

# Human rights, protests and police surveillance: a forum on intelligence gathering and monitoring of public protest

By Mini Chandramouli

Protestors' right to privacy has become a heated issue in light of protests such as Occupy Melbourne and at the Hazelwood Power station. New reports have revealed that there has been an alarming increase in the involvement of the state and federal police, ASIO and even private agencies in the systematic targeting and monitoring of lawful protestors. This Castan Centre forum addressed whether such actions are legal and what implications these activities have on critical human rights issues.

Michael Pearce SC, Barrister and former President of Liberty Victoria convened the event. He started by discussing the frequency with which privacy is invaded during lawful protest and highlighting the role of developing technology, such as Google Earth. Mr Pearce noted that Australia currently no tort of privacy that would enable claims against private parties and as a result protestors have very little form of legal redress if police collect and exchange their information. He introduced the key speakers for the day as two amateurs – individuals who had exercised their lawful right of protest – and two professionals – two human rights lawyers.

The first speaker for the evening was Chris Heislars, who was involved with the 'Watershed Victoria' campaign against the Victorian Desalination Project. Mr Heislars was a passive environmentalist, until the then Premier of Victoria, Steve Bracks, announced he was planning to build the biggest desalination plant in the world in the small town where Mr Heislars lived. Mr Heislars and others in the community formed a group called 'Your water, Your say' in response. A memorandum of understanding was made between a French water consortium and the police to allow information about Mr Heislars and other protestors including videos and photographs to be shared. Mr Heislars and his protest group brought action in the Supreme Court and sought a protective costs order which would protect them from having to pay the police's legal costs if they lost the case, but the Court refused to grant this order. He ended his speech by stating that the lack of effective legal avenues and the inability to compete on an even field meant there was too much risk in sticking to your principles.



Michael Pearce, former President of Liberty Victoria convenes the forum.

Anthony Kelly, Executive Officer of the Flemington and Kensington Community Legal Centre, fleshed out the definition and history of surveillance, emphasising that policing traditionally involved observing people and gathering information but the 'template' for modern political surveillance was laid down in the union busting era of the early 20th century. After 9/11 "intelligence-led policing" has led to an extraordinary expansion of surveillance into every aspect of policing, including political protest. Concerns about this surveillance, Mr Kelly said, go far beyond concerns of privacy and police accountability; it was intrinsically connected to the threat of political repression. He concluded with suggestions for protestors and the provocative statement that political surveillance is an intrinsic part of governments' attempts to stop ordinary people from creating social change.

The third speaker for the evening was Jan Beer. Ms Beer is a cattle farmer in Yea and was never an active protestor until the former Labor government announced the construction of the North-South pipeline to take water from her drought stricken region to Melbourne. She became the 'Plug the Pipe' spokesperson and was subjected to surveillance. She was photographed constantly by employees of Melbourne Water (a state-owned corporation), but it took a Freedom of Information request to reveal the extent of her surveillance which included two DVDs, photos, audio recordings and documents, some even documenting her whereabouts when she wasn't anywhere near the pipeline. Ms Beer explained that she was never told she was being monitored, its purpose, if she could access these documents or the identity of those monitoring her. She wrote to the Privacy Commissioner about the monitoring activities and eventually Melbourne Water agreed to give a public apology. Ms Beer highlighted that her case forced government agencies to take the *Information Privacy Act* more seriously.

The final speaker was Anna Brown, Solicitor and Director of Advocacy and Strategic Litigation at Human Rights Law Centre. Ms Brown is part of the legal team bringing a challenge against the City of Melbourne and Victoria Police on behalf of the Occupy Melbourne protestors. Ms Brown explained that surveillance by a state should only occur if absolutely necessary and, if it does occur, safety mechanisms should be put in place. Ms Brown discussed the Andrew Wood case in the UK where retention of a protestor's image by the police was found to constitute a violation of his human rights. She concluded by stating that protestors needed to remain vigilant and continue to advocate for a legal framework that makes the government accountable.

The growing prominence of police surveillance was emphasised by all speakers and the wide reaching effects of these activities were made apparent by the experiences of ordinary citizens like Jan Beer and Chris Heislars. The event provided an environment for individuals to learn about their rights and ask compelling questions, as well as motivation for the wider public to be proactive in protecting basic democratic rights.