



# Counter-terrorism laws

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This information sheet talks about some of the human rights relevant to counter-terrorism legislation in Australia. It also highlights how a federal Human Rights Act could help deal with these issues.

## Which human rights are we talking about?

Human rights are about everyone, including people who are threatened by terrorism and people who are accused of counter-terrorism crimes.

Nobody denies the need for laws and policies to ensure that Australians are protected from security threats – after all, the right to life and security is a fundamental human right. However, as the story of Dr Mohamed Haneef demonstrates, when we create those laws and policies we must make sure that we don't sacrifice other fundamental human rights such as equality before the law, the right to a fair trial and the right to be presumed innocent of a crime.

The Australian government has introduced over 40 new counter-terrorism laws since September 2001. These laws may have a serious impact on how our justice system protects fundamental human rights and freedoms, including the right to:

- a fair trial
- freedom from arbitrary detention, torture or cruel, inhuman or degrading treatment
- freedom of expression
- freedom of movement
- privacy
- freedom from discrimination.

## What human rights concerns are raised by counter-terrorism laws?

### The story of Dr Mohamed Haneef

On 2 July 2007, Dr Mohamed Haneef, who was working as a doctor in Queensland, was arrested by the AFP. His arrest followed the attempted terrorist car bombings at Glasgow International Airport on 30 June 2007. Under the provision for 'dead time', Dr Haneef was detained and questioned without charge for 12 days. The case against Dr Haneef was later dropped due to a lack of evidence.

Several aspects of the new counter-terrorism laws in Australia have raised human rights concerns, including:

- Detention without charge – the Australian Federal Police (AFP) can detain a suspect without charge for 24 hours. After 24 hours the AFP can seek a detention order from a court to detain the suspect for a further 24 hours. These 24 hour caps do not include 'dead time', which can include time when the suspect is contacting a lawyer, taking meal breaks and sleeping. Dr Haneef was detained for 12 days under this provision.
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- Restrictions on movement – control orders can force a person to stay in a certain place at certain times, prevent them from going to certain places or talking to certain people, or require them to wear a tracking device.
- Using secret evidence against an accused person – the counter-terrorism laws can prevent a defendant and their lawyers from accessing evidence which will be used against them in court (which ordinarily is allowed).

### 7 days detention for informants not otherwise suspected of a crime

The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* (Cth) gave ASIO special powers to question, or question and detain, a person suspected of having information related to an anti-terrorism investigation, even if that person is not suspected of a terrorist offence. These warrants can authorise detention of a person for up to seven days. This means that a person who is **not suspected** of a terrorism offence can be detained for longer than a terrorist suspect who is questioned by the Australian Federal Police under the *Crimes Act 1914* (Cth). The grounds for detention can be kept secret. Also, the options for challenging the basis of detention are extremely limited and ineffective.

A UN Special Rapporteur said that the absence of a right to judicial review 'is of grave concern ...offending the right to a fair hearing and the right to have the legality of one's detention determined by an independent and competent authority' (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism*, UN Doc A/HRC/4/26/Add.3 (2006), [47]).

## What are the limitations of existing human rights protections?

A person suspected or accused of committing an offence under the counter-terrorism laws currently has few legal options to assert their human rights. The options currently available include legal actions based on:

- common law – this is a body of law made up of precedents from cases previously decided in the courts. Some human rights protections found in the common law include the right against self-incrimination, and the presumption of innocence in criminal trials.
- the Australian Constitution – counter-terrorism laws must comply with the few rights contained and implied in the Australian Constitution, such as the right to challenge decisions of the government in the High Court.

### How could we improve human rights protections for people who are, or could be, subject to counter-terrorism laws?

The Australian Human Rights Commission supports a Human Rights Act for Australia.

A Human Rights Act could make a difference in protecting and promoting the rights of people who are, or potentially could be, subject to the counter-terrorism laws by requiring our federal government to carefully consider how all decisions impact on human rights.

A Human Rights Act could help prevent human rights breaches from happening, and provide remedies for those breaches that were not prevented.

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If Australia had a Human Rights Act, it could:

- make **the federal Parliament consider how laws impact on human rights** – for example, law makers would have to consider how laws allowing detention without charge impact on the right to liberty and freedom from arbitrary detention; or whether ‘sedition’ laws unreasonably impact on freedom of expression
- make **the federal government respect human rights when developing policy** – for example, ASIO would need to consider human rights when determining how its officers can question and interrogate terrorism suspects
- make **public servants respect human rights when making decisions and delivering services** – for example, if a senior AFP officer considered issuing a preventative detention order they would have to take into account the human rights of the terrorism suspect, among other factors
- provide a range of **enforceable remedies** to enable people who have been unjustly detained, for example like Dr Haneef, to challenge their detention on human rights grounds.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

**Nobody denies the need for laws and policies to ensure that Australians are protected from security threats – after all, the right to life and security is a fundamental human right.** However, when we create those laws and policies we must make sure that we don’t sacrifice other fundamental human rights such as equality before the law, the right to a fair trial and the right to be presumed innocent of a crime.

### **Sedition laws threaten freedom of expression for all people**

The *Anti-Terrorism Act 2005 (No 2)* (Cth) introduced new offences of sedition and repealed the old sedition offences contained in the Crimes Act. The sedition offences provoked public debate about how freedom of expression should be protected. Under the laws a person could be charged with sedition for rhetorical statements, parody, artistic expression or other communications that the person does not intend anyone to act upon. The Australian Law Reform Commission recommended changes to the sedition laws, including that speech should be criminalised as ‘sedition’ only when it is intended to provoke violence. The changes were recommended in order to draw ‘a bright line between freedom of expression – even when exercised in a challenging or unpopular manner – and the reach of the criminal law’ (Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia* (2006) p 10).

The federal government has accepted these recommendations.

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## Where can I find more information about counter-terrorism and human rights?

Australian Human Rights Commission:

[www.humanrights.gov.au/human\\_rights/counter\\_terrorism/index.html](http://www.humanrights.gov.au/human_rights/counter_terrorism/index.html)

Gilbert + Tobin Centre of Public Law:

[www.gtcentre.unsw.edu.au/publications/terrorism.asp](http://www.gtcentre.unsw.edu.au/publications/terrorism.asp)