

Civil and Political Rights

CASE STUDY

Anti-terrorism laws

Abdullah was recently the subject of an Australian Security Intelligence Organisation (ASIO) investigation. ASIO officers came to his home and said that he was not being charged with any offence, but that they wanted some information from him. Abdullah did not wish to say anything without his lawyer present. The ASIO officers told him that it was a criminal offence to discuss the investigation with anyone, and that he could only have access to a lawyer approved by the government if he was taken into custody. They told him that if he did not co-operate they could take him into custody without charge for seven days, perhaps longer. Abdullah didn't want to leave his wife and children alone, so he agreed to talk to the ASIO officers.¹

Anti-terrorism laws introduced in 2003 make it a criminal offence to disclose any information regarding an ASIO investigation for two years. It is therefore not known how many people have been the subject of investigation, and how many have been forced to "co-operate" without legal advice. These laws also make it illegal for a lawyer or journalist to reveal information they may have relating to an ASIO investigation.

Civil and political rights in international conventions

Fundamental civil and political rights are most comprehensively recognised in the *Universal Declaration on Human Rights* and in the *International Covenant on Civil and Political Rights* (ICCPR).

The ICCPR deals with the right to participate in the democratic process, including the following rights:

- to vote
- freedom of speech and association
- freedom from arbitrary arrest or detention
- to be informed of the reasons for being arrested and any charges laid
- to be brought before a judge promptly, and the right to release while awaiting trial
- to be compensated if unlawfully arrested
- to be presumed innocent until proven guilty according to law
- to defend oneself or use legal assistance of one's own choosing
- not to be compelled to testify against oneself or to confess guilt; and
- not to be subjected to arbitrary or unlawful interference with one's privacy.

Current Australian policy on civil and political rights

Through a combination of the Constitution, legislation and common law precedents, Australia provides certain protections for civil and political rights, including the right:

- to vote²
- to privacy³
- to a fair trial including legal representation⁴
- to remain silent under questioning⁵
- to a speedy trial⁶; and
- not to be disparaged unfairly or untruthfully (defamed).⁷

However, in recent years the Federal Government and some state governments have introduced legislation to reduce these basic rights in certain circumstances. Following September 11, the Federal Government introduced legislation that restricts people's basic civil rights to privacy, to legal advice, and to remain silent under questioning.

CASE STUDY

Freedom of speech

When Pauline Hanson sued performer Pauline Pantsdown for defamation in 1997, her satirical song "Back Door Man" was removed from the ABC Radio Triple J play-list. Although the case has still not gone to trial, the court banned the song from being broadcast in Queensland. It is really a national ban because many broadcasters are national and cannot play something that is banned in one state. The ban is still in force.⁸

The ban on Pauline Pantsdown's political song is unusual, as humour and satire are often used in political debate. This shows that the right to freedom of speech is not fully protected in Australia. Free discussion of public matters is essential to democracy.

Civil and political rights not protected in Australia

Detention without charge

In 2002 the Federal Government introduced laws that enable ASIO and the Australian Federal Police to detain people who are not suspected of having committed, or being likely to commit, terrorism offences, but who may have information related to an anti-terrorism investigation. People may be detained for seven days without charge, with possible extensions.⁹

In a democratic society, even under severe threat, no person should be denied their freedom and subjected to arbitrary detention, unless they are charged and brought before an independent court as soon as possible.

CASE STUDY

Explosion in telecommunications warrants

Matthew is an elected member of a local council. He has been under investigation by the Independent Commission Against Corruption (ICAC) for the past few months for alleged corruption at the Council. Matthew's wife Caroline recently discovered that all her phones had been tapped, including phones at home, work and her mobile. Caroline only became aware that her phones were being tapped when her husband was questioned by ICAC. There were no findings of corrupt conduct against Matthew or Caroline.¹⁰

The number of telephone tapping warrants has increased dramatically over the past five years. There are now more agencies that can apply for warrants, including state and federal police, the Police Integrity Commission, the National Crime Authority, the Australian Securities and Investments Commission (ASIC), ICAC and all royal commissions. In 2001, 20 times more telephone calls were intercepted per capita in Australia than in the United States.¹¹ This does not include telephone interceptions made by ASIO.

