

2010

# Countering Home-Grown Terrorists in Australia: An Overview of Legislation, Policy and Actors Since 2001

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Originally published in the Proceedings of the 1st Australian Counter Terrorism Conference, Edith Cowan University, Perth Western Australia, 30th November 2010

This Conference Proceeding is posted at Research Online.

<http://ro.ecu.edu.au/act/7>

## Countering Home-Grown Terrorists in Australia: An Overview of Legislation, Policy and Actors Since 2001

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### Abstract

*This article explores the impact of counter-terrorism legislation and policy in Australia. In particular it explores how legislation facilitated prosecution and conviction of persons involved in home-grown terrorism, including analysis of investigation and prosecution policy surrounding the ul-Haque and Haneef cases. Particular attention is given to the terrorism trials involving Benbrika & Ors and Elomar & Ors. What makes these trials intriguing is the fact that most of those convicted could be more easily described as more vulnerable than menacing. Sentencing of those convicted was cognate with no policies for rehabilitation. The small number of convictions under the legislation when considered against the increased funding of counter-terrorism, loss of traditional rights and privileges and Australia's involvement in Afghanistan and Iraq raises issues about adequate policy setting in this area.*

### Keywords

Attempt offences, counter-terrorism legislation, Benbrika, Elomar, sentencing terrorism, terrorists.

### INTRODUCTION

Following the events of 11 September 2001, the Australian Government moved swiftly to legislate to counter potential terrorist acts within Australia. To date there have been more than 40 pieces of legislation that relate directly or indirectly to terrorism. The aim and purpose of terrorism legislation are twofold: to act as a deterrent and to prevent future terrorist acts. This legislation formed an important component of counter-terrorism policy because it not only focused on preventing a terrorist act taking place, but convicted terrorists were to be severely punished. The disjunction between the traditional criminal law principles of attempt offences and modern counter-terrorism legislation becomes obvious in the *Benbrika* and *Elomar* trials where no terrorist act occurred. This lack of a completed terrorist act is a consistent fact in the conduct of all 21 persons convicted in Australia since 2001. Furthermore, a consideration of the background and relationships of the respective accused in these two criminal trials provide insights into radicalism and motive. What is important for those involved in combating potential terrorists within Australia is the nature of the evidence that underpinned these two convictions and the lack of policy on combating radicalisation of vulnerable persons. This is particularly important as there is a growing concern supported by research that demonstrates an increase in home-grown terrorism (Porter & Kebell, 2010).

### BACKGROUND

The counter-terrorism legislation should not be viewed in isolation. It represents a component of counter-terrorism policy that includes international obligations<sup>i</sup>, international treaties<sup>ii</sup>, international<sup>iii</sup> and domestic co-operation<sup>iv</sup>, wide reaching legislation<sup>v</sup>, policy revision<sup>vi</sup> and significant domestic expenditure. The Australian Government has increased defence spending some 59% since 2001 to \$21.8 billion (Michaelson, 2010, 24). Michaelson further notes:

More than \$16 billion have been spent in extra defence, counter-terrorism and foreign aid by 2010-11. Over the same period, ASIO's budget has increased by 655%, the Australian Federal Police (AFP) budget by 161percent, ASIS by 236 percent and the Office of National Assessments by 441 percent. Most recently, the Government has announced a \$200 billion package of aviation security measures to better protect our air transport system from terrorist attack, And the White Paper provides \$69 million for introducing biometric-based visa systems to reduce the risk of terrorists, criminals and other persons of concern entering Australia undetected. (Michaelson, 2010, 24)

The policy support for counter-terrorism legislation and expenditure has been aided by the killing of 100 Australians in overseas terrorist attacks and Australian soldiers have been killed and injured fighting in Afghanistan and Iraq. These events maintain the on-going perceived risk of terrorism to Australians abroad and by implication at home.

