

Australian government resumes push for detention without trial

Mike Head
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Having joined the Bush administration's illegal war on the Iraqi people, the Australian government is renewing its assault on democratic rights at home.

Under the guise of presenting "yet another compromise proposal" to win support for legislation giving the secret police the power to detain people without trial, the government last week outlined new amendments that will vastly strengthen the powers of the Australian Security Intelligence Organisation (ASIO). For the first time in Australian history, the intelligence agency will be able to jail and interrogate anyone for up to a week without laying charges against them.

When the ASIO Terrorism Bill was first brought forward in early 2002, it allowed ASIO to hold and question any person, including a child, incommunicado, effectively indefinitely, without access to a lawyer. The Bill was part of a draconian legislative package that included life imprisonment for "terrorism" offences—loosely defined to include any threat made for "a political, religious or ideological cause".

Seizing upon the 11 September 2001 terrorist attacks in the United States, Attorney-General Daryl Williams declared the need to sacrifice civil liberties for the entire duration of the "war on terrorism". The legislation aroused significant public opposition, however, forcing the government to refer the bills to three parliamentary committees, resulting in various minor modifications. With Labor's support, the rest of the legislation passed through parliament last June, but the ASIO Bill proved more contentious and was withdrawn amid a standoff in the Senate last December.

Williams' current proposals will lift the age limit for interrogation from 14 to 16 years old, restrict questioning to twenty four hours over seven days and allow limited access to a lawyer, who will be subject to

ASIO vetting. Under a "sunset clause," the laws will expire after three years, unless re-adopted.

The government's previous version, abandoned last December, limited initial detention to 48 hours, while allowing extensions to be obtained via "rolling warrants". Under the latest plan, a supervising judge can allow ASIO three blocks of eight hours each of continuous questioning, spread over a full week.

The previous plan would have established an ASIO-vetted panel of lawyers, permitted to advise detainees. Now, detainees will be nominally free to name a lawyer of their choice, but ASIO will have the right to veto that choice. In addition, questioning can commence in the absence of any lawyer. Neither detainees nor their lawyers will have access to any classified information which means, in effect, that detainees will not know why they are being interrogated or whether they have any grounds for objection.

The age limit increase to 16 years of age still flouts the United Nations Convention on the Rights of the Child. "Detaining children between the ages of 16 and 18 years for up to 7 days on suspicion of committing an offence with no right to silence, limited access to a lawyer and no presumption of innocence is totally unacceptable and a breach of the human rights of children," the Victorian Law Institute commented.

The Law Institute, which represents the state's legal profession, condemned the changes as "illusory" and a "cruel trick". Institute president Bill O'Shea said: "ASIO can continue to veto or remove the lawyer chosen by a detained person. Even if ASIO approves the lawyer, he or she can only provide advice between 8-hour questioning blocks and not while the questioning is going on.

"In addition, ASIO has no obligation to inform the arrested person of the grounds on which they are being

detained, so it will be very difficult for a lawyer to object to the detention... the new provisions will allow ASIO to detain those arrested for up to 7 days, rather than being required to obtain a fresh warrant every 48 hours under the previous draft. So if ASIO decided to spread the three 8-hour interrogation periods over a full 7 days, there is nothing anyone could do about it.”

The underlying powers remain the same. Detainees need not be suspected of a terrorist offence, or any other criminal offence. ASIO merely has to tell the attorney-general that their interrogation would “substantially assist the collection of intelligence that is important in relation to a terrorism offence,” even if no act of terrorism has occurred.

Teachers, neighbours and doctors, as well as the children, friends or relatives of supposed terrorism suspects could still be detained under this power, not to speak of investigative journalists and political activists. Any detainee, no matter how innocent, who refuses to answer ASIO’s questions or produce any item demanded by ASIO faces five years imprisonment.

As a number of media and legal commentators have pointed out, under the new legislation ASIO will obtain detention and interrogation powers that exceed those exercised by its American and British counterparts, the FBI and MI5. The measures have nothing to do with protecting ordinary people from terrorism; they are about hounding, framing up and jailing political opponents.

Civil liberties and legal bodies have pointed out that the new laws are completely unnecessary to combat terrorism, given that every conceivable terrorist act is already a serious crime. Fears of handing such powers to the political police have only intensified as a result of violent ASIO raids on the homes of Muslim families over the past year.

Nevertheless, even before the Labor Party or any member of the public had seen the details of the latest amendments, Labor leader Simon Crean described them as a “welcome movement” by the government. Over the past year and a half, Crean has been just as anxious as his predecessor Kim Beazley to deliver a bipartisan approach to the strengthening of the state apparatus.

Under Beazley, Labor gave in-principle agreement to the entire “anti-terrorism” package as soon as it was mooted in the wake of the September 11 events. All the

Labor state and territory governments then passed complementary laws giving the Howard government special constitutional powers to proceed. At the federal level, Labor has worked to fashion cosmetic amendments in order to appease widespread popular opposition. In his latest “compromise” offer, the attorney-general specifically adopted an earlier Labor suggestion to permit interrogation to commence in the absence of a lawyer.

Labor’s shadow cabinet will formally decide its position on the revamped proposals this week, but the general thrust of its response has been to join hands with the government. Accordingly, Howard and Williams are likely to introduce the revised legislation in the Senate this week, demanding its swift passage, backed by the threat of an early double dissolution general election if the Bill is not adopted.

Far from a sign of political strength, the Howard government’s anxiety to obtain the unprecedented powers indicates it is preparing for further political dissent and social unrest as its policies increasingly erode the living standards and basic rights of ordinary people.



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