



Australia's Counter-Terrorism Laws and Practice

There are insufficient safeguards in Australia's counter-terrorism laws to ensure compliance with the *Convention Against Torture*. Following the events of 11 September 2001, the Australian Government introduced more than forty new pieces of legislation to address terrorism and related activities.¹

ASIO Detention

Increased powers provided to the Australian Security Intelligence Organisation (ASIO) enable a person to be held in detention for questioning without charge for renewable periods of 7 days.² This may, in theory, extend to indefinite detention without charge. It is a criminal offence for a detainee to refuse to answer a question. A detainee need not be a terrorist suspect but need only be in possession of information that will 'substantially assist the collection of intelligence related to a terrorism offence. A detainee has no right to seek judicial review of the validity or terms of the ASIO warrant. Additional secrecy provisions prevent the press, lawyers and academics from independently monitoring the use of ASIO questioning and detention powers. The lack of judicial scrutiny and review of potentially indefinite and substantially incommunicado detention is of grave concern given the strong interrelationship between incommunicado detention and torture or other cruel treatment.³

Preventative Detention and Control Orders

The suite of terrorism-related offences has included the introduction of preventative detention orders and control orders. Preventative detention orders do not necessarily require judicial authorisation⁴ and may be based on secret information that neither the detainee nor their lawyer can see. Detainees are held in circumstances of extreme secrecy and may effectively be held incommunicado.

Conditions of Detention of Unconvicted Remand Prisoners Charged with Terrorism-Related Offences

The UN Working Group on Arbitrary Detention recently considered the situation of 13 detainees accused of terrorist related offences who have been held as unconvicted remand prisoners in a maximum security prison since 2005.⁵ The Working Group expressed significant concerns in relation to the 'particularly severe' conditions of detention (especially taking into account that the detainees have not yet been declared guilty), the 'extraordinarily restrictive conditions' of detention prescribed for any person charged with a terrorist offence and the lack of sufficient discretion for judges to decide on bail applications in such matters. The conditions of detention have recently been the subject of highly adverse judicial comment by the Supreme Court of Victoria, which described them as 'pos[ing] a risk to the psychiatric health of even the most psychologically robust individual.⁶ The UN Special Rapporteur on Human Rights and Counter Terrorism has also expressed serious concern about the conditions of detention of terrorist accused and the reversal of the onus and very high threshold for the granting of bail in Australia.⁷

Admission of Confessional Evidence Obtained under Duress

Officers of the Australian Federal Police and ASIO have been involved in obtaining confessional evidence as the result of a long period of ill-treatment in detention and without the presence of a lawyer. In the case of Jack Thomas,⁸ confessional evidence obtained by the AFP and ASIO in Pakistan during a period of six months detention was used for charges to be brought against him on his return to Australia. During the six months of detention, Mr Thomas was held for extended periods in solitary confinement, including being

detained in 'dog-kennel' like conditions and deprived of food and water for up to three days. He was hooded, shackled, manacled, and threatened with electrocution and execution. On one occasion he was strangled with the cord of his hood so that he could not breathe. He was threatened with lashings and the rape of his wife. He was told that his testicles were going to be crushed and was urged to cooperate fully with Pakistani and US interrogators who told him, 'We're outside the law. No one will hear you scream.' Mr Thomas was convicted of terrorist-related offences on the basis of his confessional evidence, although the evidence was subsequently excluded and the conviction quashed by an appellate court. Mr Thomas was, however, immediately made subject to a control order following his successful appeal on the basis of 'very limited evidence'.⁹

TABLE OF CROSS-REFERENCES

Issue	Relevant Articles of <i>Convention Against Torture</i>	References to Issue in NGO Submissions
ASIO detention	2, 11, 16	NACLC/HRLRC Submission of 9 October 2007, Part 1(a) NSWCCL Shadow Report (27 July 2007) Part 5.4.1
Preventative detention and control orders	2, 11, 16	NACLC/HRLRC Submission of 9 October 2007, Part 1(a) NSWCCL Shadow Report (27 July 2007) Part 5.4.1
Conditions of detention of unconvicted remand prisoners charged with terrorism-related offences	2, 11, 16	NACLC/HRLRC Submission of 6 July 2007, Part 6(a) NACLC/HRLRC Submission of 9 October 2007, Part 1(b) NSWCCL Shadow Report (27 July 2007) Part 5.4.3
Admission of confessional evidence obtained under duress	15	NACLC/HRLRC Submission of 6 July 2007, Part 6(b)

Endnotes

- ¹ A comprehensive list of the 'legislative suite' can be found at the Government's 'National Security' website: <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument>.
- ² *Australian Security Intelligence Organisation Amendment (Terrorism) Act 2003* (Cth) s 34HC.
- ³ Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [46]-[47].
- ⁴ *Anti-Terrorism Act (No 2) 2005* (Cth), Div 105.8.
- ⁵ 48th Session of the Working Group on Arbitrary Detention, *Opinion No. 7/2007* (Australia), 9 May 2007.
- ⁶ *Raad v DPP* [2007] VSC 330 (6 September 2007).
- ⁷ Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [34]-[36].
- ⁸ *R v Thomas* [2006] VSCA 165 (18 August 2006).
- ⁹ Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [38].