

APPENDIX 6

Opinion

ASIO raids risk eroding our trust in justice

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The lack of judicial oversight is cause for real concern.

A YOUNG Muslim entrepreneur in the United States is selling T-shirts online that say: "My name causes national security alerts. What does yours do?" Light-hearted, perhaps. But it emphasises the legitimate anxieties of many Muslims in the post-September 11 West: that security agencies may be targeting them on the basis of little or no evidence, and with impunity.

Those insecurities may have freshened in some Australian Muslims after ASIO raids in Melbourne and Sydney this past week, but they are not new. More seminal were the raids of

October 2002. What concerned many on that occasion was not the idea that Muslims who are actually guilty of a crime might be raided, but rather the seemingly unnecessary force with which the raids were executed. Mental images of children being held at gunpoint in a particular raid, from which no arrests resulted, die hard. Suspicion of the authorities was not entirely unreasonable.

At least the recent raids seem to have been carried out relatively peacefully and without terrorising children. But it is still a little unsettling to hear Attorney-General Philip Ruddock admit they are unlikely to lead to any arrests because there is insufficient evidence to support a charge. And it is even more disturbing to read in *The Age* on Tuesday comments of "a senior federal source" admitting these raids were essentially a deterrent, or as that source put it, "rattling the

cages". Is ASIO really raiding people to scare them? Of course, police could not do that. They require more solid foundations to obtain a warrant. That is not true of ASIO, and given ASIO's specialised role as a security and intelligence organisation, perhaps that is appropriate. But even so, it highlights the extensive powers ASIO has, and demonstrates the importance of having safeguards against their abuse.

In that context, we should all be concerned about the intense secrecy with which ASIO can exercise its most draconian powers. Once ASIO questions or detains a person (for up to seven days without charge), there is no effective mechanism for independent scrutiny. Warrants are issued by the minister, not a judge, and because no one, other than ASIO or the Government, may talk to anyone about these operations for two years, none will know about

even extreme abuses of power until it is too late. There can therefore be no meaningful public scrutiny.

There is not even any judicial oversight to keep ASIO in check. Any oversight is left to a retired judge with little meaningful power. If these arrangements give Australian citizens any rights, those rights are merely rhetorical.

Ruddock assures us these draconian powers were not used in these latest raids. He says that only search warrants were issued, and that because the strictest secrecy provisions apply only to detention and questioning, the people raided are free to talk. I believe Ruddock is telling the truth. But the problem is that if he isn't, we would have no way of knowing. No one would be free to rebut him, and he could always maintain that the people concerned simply decided against saying anything. Conveniently, Rud-

dock can be proven truthful, but not untruthful.

This leaves Australians with nothing for security other than trust for the Government and its organs. We are left utterly reliant on the integrity of the individuals in power. That is quintessentially antithetical to democratic principles, which focus on governmental accountability. Safeguards against abuses of power must be intrinsic to the legislative design. Good laws protect citizens, even from bad governments.

Currently a joint parliamentary committee is reviewing the most draconian of ASIO's powers and the secrecy surrounding them. Islamic and legal groups have made submissions indicating the fear and mistrust this legislation has created in the Muslim community. Staggeringly, the committee seemed genuinely surprised to hear it. But surely when you give a secret organis-

ation extreme, coercive powers with no effective mechanism for independent scrutiny, it should be obvious that Muslims are fearful for their civil rights. Indeed, shouldn't that concern be shared by all Australians?

The mere presence of the secrecy provisions casts an unnecessary shadow of mistrust over ASIO's operations. I may not think this Government, or ASIO, are sinister. I may not believe Muslims are being targeted simply for being Muslims. But with every raid that passes without arrest, and with every hint of their use as an intimidatory tool, the trust of many may quite naturally erode.

That may be good news for witty online T-shirt salesmen. But it is unhealthy for any genuine democracy.

Melbourne lawyer Waleed Aly is on the executive of the Islamic Council of Victoria.

7 days after Aly's article (today)
Muslims blew up trains in London,
8/7/2005. In the electronic media - T.V. it was reported that these raids, referred to by Aly, was investigating the filming of Flinders & Spencer street railway stations in Melbourne.

Re: Liberty & the people.

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