## LEGISLATION

The Commonwealth of Australia has created a single set of terrorism offences under the Section 100 of the *Criminal Code Act 1995 (Criminal Code)*. The objective was to create offences:

Designed to prevent, discourage and punish behaviour which falls within a wide range of human activity, and which is commonly described as terrorism: broadly, the use of violence or a threat of violence in pursuit of some political, ideological or religious cause. (*Criminal Code*, s.100)

Furthermore, anti-terrorism legislation defines a terrorist act widely, encompassing industrial and political dissent.<sup>vii</sup> In 2005 these powers were extended to include organisations that advocate the doing of a terrorist act.<sup>viii</sup> The key provision in the *Criminal Code* is:

### Division 101 -- Terrorism

#### 101.1 Terrorist acts

(1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life...

#### 101.2 Providing or receiving training connected with terrorist acts

(1)...

(2)...

(3) A person commits an offence under this section even if:

(a) a terrorist act does not occur; or

(b) the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

(c) the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act...<sup>ix</sup>

The policy imperatives were allowing an early opportunity at which the facts can be submitted establishing a prima facie case and providing cogent punishment of persons convicted of terrorism offences. For the former point this represents a winding back of the traditional law on attempt offences. Traditionally, the common law viewed attempt offences as unfinished offences and distinguished between acts that were preparatory and acts that were sufficient to amount to attempt (Bronitt & McSherry, 2005). In other words, for an accused to commit an offence it had to be proved that an accused intended to commit a crime by engaging in conduct that is more than preparatory such that the acts must be proximate (not remote) from the completed act (Bronitt & McSherry, 2005). This amounts to an extension of criminal liability from what an accused did to what an accused tried to do; or under Division 101 of the *Criminal Code* above what an accused may have contemplated. The result is that the authorities can arrest well before completion of the anticipated crime. Historically, this has led to appeal cases determining how far police can throw their net in attempting to prevent crime.<sup>x</sup> However, this does appear to be the case with terrorism appeals in Australia. The policy underpinning this legislation is to allow authorities to act well before any damage is done or even a target is chosen so as to limit potential death or injury to civilians.

In addition, the Australian Government can now classify an organisation as a terrorist organisation. This means that its members may have, by being members of a proscribed organisation, committed an offence (*Criminal Code*, s. 102 1). Furthermore, federal legislation has tossed aside traditional common law rights such as a right to silence, unrestricted access to a lawyer of choice and freedom of speech (*Australian Security Intelligence Organisation Act 1979 (Cth) ss.34G, 34TA and 34NVAA*).

## INVESTIGATION AND PROSECUTION

Whereas the investigation and prosecution of those involved in terrorism offences as in the *Benbrika* and *Elomar* trials were largely uneventful that has not always been the case with terrorism investigations and prosecutions since 2001. Two examples stand out. The first is the failed prosecution of Izhar ul-Haque which raised serious concerns about the conduct of Australian Federal Police (AFP) officers and Australian Security Intelligence Officers (ASIO) cumulating in *The Street Review – A Review of Interoperability between the AFP and its National Security Partners (Street Report)*. The report noted that the prosecution failed,

...when evidence essential to the Crown's case was ruled inadmissible in pre-trial hearings. NSW Supreme Court Justice Michael Adams was highly critical of the manner in which the AFP and ASIO had dealt with the suspect, and it was on these grounds that he determined critical evidence inadmissible. (Street Report, 1.5 [1])

Justice Adams in *Izar ul-Haque* noted, amongst other criticisms:

The precise boundaries of the term “oppressive...conduct” are uncertain. Some assistance is afforded by the other conduct mentioned in para 84(1)(a). For the purposes of this case, however, it is not necessary to approach the boundaries of the term. In my view, the conduct of ASIO, in particular by officers B15 and B16, was well within the meaning of the phrase. In substance, they assumed unlawful powers of direction, control and detention. It was a gross interference by the agents of the state with the accused’s legal rights as a citizen, rights which he still has whether he be suspected of criminal conduct or not and whether he is a Muslim or not. Furthermore, the conduct was deliberately engaged in for the purpose of overbearing the accused in the hope that he would co-operate. It involved using a part of his parents’ home to hold him incommunicado for the purposes of an interview under cover of a warrant which the officers knew well did not justify any such conduct but which I think they rightly believed neither the accused nor his family understood. Whatever “oppressive” means for the purposes of [s84](#), I do not doubt that the conduct of the ASIO officers falls well within it (*R v Izar ul-Haque*, [95]).

