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The year of living very nervously

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Of all the round-ups of the highs and lows during the year just gone, my favourite was the top 10 civil liberty violations of 2006 published on Slate.com and *The Washington Post*. Looking at erosions of liberties in Australia over the year, there are rich pickings.

10. Sedition. This is a favourite of journalists, writers and creative types. Speed was of the essence so the Attorney-General, Philip Ruddock, told a tiny number of wavering backbenchers: pass the law and I'll have it examined later to see if it's fair. The waverers fell for it, the legislation went through and the sedition provisions were referred to the Australian Law Reform Commission, which last July recommended considerable refinements to the criminalisation of speech.

Unsurprisingly, the commission thought it would be fairer for the criminal sanction to apply where it can be proved that someone had intentionally urged violence or the use of force and intended that this would happen. There were other proposals to protect artistic expression, scholarship and commentary. On September 13 Ruddock said he'd give careful consideration to the report. On September 18 he said there wouldn't be any changes to the legislation.

9. Freedom of information. This one is largely the doing of the High Court, which on September 6 found that if a minister issues a "conclusive certificate" under the FoI Act, then that's it - no further correspondence need be entered into. The majority of the court thought that, in deciding not to release government documents it is purely up to the minister what is in the public interest, and the reviewing tribunal should not take it upon itself to decide what other issues might be relevant.

Goodbye FoI. On a related topic, answers to a parliamentary question on notice revealed that between 2002 and 2006 there were 53 referrals from Commonwealth Government departments and agencies to the Australian Federal Police for "unauthorised disclosures of government information".

8. Immigration. The Commonwealth Ombudsman helpfully laid it all out in December. His investigations showed that 10 Australian citizens, including children and the mentally ill, were detained as a result of the "serious administrative deficiencies" of the Department of Immigration. The Shayan Badraie case is worth a special mention. The 11-year-old Iranian refugee boy sued the department for ill-treatment in its detention centres. So traumatic were the events he witnessed at Woomera and Villawood the department thought it best they not be ventilated in public. It settled in March for \$400,000. Meanwhile, what news of the Iraqi Mohammad Faisal, who was one of two detainees left on Nauru after five years of offshore detention as part of the "Pacific solution"? When last heard of he had been sent to a Brisbane hospital because he was suicidal.

7. Control orders. One of those laws rushed though after the London bombings. Despite the urgency no control orders were issued for nine months and only then because of the political heat generated by the Jack Thomas case. He was convicted last February of receiving funds from al-Qaeda and having a dodgy passport. His conviction was quashed but in a reworking of the double jeopardy rule he's to be retried on the basis of alleged admissions made on a TV program. Interestingly, evidence emerged that the head of counter-terrorism at the AFP does not believe Thomas planned any terrorist acts in Australia. The former High Court judge Michael McHugh said recently that parts of the anti-terrorism legislation, including control orders, seemed unconstitutional. The High Court is

yet to decide that question. Meanwhile, Thomas is prevented from contacting Osama bin Laden and others who are either dead or incarcerated.

6. Terrorism legislation. Forty-one pieces of anti-terrorism legislation have been enacted federally since September 11, 2001. Last year powers were given to ASIO and the federal police for the first time to tap the telephones of people not suspected of anything.

5. ASIO. The Federal Government is appealing against a Federal Court decision that found people who were the subject of adverse security assessments by ASIO could actually see these assessments with a view to challenging them. Until then the Government had been able to refuse to reveal its reasons for deporting people or holding them indefinitely on rocky Pacific islands. The full Federal Court will decide whether flawed security assessments are unchallengeable.

4. Lawyers and the law. With ASIO, it is worth remembering the spy agency has taken upon itself the authority to decide which lawyers can and cannot appear for people charged with terrorism offences. The agency unsuccessfully challenged two lawyers appearing in the Belal Khazaal case, but it has plenty more tricks up its sleeve. Security clearances can be required for lawyers appearing in terrorism cases, courts can be closed, evidence can be secretly adduced, or judgements can be issued in secret.

3. Prisoners of Bali. It was the AFP that tipped off the Indonesian police about the Bali nine. Ruddock said information sharing with the Indonesians was important. The deal seems to be: we'll do in our drug couriers to you if you do in your terrorists to us. Meanwhile, Schapelle Corby's trial remains a blot on what might be termed "judicial" proceedings. The protests from the Australian Government have been extremely muted.

2. Ruddock. The Attorney-General deserves a category all of his own. In particular, he startled us on Tuesday by saying that remarks by Lyn McDade, the director of military prosecutions, that the treatment of David Hicks was "abominable" actually "reflected the position of the Government". This is the same Attorney-General who compared Hicks's supporters to communist sympathisers in the Cold War, and said that the Guantanamo prisoner is simply a "fashionable cause" and he should not be the subject of legal profession solidarity.

1. David Hicks.

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