be Aboriginal, a permanent resident with a criminal conviction, a terror suspect or a Gold Coast doctor. But there is another group in our society that can also fairly claim to be victims of injustice. It is not readily defined by a convenient label as the Stolen Generations can be. They are those desperate people with valid legal rights to protect or enforce, but who abandon or compromise those rights because they cannot afford to go to lawyers and are not eligible for legal aid. It is a very large group.

In June 2004, the Senate Legal and Constitutional References Committee delivered its report on legal aid and access to justice. It is a lengthy report. In summary, it found that legal aid funding was inadequate to meet the need, that community legal centres (CLCs) were inadequately funded and that, as a result, there was serious injustice to vulnerable groups and an undesirably high number of unrepresented litigants. The principal findings include the following:

- the Commonwealth Priorities and Guidelines deny adequate assistance in family and civil matters;
- there is gender disparity in the distribution of legal aid funds in practice, resulting in indirect but significant discrimination against the circumstances and needs of women in their access to justice;
- there must be adequate funding of legal assistance for actions taken under state/territory law involving domestic violence;
- where violence has taken place, legal representation is needed to ensure that women can participate effectively in the legal system;
- there are overwhelming deficiencies in the legal aid system as it relates to Indigenous people in Australia;
- gaps in the legal aid system are greatly magnified in regional, rural and remote areas;
- guidelines introduced in 1997 have resulted in a reduction of available legal assistance for migrants and refugees, who are among the most disadvantaged groups in terms of access to justice;
- improving access to justice is essential to breaking the cycle that leads to homelessness and poverty; and
- pro bono legal help is not a substitute for an adequately funded legal aid system.

These are very serious findings. In practice, grants of legal aid are tailored to fit the available, inevitably inadequate, funding. We need a system that is funded to meet the demand, rather than a system trimmed to fit the budget. Legal aid funding needs to be increased to three or four times its present level. A substantial increase in legal aid funding would solve many problems for many people, and would generate a massive return in the form of increased confidence in the legal system.

A significant amount of important legal work is done, very inexpensively, by CLCs. CLCs are independent, non-profit organisations that provide legal help to more than 350,000 people each year. They do not charge for their work. There are more than 200 CLCs in Australia, ranging in size from centres with no paid staff to centres with up to a dozen employees. In recent years, the federal government has reduced the funding to CLCs and, during its last couple of years in office, the Howard government threatened to reduce funding further. >>

The people who receive legal help from CLCs are generally the most disadvantaged in our society. The Senate inquiry report included a finding that CLCs should be properly funded to enable them to provide services that can respond to community need. The report said that the difficulties CLCs are experiencing were unacceptable and were a direct result of inadequate levels of funding and increased demand on CLCs, caused by restricted legal aid funding.

The practical result of the present system is that only the very rich and the very poor are able to secure adequate representation in court in criminal matters and in some family law matters. And the rest? They represent themselves or abandon their rights. The results are not good for either the courts or the litigants. A great deal of court time is wasted as judges and magistrates try to explain the procedure to self-represented litigants. Many such cases go on appeal, because they miscarried at first instance. Many litigants walk away from their encounter with the legal system feeling bruised, cheated or betrayed; feeling that they have not had justice. The dismal truth is that their perception is too often justified by the facts. Funding for legal aid and CLCs needs to be greatly increased.

Report: Can do much better.

ANTI-TERRORISM LEGISLATION

Along with much of the western world, Australia has introduced harsh measures ostensibly to deal with the risk of terrorism. The objective reason for that perceived risk was the attack on America on 11 September 2001; the bombing in Bali on 12 October 2002; the train bombing in Madrid on 11 March 2004 and the bombing in London on 7 July 2005. Dreadful though these events were, they were not unprecedented. The 20th century is littered with examples of terrorist events, including numerous bombings and other attacks in Britain by the IRA, numerous attacks and assassinations in Continental Europe by the Red Brigade, the Baader-Meinhoff gang and the murder of Israeli sportsmen and women at the Munich Olympic Games in 1972.

For reasons that are not immediately obvious, the attack on America on 11 September 2001 induced a state of moral panic that has been encouraged and exploited by Western governments to justify increasingly harsh measures. While this is not the occasion to discuss American conduct (and Australian complacency) in relation to Guantanamo Bay, it is difficult to imagine that such an institution would have been tolerated uncritically 10 or 20 years ago. In Australia, it took the public and the government five years before they began to consider that the detention without trial of David Hicks at Guantanamo Bay might be problematic.

Exploiting the climate of fear that made Guantanamo Bay thinkable, the Australian government introduced (with bipartisan support) a number of security measures that seriously interfere with fundamental liberties.