And later:

The evidence of the ASIO conduct, considered alone, would be sufficient to establish oppressive conduct within the section. But the oppression was continued, in my view, by the conduct of the AFP. Mr Gordge’s presence at the interviews was a clear signal to the accused of the inextricable link between ASIO and the AFP and an implicit reminder that he should not depart from anything already said. The conversations with him at the end of the interview on 7 November and when he came to AFP headquarters on 10 November continued the thrust of the message communicated by ASIO at the first meeting: co-operate or else. (*R v Izar ul-Haque*, [98])

It needs to be remembered that those investigating potential terrorism offences have wider powers than in investigating other criminal offences. To start with the terrorism provisions are drafted widely picking up persons who not only commit a terrorist act but do anything that can be linked to a potential terrorist act. The latter gives a wide subjective discretion to authorities. Combined with this discretion are powers requiring compliance<sup>xi</sup>, production of documents and information<sup>xii</sup> and silencing of persons questioned about terrorism matters or being investigated about terrorism matters<sup>xiii</sup>. On two occasions the checks and balances that are supposed to protect citizens from unwarranted prosecution have failed. Damian Bugg AM QC, former Commonwealth Director of Public Prosecutions (CDPP) in a press release dated 12 October 2007 noted in regard to the failure of the CDPP to follow policy in the Dr Haneef prosecution:

The Prosecution Policy of the Commonwealth provides that there be a prima facie case with reasonable prospects of conviction for a prosecution to be instituted or continued. The DPP’S role is to provide advice on whether the evidence establishes reasonable prospects of conviction in accordance with that policy.

The advice given in this case did not address that test.<sup>xiv</sup>

His successor Christopher Craigie SC has nonetheless in a Directors speech on 12 November 2009 at the Heads of Prosecutions Agencies of the Commonwealth (HOPAC) conference affirmed CDPP compliance with government policy directions:

...the *Prosecution Policy of the Commonwealth* commences by recognising that not all suspected criminal offences must automatically be subject of prosecution...The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution...a decision whether or not to prosecute must clearly not be influenced by:

- a. The race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved...
- b. ...
- c. Possible political advantage or disadvantage to the Government or any political group or party or...<sup>xv</sup>.

While not seemingly involved in the initial issues surrounding the questioning and detention of Izhar ul-Haque, it would be fascinating to hear what the CDPP’s advice was upon receiving the AFP brief especially as there were several attempts to bring the matter before the High Court of Australia on an extraterritoriality issue. In essence, challenging the constitutional validity of proscribing the conduct of Australian citizens overseas for conduct unconnected with Australia (Nolan, 2008, 175-90). The *Street Review* recommended greater co-operation between CDPP, ASIO and AFP. However, Nolan doubts whether greater interoperability and information sharing will “remedy the problematic investigative methods as exposed by Justice Adams” (Nolan, 2008, 183). Furthermore and

also noted in Nolan's article, the *Street Report* noted at 6:

1.6 The outcome of the ul-Haque matter has demonstrated that the preconditions to criminal prosecution need to be taken into consideration by all of Australia's national security agencies in the conduct of their operations if the full range of preventative measures, including prosecution, is to remain available to combat terrorism.

