Civil rights under attack

By Geraldine Collins

We are again facing a barrage of government actions purportedly aimed at satisfying the public's need for 'law and order' but in reality representing an attack on civil rights.

In Queensland, we have seen the passing of the *Vicious Lawless Association Disestablishment Act*, generically known as the 'anti-bikie' legislation. This makes a gathering of three or more 'bikies' or their 'associates' unlawful and stipulates mandatory custodial sentences of 15–25 years.

Since its passing, we have seen ludicrous examples of the practical effects of the legislation, coupled with an extraordinary attack by the government on the legal profession for speaking out against the deficient laws.

Such legislation shows the problems confronted by government attempting to classify persons collectively, rather than individually. The law should punish criminal conduct but not punish people merely because of their association(s). We should not be putting people into prison because of the company they keep.

The Queensland Government has also amended Section 106 of the *Electoral Act* 1992, which prohibits a person who is serving a term of imprisonment from voting in state elections. The prohibition is unqualified, which makes Queensland unique among Australian jurisdictions.

Commonwealth law provides that a person serving a sentence of less than three years is permitted to vote in federal elections. The NT and Tasmania also maintain the inmate's right to vote in territory/state elections if the sentence is less than three years. In Victoria, a person may vote in state elections if the sentence is not greater than five years. In NSW and WA, a person can vote in state elections if the sentence is less than 12 months imprisonment. In the ACT and SA, the right to vote in territory/state elections is unrestricted by the length of the sentence.

The right to vote, without discrimination, is set out in the *International Covenant on Civil and Political Rights* (article 25) and the *International Covenant on the Elimination of Racial Discrimination* (article 5(c)). Both of those treaties bind the Australian Government. The right to vote is also set out in the *Universal Declaration on Human Rights* (article 21).

The United Nations Human Rights Committee has issued a General Comment (*General Comment 25*) to help interpret the meaning of article 25 of the ICCPR. It states that any restrictions on the rights in article 25 'should be based on objective and reasonable criteria.'

A minimum age for exercising the right to vote has been found to be a reasonable criterion, while it would be unreasonable to restrict the right to vote 'on the ground of physical disability, or to impose literacy, educational or property requirements.'

General Comment 25 specifically addresses the possibility of excluding convicted criminals from the right to vote. It says that any exclusion must be 'objective', 'reasonable' and 'proportionate' to the offence and the sentence.

One questions whether the Queensland Government's actions can be regarded as complying with the ICCPR. The unfettered veto does not appear to be 'proportionate' to anything.

Victoria has also stepped up in the 'law and order' game. The Victorian government recently introduced the *Corrections Amendment (Parole) Bill*, which has the sole purpose of keeping Hoddle St murderer Julian Knight in prison beyond the term of his original sentence. The legislation states that Knight should not be considered for parole unless he is in imminent danger of death, or so incapacitated that he no longer has the physical ability to do harm to anyone.

There is a threat to legal principles inherent in such legislation that specifically names the offender and applies only to him. In 1994, the High Court held that a NSW law aimed at keeping offender Gregory Kable in prison was unconstitutional, as it transgressed the doctrine of the separation of powers.

The Victorian attempt may be viewed differently, as it applies to the conditions of Knight's potential parole. However, it certainly could be perceived as a least indirectly interfering with the judiciary, as it effectively provides an additional penalty to the original sentence.

Even if such laws are 'popular', we, as lawyers, must question whether the *means* do more damage to constitutional government than the *ends* justify. We must continue to hold governments to account in their respect for, and application of, constitutional principles. ■

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