

Australian government suffers second setback on terror laws

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For the second time within a month, a parliamentary committee led by government MPs has unanimously condemned aspects of the Howard administration's "counter-terrorism" legislation. Prime Minister John Howard and key ministers are now hoping for an agreement with the opposition Labor Party to push through modified measures.

In the latest setback, the Joint Parliamentary Committee on the intelligence services declared that a bill to allow the Australian Security Intelligence Organisation (ASIO) to detain people indefinitely for interrogation would "undermine key legal rights and erode the civil liberties that make Australia a leading democracy".

Committee chairman, former Liberal minister David Jull, described the ASIO Terrorism Bill as the "most controversial piece of legislation ever reviewed by the Committee". The committee, made up of four government and three Labor MPs, received more than 150 submissions from organisations and individuals, "most of which were opposed to the provisions in the Bill".

The Law Council of Australia, legal academics, civil liberties groups and community organisations castigated the legislation as "potentially dangerous," an "unprecedented affront" to UN and international covenants and "unconstitutional". Faced with this level of criticism, the committee urged the government to adopt a series of changes to "provide greater confidence to the Australian public".

The submissions reflect a certain groundswell of opposition, unanticipated by the government, to its efforts to use the September 11 terrorist attacks in the US to justify unprecedented police state powers. The ASIO Bill seeks to introduce detention without trial, not seen before in Australia during peacetime, except for the inhuman mandatory imprisonment of asylum seekers.

ASIO, the domestic spy agency, already has vast powers to intercept mail, tap phones, secretly enter premises, hack into computers and infiltrate organisations. It has a long and notorious history of surveillance, harassment and dirty tricks directed against left-wing political activists and organisations. Adding the powers of detention and interrogation will transform it into a fully-fledged political police force. Under the guise of protecting Australians against terrorism, the government has rushed to establish an apparatus that will be used to intimidate and terrorise ordinary people.

Last October 2, within three weeks of September 11, the government first announced its intention to give ASIO the power to detain people, supposedly for 48 hours, and force them to answer questions or face five years jail. Howard declared the "war on terrorism" to be one of his highest priorities, seeking to stampede public opinion, despite the fact that the government could produce no evidence of any specific terrorist threat. Since then, not a single terrorist threat has been identified, although there have been numerous unexplained ASIO raids on members of the Arab and Islamic communities. Nevertheless, as soon as parliament resumed in February after the November federal election, the government introduced six "anti-terrorist" bills, including the ASIO Bill, pushing for them to be

passed within two days.

This is not the first time that a terrorist incident has been seized upon to boost the powers of the security apparatus. In fact, the only alleged major terrorist crime ever committed in Australia, the bomb blast outside a Commonwealth heads of government meeting at the Sydney Hilton Hotel in 1978, had all the hallmarks of an ASIO and military intelligence provocation. ASIO and state police special branch agents infiltrated the accused organisation, the Ananda Marga religious sect, and framed up three of its members. The convictions were finally overturned more than a decade later but, in the meantime, the Fraser government exploited the Hilton affair to dramatically increase the surveillance powers of ASIO and other agencies.

The other five bills in the Howard government's package provide for the outlawing of organisations and for life imprisonment for "terrorism" and "treason," both defined to cover many forms of political protest and dissent. Taken together, the measures represent the greatest attack on basic democratic rights since the Menzies Liberal government attempted to ban the Communist Party in 1950-51.

Initially, the legislation appeared set to pass, attracting almost no coverage in the media and with the Labor Party indicating full "in principle" support. In order to head off concerns that had already begun to emerge among legal, civil liberties and other groups, however, Labor suggested the convening of brief parliamentary committee inquiries. In the case of the ASIO Bill, the committee was given just six weeks to submit a report. But the volume of hostile submissions forced it to ask for a one-month extension.

The Senate committee inquiring into the other five bills was deluged by an even greater number of opposing submissions—more than 430—and rejected parts of the legislation last month, prompting government backbenchers to refuse to endorse it. The very fact that two government-led committees have objected to key legislation—the first time this has happened since Howard came to office in 1996—points to a considerable political crisis for the government.

Under the government's original ASIO Bill, the agency could detain anyone for questioning, initially for 48 hours, and hold them incommunicado, without access to a lawyer. By repeatedly obtaining new 48-hour warrants, ASIO could extend the detention indefinitely without trial. Detainees need not be suspected of committing any offence; it would be enough for ASIO to claim that they could provide information relevant to a terrorist act. Prisoners, including children, could be compelled to answer questions and produce requested items, without any protection against self-incrimination. They could also be strip-searched.

Many submissions cast doubt on ASIO's claim that these powers were needed to combat terrorism. Amnesty International pointed out that incommunicado detention would hardly prevent detainees tipping off others involved in terrorist activity. "Amnesty International finds it difficult to believe that a person's disappearance for 48 hours without contact with their family or friends would not draw similar attention to an

investigation.”

Nonetheless, the committee dismissed calls for the Bill to be scrapped. Instead, the MPs toiled for weeks to draft recommendations that could save it. “The majority of evidence to the inquiry has called for the Bill to be abandoned in total or key provisions removed,” the committee reported. “The committee heard these calls but also sought to seek solutions which would ameliorate the major concerns that were raised.”