Of some concern for policy makers is the not unsurprising difference of opinion on some issues involving the behaviour of ASIO agents towards ul-Haque between Justice Adams in the Supreme Court of New South Wales and Ian Carnell, Inspector-General of Intelligence and Security in regard to trespass, coercive interviewing, kidnapping and false imprisonment of ul-Haque (Nolan, 2008, 187). While Justice Adams was concerned with legal rights and the law, Ian Carnell claimed national security imperatives in the war on terror (Nolan, 2008, 187).<sup>xvi</sup>

Furthermore, there is a structural problem arising from different statutory authorities combating terrorism. This was identified in the *Street Report* at 6:

1.8 The Committee recognises that ASIO and the AFP have different statutory mandates. Both agencies, and State and Territory police jurisdictions, have a clear mandate to prevent terrorist activity. In responding to potential national security threats the ASIO mandate is broadly focused, whereas the AFP and its state and territory counterparts are generally focused on the demands of criminal investigations and potential prosecutions. It is critical that effective and accountable processes exist to reconcile any overlaps or conflicts in organisational mandates and priorities.

## IMPLICATIONS

Another way to review the success or otherwise of counter-terrorism policy and legislation is to consider who has been convicted. In Victoria in 2009 and NSW in 2010 two large criminal trials concluded with those convicted receiving lengthy sentences of imprisonment. Overall, some 22 men were accused of various terrorism related offences.

In the Victorian matter - *Benbrika & Ors* 13 men were accused of offences against Part 5.3 of the Commonwealth Criminal Code in December 2006. One, Izzydeen Atik pleaded guilty in July 2007 and the other 12 went to trial commencing in February 2008. On 15 and 16 September 2008 seven were convicted of knowingly being members of a terrorist organisation and some of other offences. Four were acquitted and in one case the jury could not reach a verdict.

The prosecution needed to convince a jury that each of the accused was a member of a terrorist organisation together were planning to commit a terrorist act. The evidence consisted of:

- Attendance at religious classes,
- Talk of being involved in violent jihad,
- The existence of a jemaah to hold money for the group members,
- 482 intercepted telephone conversations,
- Inconclusive evidence of trips away to training camps,
- Stealing a car to fund the groups activities,
- Internet access to websites - beheading of hostages – jihadi literature – terrorist handbooks...including for example in Haddara's computer two copies of a publication called 'AL-Battar Bimonthly Publication No 22' – a military or quasi-military training guide or manual – found in two files, a Word document file and a PDF file called '22.doc' and '22.pdf' respectively – in zip archive file, '10.11.04 b22.zip' – in 'Other/' – at end of a chain of limbs directed to Haddara's business.<sup>xvii</sup>

The final evidence related to Benbrika's activities with an undercover policeman who demonstrated the use of explosives. There was no evidence that other members of Benbrika's group knew or were involved in these activities. It should also be noted that internet access by one member of the group may have little or no significance on the criminality of other members. However, if there is regular contact between group members who among other things share internet derived materials these materials assume greater significance if they relate to terrorism. Courts are also careful to distinguish 'benign' material, for example; Arab language classes and American movies from images extolling the virtues of 11 September 2001, images of Osama bin Laden and/or praising his activities in relation to warfare, extremely gruesome images including beheadings and executions of foreign prisoners. (*R v Mulahalilovic* [2009] [16 – 17].

Table 1, The Benbrika Men, sets out background data and resultant sentences for those convicted in *Benbrika & Ors*. Of particular interest is the age difference between Benbrika and the followers. The educational background and resultant qualifications are mediocre for the followers. Furthermore several of the followers have suffered a family crisis in the years leading up to arrest.

name	age at sentence	born	Married/ children	education	Prior character	Penalty Max/sent/non- parole (yrs/mths) Add 1184 days of Pre-trial custody
Benbrika	48 Religion after arriving here – religious advisor	1941 - Algiers - 1989 - Australia	Yes/7	Aviation engineer – religious leader here	good	25/15/12
Aimen Joud	24	1984	no	Did not finish school – supervisor fathers blding bus.	good good references	25/8/7.6
Fadl Sayadi	28	Lebanon 1983 - here	Yes/no	Left yr 10	minor priors good references	25/8/6
Abdullah Merhi	23	Melbourne	Yes/1	Left yr 11 – completing electrical apprentice ship	good good references	10/6/4.6
Ahmed Raad	25 Death of brother – religion - Benbrika	Australia	Yes/1	Left yr 11 unsuccessful TAFE	good good references	25/8/7.6
Ezzit Raad	26 Death of brother – religion - Benbrika	Australia	Yes/2	electrician	good good references	25/6/5.6
Amer Haddara	29 Mecca 2004 – tour leader 2005	Australia	no	Computer systems Dip – VU	good good references	10/6/4.6

Table 1: The Benbrika Men

In the Benbrika trial and subsequent sentencing hearing none of the accused gave evidence which meant no explanation/justification was given by those convicted of their reasons for being involved with Benbrika. This had a direct impact on sentencing wherein the sentencing judge noted that rehabilitation played little or no part.