While telecommunications interceptions and other surveillance techniques are important for fighting crime, they involve serious invasions of privacy.¹² There should be stronger external monitoring to ensure that they are used in moderation and not abused.

Freedom of speech

In 2003 the Federal Government introduced further amendments to ASIO's powers,¹³ which severely restrict the freedom of the press and the freedom of public discussion. It is now illegal for anyone, including lawyers, journalists or parliamentarians, to report on issues related to an anti-terrorism investigation for two years.

The banning of Pauline Pantsdown's satirical song also shows that the right to freedom of speech is not fully protected in Australia.

Right to privacy

In 2004 the Federal Government introduced a Bill that will extend the scope of telecommunications interceptions to include text and image-based communications, such as email.¹⁴

There is effectively only a limited right to privacy guaranteed in Australia, as there is no remedy or penalty for a breach of privacy.

Right to remain silent

The ASIO anti-terrorism laws and laws establishing the power of statutory commissions, such as the Australian Crime Commission, ASIC, ICAC, and the Police Integrity Commission, limit the right to remain silent under questioning. Even though these bodies are not courts, they can make people answer questions, even if their answers might reveal that they have engaged in criminal conduct.

Right to vote

All Australian citizens over 18 and British subjects who were on the electoral role before 26 January 1984 have the right to vote in federal elections. However, this fundamental right of citizenship is denied to prisoners serving sentences of five or more years.¹⁵ The right to vote is also denied to Australians who have been living overseas for six or more years.¹⁶

Improving civil and political rights in Australia

Although Australia is a democratic state and has a history of respecting people's civil and political rights, recent amendments to legislation illustrate how easily these basic rights can be reduced.

Protection of civil and political rights and fundamental freedoms in line with international standards is



essential to ensure that everyone in Australia is guaranteed their human rights and dignity.

“What form should the protection of human rights take?”

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N^o 1: **Background to Human Rights**

REFERENCES

- ¹ Case study provided by Council of Civil Liberties, NSW.
- ² *Commonwealth Electoral Act 1918*, section 93.
- ³ *Privacy Act 1988* (Cth); and in relation to a woman's right to have an abortion *R v Davidson* [1969] VR 667 and *R v Wald* (1971) 3 DCR (NSW) 25.
- ⁴ *Dietrich v The Queen* (1992) 177 CLR 292.
- ⁵ *Environment Protection Authority v Caltex Refining Co. Pty. Limited* (1993) 178 CLR 477.
- ⁶ *Jago v The District Court of New South Wales and Others* (1989) 168 CLR 23.
- ⁷ *David Russell Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.
- ⁸ *Australian Broadcasting Corporation v Pauline Hanson*, unreported, 28 September 1998, Supreme Court of Queensland, Court of Appeal.
- ⁹ *Security Legislation Amendment (Terrorism) Act 2002* (Cth).
- ¹⁰ Case study provided by Council of Civil Liberties, NSW.
- ¹¹ Attorney General's Department, Annual Report on the *Telecommunications (Interception) Act 2000/01*; Administrative Office of the United States Courts, Annual Wiretap Report 2001.
- ¹² Daryl Melham MP, Shadow Minister for Justice and Customs, *More Telephone Taps in Australia than the United States* (press release), 15/9/2002.
- ¹³ ASIO Legislation Amendment Bill 2003 (Cth) (not yet consolidated although it has been passed in the Senate).
- ¹⁴ Telecommunications (Interception) Amendment Bill 2004 (Cth).
- ¹⁵ *Commonwealth Electoral Act 1918*, section 93(8)(b).
- ¹⁶ *Commonwealth Electoral Act 1918*, section 94(1).