Significantly, the three Labor members on the committee are right-wing heavyweights known for their enthusiastic support for the military and intelligence apparatus—former defence minister and Labor leader Kim Beazley, who gave Howard complete bipartisan backing before last November’s election; another one-time defence minister, Robert Ray, and ex-parliamentary speaker Leo McLeay.

The report proposed a seven-day limit on detention, to be followed either by release or the laying of charges by police. This would still give ASIO, working hand-in-glove with police personnel, unprecedented power to arbitrarily detain, interrogate and intimidate individuals, including political dissidents, community activists and investigative journalists.

The committee recommended modifying the incommunicado regime, but only to permit access to an official panel of lawyers with security clearances. Detainees would have no right to choose their own legal representatives. Since ASIO would provide the security clearances, it would have an effective veto over the selection of lawyers to serve on the panel and could threaten to bar uncooperative lawyers.

To avoid openly breaching the International Covenant on the Rights of the Child, the report proposed restricting the detention power to adults aged over 18. It also suggested that ASIO draw up detention protocols, supposedly to protect detainees from torture, prolonged interrogation and other abuses. But these rules would be based on British protocols that have done nothing to prevent the mistreatment and frame-up of Irish detainees over the past three decades. Moreover, detainees would have difficulty legally enforcing any protocols, because they would not even know the identity of their ASIO captors. The ASIO Act makes it illegal to publicly identify ASIO officers.

The MPs called for prisoners to be protected against self-incrimination—but primarily in order to make detention more effective from an intelligence-gathering angle. The committee expressed concern that fear of life imprisonment for terrorist offences could lead detainees to regard five years jail for refusing to answer a question as a lesser penalty. If detainees were protected against self-incrimination, they could be more easily induced to provide information. In any case, the report noted, this change would not give detainees immunity from prosecution.

The committee supported the government’s determination to abolish the right to remain silent and reverse the onus of proof. Detainees who failed to produce a document or any other “thing” demanded by ASIO could still be jailed for five years unless they proved that they did not have the items requested.

Finally, the committee recommended several measures to give the appearance of parliamentary and legal accountability. It called for a sunset clause to terminate the legislation in three years—yet the laws could be renewed. The report proposed that ASIO report annually on the number of detention warrants issued and that detainees have some unspecified form of judicial review after 24 hours of detention.

The MPs admitted that even with these modifications, ASIO detention could be unconstitutional, on two grounds. The High Court has consistently ruled that only courts can order imprisonment, except for refugees and other non-citizens. In addition, under the separation of powers doctrine, judges cannot be used for administrative purposes, such as issuing detention warrants, if their involvement could compromise their judicial independence.

To evade these constitutional protections, the committee proposed that

Federal Court judges issue warrants where detention exceeds 96 hours, but that the attorney general appoint non-judicial officials to issue other warrants. This would only give ASIO easier access to detention warrants. The MPs bluntly acknowledged that their proposals would “push constitutional limits,” revealing the lengths to which they are prepared to go to assist the government.

While the government has yet to indicate its response to the report on the ASIO Bill, Howard is looking for a deal with Labor to push all six bills through with minimal parliamentary or public debate.

“Rather than allow the thing to fall into a political ping-pong game, I would rather hope that we could have some further discussion with the opposition in an endeavour to reach agreements because we do need a tougher anti-terrorist law,” he stated. “The opposition says that, we are not arguing over that, we are arguing over the detail of it and I hope we can reach a sensible outcome.”

Before the ASIO report was released, government MPs voted to accept Attorney General Daryl Williams’ proposed amendments to the other five bills. While refusing point-blank to release any details, Williams claims to have heeded some of the objections expressed by last month’s Senate committee report. According to Williams’ vague media release, the most contentious proposal—the power to outlaw organisations—will remain, albeit in a slightly modified form. Despite this, prominent “moderate” Liberals who objected to the first version of the laws publicly pledged their support, clearing the way for closed-door talks with Labor.

Labor’s leaders are anxious to oblige. Senate leader John Faulkner praised Williams for having “gone back to the drawing board” to improve the legislation. Opposition leader Simon Crean declared that Labor would “pass tomorrow” the legislation if it reflected Labor’s amendments, which he has also refused to disclose publicly.

Another Senate party, the Australian Democrats, warned of a backroom deal between the government and Labor “to minimise debate from dissenting voices”. Nevertheless, spokesman Senator Brian Greig reiterated the Democrats’ readiness to support revised measures, describing the parliamentary committee’s ASIO proposals as “reasonable”.

Greens’ leader Senator Bob Brown called for the scrapping of the ASIO Bill, yet hinted that his group was also willing to negotiate. “The recommendations from the government and ALP would be good if applied to people actually suspected of terrorism, but the legislation goes much further, allowing innocent journalists, politicians, human rights workers, in fact any adult in the community, to be locked up by ASIO.”

Throughout its efforts to ram through its “counter-terrorism” package, the government has misjudged the level of public antagonism to overturning long-standing legal principles and fundamental democratic rights, which has found only limited and distorted expression in the rarified atmosphere of the Senate inquiries. Howard is nevertheless intent on proceeding. Plans are afoot for a bipartisan package that will rely upon Labor and the other Senate parties to smooth the passage of laws that will, notwithstanding minor changes, constitute a wholesale attack on democratic rights, with vast powers concentrated in the hands of the government and its security apparatus.



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