In 2002, the ASIO legislation was amended to permit the incommunicado detention, for a week at a time, of people not suspected of any wrongdoing: it is enough if they are thought to have information about others who may be involved in past or potential terrorist offences. The person may be taken into isolated custody, and will not have a free choice of legal help; they will not be permitted to tell friends or family where they are; they must answer questions, or face five years' imprisonment.

In 2005, the Commonwealth Criminal Code was amended to authorise control orders and preventative detention orders. A control order can include an order confining a person to a single address for up to 12 months, without access to telephone or the internet. When the subject of the control order is served with the order, they are to be given a summary of the grounds on which the order was made, but not the evidence.

A preventative detention order will result in a person being jailed for up to 14 days in circumstances where they have not been charged with, much less convicted of, any offence. The order is obtained in the absence of the person subject to it, and authorises them to be taken into custody. Once in custody, they are not to be told the evidence on which the order was obtained, but merely a summary of the grounds on which the order was made.

In the case of preventative detention orders and control orders, a person's basic liberties are summarily curtailed as the result of a secret hearing on secret evidence. While both types of order can be subjected to judicial review, challenging an order made in secret is very difficult when a subject of the order is not able to know the evidence that was relied on. So, if evidence is mistaken – for example, if it relates to a different person altogether, or if it has been misinterpreted – then the error that leads to the order will never be exposed. Furthermore, judicial review of orders of this sort faces a further difficulty, arising from the *National Security Information (Criminal and Civil Proceedings) Act* 2004 (the NSI Act).

The NSI Act is one of the most alarming pieces of legislation ever passed by an Australian Parliament in a time of peace. As originally passed, it was confined in operation to criminal proceedings. In early 2005, it was amended so as to extend to civil proceedings as well. It provides that if a party to any proceeding knows or believes that they will disclose in the proceeding information that relates to national security, or if they intend to call a witness who would, by their presence in court or by the evidence they could give, disclose information that relates to national security, then the party must notify the Commonwealth attorney-general of the fact. The party must also notify the opposite party and the court. The court is then required to adjourn the proceeding until the attorney-general acts on the matter. The attorney-general can sign a conclusive certificate to the effect that the evidence proposed to be called, or the proposed calling of the witness, would be likely to prejudice Australia's national security interests.

The certificate must then be provided to the court and the court must hold a hearing to decide whether or not to make an order preventing the evidence from being called or the witness from being brought to court. During that hearing the court must be closed. The Act authorises the court to exclude both the relevant party and his or her counsel from the closed hearing in which the question will be decided.

In deciding the balance between the interests of a fair trial and the national security interests, the statute directs the court to give the greatest weight to the attorney-general's certificate that the evidence will present a risk of prejudice to national security.

These provisions are immediately alarming to anyone who understands the essential elements of a fair trial. They are all the more alarming when the real breadth of the provisions is understood. Their breadth comes, in part, from the definition of national security, which means: 'Australia's defence, security, international relations or law enforcement interests.'

The apparently uncontroversial definition of national security is rendered astonishingly broad by the definition of 'law enforcement interests'. That expression is defined as including interests in:

1. avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence;
2. protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence;
3. the protection and safety of informants and of persons associated with informants; and
4. ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.

By reference to this definition, Australia's national security is affected by each of the following things:

1. evidence that a CIA operative extracted a confession by use of torture;
2. any evidence that tended to reveal operational details of the CIA, Interpol, the FBI, the Australian Federal Police, the Egyptian Police, the American authorities at Guantanamo Bay, etc; and
3. evidence which tended to show the use of torture or other inhumane interrogation techniques by any law enforcement agency.

Other provisions make it possible for relevant evidence to be concealed from the litigant most vitally interested in it.

An adverse security assessment from ASIO can result in a person's passport being cancelled, or their job application being refused, or (for foreign visitors) a visa being refused or cancelled, or an Australian passport being cancelled.

Cancellation of a passport may be challenged in the Administrative Appeals Tribunal. The *Administrative Appeals Tribunal Act* 1975 (Cth) contains provisions enabling the attorney-general to grant a certificate that effectively prevents the applicant and their lawyer from being present in the Tribunal while certain evidence is given and submissions are made on behalf of the government. Here is the text of one such certificate, issued early in 2006:

> 'I, Philip Maxwell Ruddock, the Attorney-General for the Commonwealth of Australia ... hereby certify ... that disclosure of the contents of the documents ... described in the schedules hereto, ... would be contrary to the public interest because the disclosure would prejudice security.
>
> I further certify ... that evidence proposed to be adduced and submissions proposed to be made .... concerning the documents ... are of such a nature that the disclosure of the evidence or submissions would be contrary to the public interest because it would prejudice security.
>
> As the responsible Minister ... I do not consent to a person representing the applicant being present when evidence described ... above is adduced and such submissions are made ...'