What is clear is that motive was clearly inferred from the telephone intercepts. Porter and Kebell (2010, 8) noted that, ‘Benbrika and his group showed later isolation within the Muslim community, breaking away from the local mosque’. This isolation was also noted in a lack of attachment to the wider community with Benbrika covertly recorded saying: ‘...I don’t believe in this country. I don’t believe in this law. Which all this believe, no Allah but Allah, no Allah no other law of. This is the meaning of no Allah but Allah’ (Porter and Kebell, 2010, 8). In terms of group dynamics Benbrika increased the sense of collective identity of the group by use of inclusive first person pronouns (Porter and Kebell, 2010, 9).

In the New South Wales matter, *Elomar & Ors*, nine men were accused of a series of terrorism related offences in late 2005. Shortly before the trial three men pleaded guilty and one was at that stage found to be unfit to plead. He subsequently recovered sufficiently to plead guilty. The remaining five were found guilty by a jury in October 2009 of conspiring to do a terrorist act. The difference between this trial and the *Benbrika* trial is that here the accused were charged with conspiracy to commit a terrorist act. A conspiracy offence requires proof of the existence of an agreement to do an illegal act, here to commit a terrorist act. Because criminal agreements are rarely written, the existence of the agreement is proved by evidence that is termed overt acts.

In *Elomar & Ors* the evidence relied upon was:

- Ammunition,
- Laboratory equipment,
- Training camps,
- Purchase of chemicals,
- Internet derived instructional material and some hard copies about explosives, eavesdropping and gun use,
- Internet derived material of an extremist or fundamentalist matter. With some evidence of hard copies being distributed amongst some members of the group,
- Telephone conversations,
- Fingerprints, and
- Meetings.

The evidence in this matter was more substantial and revealing. Although there was no target, the evidence was more consistent with what would be expected of a terrorist group planning to carry out a terrorist act. The dynamics of the Elomar group are also different. Here the ages are collectively higher with less difference between the leader and the followers. The same can be said in regard to qualifications and educational background.

Table 2 below, The Elomar Conspirators, sets out background data on the Elomar group including the sentences handed down following conviction.

name	age	at	born	married/children	education	Prior character	Penalty max/sent/non-parole (yrs/mths)
Mohamed Elomar	44		Lebanon 1977 - Australia	Yes/6	Trade qual – family bus.	good	Life/28/21
Khalid Cheiko	36	Took religion to 20's in	Lebanon	Yes/1	Left yr 11		Life/27/20
Abdul Hasan	40	Culturally isolated	Bangladesh 1990? - Australia	Yes (convert)/4	Poor work history – basic English/limited Arabic	good	Life/26/19.6
Moustata Cheikho	32	1995 – religion - Influence of Khalid Cheiko	Australia - Attended LeT training camp Pakistan	Yes/1	Did not finish mechanics trade – gun licence till ASIO..	good	Life/26/19.6
Mohammed Jamal	26	Drugs/OH at school – religion via brother	Australia	No – male family cannot visit him	Yr 10 & computer skills	good	Life/23/17.3

Table 2: The Elomar Conspirators

As in the *Benbrika Case*, in *Elomar & Ors* none of the accused gave evidence at trial or during sentencing proceedings. Motive was derived primarily from intercepted telephone recordings. In regard to motive Justice Whealy noted:

