

ASIO Terrorism Act

Unprecedented police-state measures passed by Australian parliament

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With the support of the Labor Party, the Howard government last week succeeded in pushing through the Australian parliament an unprecedented piece of legislation giving the government's political police the sort of arbitrary power normally associated with fascist regimes or military juntas.

Under the ASIO Terrorism Act, the Australian Security Intelligence Organisation now has the power to detain and question people without charge or trial. ASIO and Federal Police officers can raid anyone's home or office, at any hour of the day or night, and forcibly take them away, interrogate and strip-search them and hold them incommunicado, effectively indefinitely.

The Act represents a fundamental assault on essential civil liberties. It gives the security and intelligence agencies unfettered arbitrary and repressive power, marking a dramatic step toward the implementation of authoritarian rule.

Those detained have no right to know why they are being hauled off for interrogation. If they resist, violent force, including lethal force, can be used against them. If they refuse to answer any question or hand over any material that ASIO alleges they possess, they face five year's jail.

Detainees, including teenagers as young as 16, will be unable to contact their families, friends, political associates or the media. In effect, they can be kidnapped by the secret police without anyone's knowledge. If they know the name of a lawyer, they can contact them for legal advice, but only if ASIO does not object to the lawyer.

Initial detention can last for up to seven days, including three eight-hour blocks of questioning over three days, but the Attorney-General can easily approve further seven-day periods. To justify serial extensions, ASIO and the government simply have to claim that "additional or materially different" information has come to light.

Entirely innocent, ordinary people, who have committed no crime, will be subjected to this regime. They do not have to be suspected of committing any offence. ASIO only has to assert that they may have some information relating to "terrorism", regardless of whether any terrorist act has actually occurred or is even suspected of being planned.

A school or university teacher could be detained simply because they have a student in their class who has written an essay on terrorism. An investigative journalist or researcher could be interrogated and forced to hand over documents or notes relating to terrorism. Neighbours, workmates, acquaintances or relatives of suspects could be detained for questioning, possibly on flimsy, false accusations made by anonymous sources. Political or social activists

could be taken into custody on allegations of knowing about terrorist plans.

The potential for political harassment and victimisation is vast. The definition of terrorism inserted into the Criminal Code last year via Howard's package of sweeping "counter terrorism" laws is so broad that anyone who knows about a protest or demonstration planned for a "political, ideological or religious cause" could be rounded up for interrogation.

These powers are unparalleled. Not even during two world wars did a government seek to overturn freedom from arbitrary detention (with the shameful exception of the rounding up of people of German, Japanese and Italian origin as so-called enemy aliens) or abolish the centuries-old common law right to remain silent.

Under existing law, the Federal Police can detain a person for no more than 12 hours before either charging or releasing them. No prisoner is obliged to answer any question, apart from giving his or her name and address. They have the right to a lawyer of their choice, who can be present during interrogation and object to any question. Likewise, state police are not permitted to arrest or detain solely for the purpose of asking questions. A citizen is entitled to decline a request to attend a police station "to assist police".

Under the ASIO Terrorism Act, even if ASIO accepts a detainee's choice of lawyer, questioning can commence without the lawyer being present. In any case, the lawyer cannot object or intervene during questioning—if they do, they can be ejected for "disrupting" ASIO. If they inform a detainee's family or the media about the detention, they face up to five years in jail. A lawyer who is provided information by a client may also be detained for interrogation. The Act does not protect legal professional privilege in communications between lawyer and client.

In a very significant departure from established law, the Act reverses the burden of proof, overturning a basic protection against police frame-up. If ASIO alleges you have information or material, the onus is on you to prove that you do not. According to Justice Minister Chris Ellison this merely reverses an "evidentiary burden", not the onus of proving guilt. This is pure sophistry—the burden is always one of evidence. It is a fundamental democratic principle that state agencies must prove their accusations, otherwise, they can persecute an individual without proof. This doctrine was recently re-affirmed by the Australian High Court, on the ground that it was essential in order to protect individual liberty.