By this certificate, the attorney-general produces the conditions that led to the wrongful conviction of Alfred Dreyfus in 1894. The applicant who seeks to have his passport restored will face an impossible burden in knowing what evidence must be called, because neither he nor his counsel will be allowed to know the nature of the case against him.

The provisions I have been discussing were passed by the parliament with bi-partisan support, and with no real consideration of the potential human rights violations they present. It may be that a rational assesment of the threat of terrorism justifies them. I doubt it, but it is possible. Unfortunately, they were passed into law without any attempt to show that the diminution of human rights they entail was proportionate to the risks at which they are directed.

Fair trials are one of the basic promises of democracy. We have abandoned the guarantee of fair trials, ostensibly to help save democracy from terrorists. What we will achieve, >>

in fact, by these measures is a growing concern that the real danger to democracy is posed by our own government.

Report: Can do much better.

STOLEN GENERATIONS

On 13 February 2008, Australians took a step of great symbolic significance in reconciliation with the Indigenous people of this country. At the first sitting of the new Parliament, the prime minister apologised to members of the Stolen Generations and their families. The apology resonated throughout the nation in a way which no one could have predicted.

13 February 2008 will be remembered as a day the nation shifted, perceptibly. The apology was significant not only for marking a significant step in the process of reconciling ourselves with our past: it cast a new light on the former government. It set a new tone. And I think it reminded us of something we had lost: a sense of decency.

However, the prime minister announced in advance of the apology that the Commonwealth would not offer compensation to surviving members of the Stolen Generations. That is a matter of great regret.

In *Trevorrow v South Australia* (No. 5) [2007] SASC 285, the only case in which a member of the Stolen Generations has successfully sued a government, Gray J said:

> '[885] I find that it was reasonably foreseeable that the separation of a 13-month-old Aboriginal child from his natural mother and family and the placement of that child in a non-indigenous family for long-term fostering created real risks to the child's health. The State through its emanations, departments and departmental officers either foresaw these risks or ought to have foreseen these risks. ...'

That finding also accords not only with commonsense, but was based on extensive evidence concerning the work of John Bowlby in the early 1950s, which showed that it is intrinsically harmful to remove a child from his or her parents, in particular when this occurs after nine months of age.

The prime minister's apology makes no difference whatever to whether or not governments face legal liability for removing Aboriginal children. But it acknowledges for the first time that a great moral wrong was done, and it acknowledges the damage caused. The most elementary instinct for justice tells us that when harm is inflicted by acts that are morally wrong, then there is a moral, if not a legal, responsibility to answer for the damage caused. To acknowledge the wrong and the damage and to deny compensation is simply unjust.

What is needed is a national compensation scheme, run by the states, territories and the Commonwealth in co-operation. The scheme I advocate would allow people to register their claim to be members of the Stolen Generations. If that claim was, on its face, correct, then they would be entitled to receive copies of all relevant government records. A panel would then assess which of the following categories best describe the claimant:

1. removed for demonstrably good welfare reasons;
2. removed with the informed consent of the parents;
3. removed without welfare justification but survived and flourished; and
4. removed without welfare justification but did not flourish.

The first and second categories might receive nominal or no compensation. The third category should receive modest compensation, say $5,000-$25,000, depending on the circumstances. The fourth category should receive substantial compensation, between say $25,000-$75,000, depending on the circumstances.

The process should be simple, co-operative, lawyer-free and should run in a way that is consistent with its benevolent objectives.

If only the governments of Australia could see their way clear to implementing a scheme like this, the original owners of this land would receive real justice in compensation for one of the most wretched chapters in our history.

Report: Making progress, but can do better.

PROTECTION OF RIGHTS

The ACT and Victoria have introduced statutory schemes[2] for the protection of human rights. This is a welcome development. No adverse effects have been noted. Western Australia recently held a public consultation but resolved not to introduce a bill of rights.

The federal government has announced that it proposes to hold a public inquiry into the desirability of a bill or charter of rights. The adoption of a statutory scheme of rights protection was recommended by the governance stream of the 2020 Summit in April this year.

This year notes the 60th anniversary of the Universal Declaration of Human Rights (UDHR). It was the direct result of one of the greatest terrorist threats of the 20th century: the Nazi regime in Germany. The UDHR recognised that 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'. Australia has been very slow to approach the task of protecting human rights by the rule of law. Perhaps this year will mark a change.

Report: A slow learner, but with signs of promise.

OVERALL ASSESSMENT

Australia needs to try harder. It has natural advantages and is quite a bright student. It is too prone to fighting in class, and sometimes does not pay attention. It is capable of better results. It can do much better if it tries. ■

Notes: **1** Senator Evans' speech at the Centre for International and Public Law, Australian National University, 29 July 2008. **2** *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act* 2006 (Vic).

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