First, each was driven by the concept that the world was, in essence, divided between those who adhered strictly and fundamentally to a rigid concept of the Muslim faith, indeed, a medieval view of it, and to those who did not, Secondly, each was driven by the conviction that Islam throughout the world was under attack, particularly at the hands of the United States and its allies. In this context, Australia was plainly included. Thirdly, each offender was convinced that his obligation as a devout Muslim was to come to the defence of Islam and other Muslims overseas. Fourthly, it was the duty of each individual offender, indeed a religious obligation, to respond to the worldwide situation by preparing for violent jihad in this country, here in Australia (*R v Elomar & Ors*, 2010, [56])

However, while there was evidence of members in both groups taking on roles both groups were poor role models for future groups considering how to successfully commit a terrorist act. While the evidence demonstrates the *Elomar* group were more advanced in preparation, having ammunition and bomb-making materials, their efforts were described by counsel representing one terrorist on sentencing as; "...they were amateurish and ineffective. Thirdly, it was argued that the offender's (Touma's) cognitive and other skills were lessened to a degree by the limit of his intellectual capacity..."(*R v Touma* [2008] NSWSC 1475 (24 October 2008) [105]). The lack of skills demonstrated by these individuals was recognised with Justice Bongiorno who also sounded a warning:

Overseas experience of terrorist activity with which we are all unfortunately now effective operatives...terrorist acts ... in modern times are often carried out by amateurs... (*R v Benbrika & Ors* [67]).

## CONCLUSION

The fact that the Benbrika men and Elomar conspirators are Muslim, alone with the just about all of those convicted as terrorists in Australia might suggest Muslims are a threat to the Australian community. This is not supported by Australian Government statistics that indicate that less than two percent of the Australian population is Muslim. But more importantly, they have widespread origins coming from Turkey, Lebanon, Bosnia, Kosovo, Herzegovina, Afghanistan, Pakistan, Bangladesh, Iraq, Indonesia, Somalia and the Sudan for a start. Historically, not all these populations have friendly histories. Furthermore, with Christians, not all Muslims practice their faith.

If lack of successful terrorist attacks on Australian soil is used as a guide than counter-terrorism legislation and policy have been successful. However, the problems in the *Haneef* and *ul-Haque* matters combined with the overt radicalisation of those involved in the *Benbrika* and *Elomar* matters suggest underlying problems with our legislation and policy. For example, the different mandates applying to statutory authorities involved in counter-terrorism (*Street Report*).

Because the background, community involvement and motives of home-grown terrorists who have been convicted are difficult to detect beyond possible religious fervour, a concerted policy of counter-terrorism counter-radicalisation is needed if the potential risk to the Australian community is going to be effectively reduced. Legislation is not a shield and policy makers need to accept its use as a blunt weapon of deterrent and punishment is more akin to the underlying attitudes of terrorists rather those traditionally associated with a democratic state. What is needed is targeted education and counter-radicalisation policies that can provide an in-built resilience akin to a shield against potential home-grown terrorist attacks.

## Notes

<sup>i</sup> For example, following the events of 11 September 2001, the United Nations Security Council issued Resolution 1373 that included: 'all States shall...prevent and suppress the financing of terrorist acts ... providing any form of support, active or passive, to entities or persons involved in terrorist acts... Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.' Retrieved October 7, 2010 from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>



<sup>ii</sup> For example: *International Convention for the Suppression of Terrorist Bombings*; *International Convention for the Suppression of the Financing of Terrorism* (New York, 9 December 1999, UN Doc.A/Res/54/109 (1999), in force 10 April 2002).

<sup>iii</sup> For example: Australia has signed an international treaty with Europol to facilitate transnational sharing of intelligence and access to crime-specific training and expertise. Europol is the European Union Law Enforcement Intelligence Agency which aims to improve the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of organised crime. Retrieved October 7, 2010 from <http://www.afp.gov.au/policing/international-liaison/europol.aspx>

<sup>iv</sup> For example: **National Counter-Terrorism Arrangements and National Counter-Terrorism Plan. Retrieved October 7, 2010 from** [http://www.ag.gov.au/agd/WWW/NAtionalSecurity.nsf/Page/What\\_Governments\\_are\\_doingNational\\_Counter-Terrorism\\_Arrangements](http://www.ag.gov.au/agd/WWW/NAtionalSecurity.nsf/Page/What_Governments_are_doingNational_Counter-Terrorism_Arrangements)

<sup>v</sup> For example in 2002: *Security Legislation Amendment (Terrorism) Act 2002*, *Suppression of the Financing of Terrorism Act 2002*, *Criminal Code Amendment (Suppression of Terrorist Bombing) Act 2002*, *Border Security legislation Amendment Act 2002*, *Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002*. Retrieved October 7, 2010 from <http://www.austlii.edu.au/legis/cth>

<sup>vi</sup> Australian Government, *Counter-Terrorism White Paper; Securing Australia/Protecting Our Community*, Commonwealth of Australia 2010.

<sup>vii</sup> s.100 *Criminal Code Act 1995* (Cth).

<sup>viii</sup> ss.102.1, 102.1(2) *Criminal Code Act 1995* (Cth).

<sup>ix</sup> Retrieved October 7, 2010 from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/cca1995115/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html)

<sup>x</sup> See, for example: *DPP v Stonehouse* [1977] 2 All ER 909 especially Lord Diplock at 916, 919, 920; Lord Solmon at 927 and Lord Edmund-Davis at 934; *Alister v Regina* (1984) 154 CLR 404 and *Knight v Regina* (1992) 175 CLR 495.

<sup>xi</sup> See, for example; s. 201A of Schedule 2 *Cybercrime Act 2001* (Cth) requiring assisting authorities to access computer systems.

<sup>xii</sup> See, for example; *Financial Transactions Reports Act 1988* (Cth) and *Anti-Terrorism Act (No 2) 2005* (Cth)

<sup>xiii</sup> See, for example; s. 34F(8) *Australian Security Intelligence Act 1979* (Cth) which provides for incommunicado detention without notice; and s.104.5(3) *Criminal Code Act 1995* (Cth) concerned with interim control orders which can impose restrictions on communicating or associating with specified individuals; s105.41 *Criminal Code Act 1995* (Cth) concerned with disclosure offences and s.34ZS *Australian Security Intelligence Organisation Act 1979* (Cth) Secrecy relating to warrants and questioning.

<sup>xiv</sup> Retrieved October 7, 2010 from <http://www.cdpp.gov.au/Media/Releases/20071012-Haneef.pdf>

<sup>xv</sup> Retrieved October 7, 2010 from <http://www.cdpp.gov.au/Director/Speeches/20091112cc-Prosecution-Independence> (7/10/2010). The policy can be read in full. Retrieved October 7, 2010 from <http://www.cdpp.gov.au/Publications/ProsecutionPolicy>

<sup>xvi</sup> See also: Justice Adams in *R v ul-Haque* [2007] NSWSC 1251 and Ian Carnell, Inspector-General of Intelligence and Security, Report of Inquiry Into the Actions Taken by ASIO in 2003 in Respect of Mr Izhar ul-Haque and Related Matters (12 November 2008). Retrieved October 13, 2010 from <http://www.igis.gov.au/statements.cfm>

<sup>xvii</sup> Haddara argued no evidence he ever read these materials: (*R v Benbrika & Ors* (Ruling No 28) [2008] VSC 336 (16 June 2008) at [42].

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### **Legislation and International Conventions**

*Anti-Terrorism Act (No 2) 2005 (Cth)*

*Australian Security Intelligence Organisation Act 1979 (Cth)* ss.34G, 34F(8), 34TA, 34NVAA and s.34ZS.

*Criminal Code Act 1995 (Cth)* ss.100, 102.1, 102.1(2), s.104.5(3) , s105.41 Retrieved October 7, 2010 from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/cca1995115/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html)

*Cybercrime Act 2001 (Cth)* s. 201A of Schedule 2

*Financial Transactions Reports Act 1988 (Cth)*

*International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of Terrorism* (New York, 9 December 1999, UN Doc.A/Res/54/109 (1999), in force 10 April 2002).

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