The government, Labor and the media have portrayed the final version of the Act as a more acceptable, watered-down version of the

original Bill that the government rushed forward in the immediate aftermath of the September 11 terrorist attacks in the United States. But the essential provisions remain the same—indefinite, incommunicado detention without trial.

One last-minute government amendment, Section 34JB, permits police officers to use “such force as is necessary and reasonable” in breaking into premises and taking people into custody. This clause gives police the power to kill or cause “grievous bodily harm,” as long as they believe it necessary to protect themselves.

Democratic rights forged over more than 400 years of struggle, first against the absolute monarchy in Britain and then against governments throughout the nineteenth and twentieth centuries, have been abolished—above all, *habeas corpus*, or freedom from arbitrary detention. There is no longer the right to remain silent—a principle developed in the fight against state torture. Unlike other criminal legislation, under the ASIO Terrorism Act people can be imprisoned or punished for ideas, or knowledge, rather than acts. Moreover, they can be detained on mere suspicion, without a specific charge.

How different is this from the Nazi regime? Anyone can be rounded up for interrogation and detention under a law that is so vague that no one can tell whether they have infringed it or not. The Act’s language is deliberately ill defined, highly subjective and political, making it easy to manipulate.

These measures are only a short step from those being implemented by the Bush administration, which has ripped up basic constitutional rights by declaring alleged terrorist supporters, including US citizens, to be “enemy combatants” who can be held indefinitely and brought before military tribunals.

For its part, the Howard government is openly contemptuous of whether the ASIO Terrorism Act is unconstitutional. Australia does not have a Bill of Rights that sets a minimum standard for protecting civil liberties. But in 1992, the High Court indicated that, at least in peacetime, Australian citizens enjoy a “constitutional immunity from being imprisoned,” except by a court order. (However, the High Court refused to extend that protection to refugees, upholding the Labor government’s introduction of mandatory detention.) In the final Senate debate last Thursday night, Ellison refused to confirm that the government had legal advice that the Act is constitutional.

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The government has sought to exploit fears of terrorism to introduce these police-state measures, with Attorney-General Daryl Williams claiming that they are essential for the “safety and security of the Australian community”. These powers have nothing to do with protecting ordinary people from terrorism. ASIO already had every conceivable power it could want to detect terrorists, including power to raid homes and offices, place bugging devices, tap phones, intercept mail, hack into computers and infiltrate organisations.

As the lack of warnings of the Bali bombings demonstrate, ASIO and the rest of the large network of Australian civilian and military intelligence and security agencies, both domestic and overseas, do not exist to safeguard working people. Their function is to terrorise and intimidate the public, especially political opponents of the ruling establishment. From the jailing of militants during World War I to the Petrov affair of the early 1950s and the Hilton Hotel bombing in 1978, they have a long history of dirty tricks and frame-ups directed against left-wing activists, trade unionists and Marxists.

The ASIO Terrorism Act is a further warning that the Howard government is preparing repressive measures to deal with new levels

of social conflict and political unrest produced by its own policies, including the assault on social welfare, public health and education, the detention and expulsion of refugees and Australia’s involvement in the war on Iraq. This is the government’s third major strengthening of the state apparatus, following the military call-out legislation of 2000 and the mobilisation of the navy against refugees in 2001.

Despite widespread opposition to this ASIO Bill, the Labor Party struck a deal with the government to push the measures through the Senate, where the government depends on Labor votes. Labor’s role underscores the fact that it has no differences with Howard’s agenda. Just one day after Simon Crean was re-elected Labor leader on June 16, the Labor parliamentary caucus voted unanimously to back the ASIO legislation. Not a single Labor MP objected.

Labor’s home affairs spokesman Senator John Faulkner said Labor would propose a three-day limit on detention, rather than seven days, but would vote for the legislation whether the government acceded to its suggestion or not. In the wake of the war on Iraq, Labor has scurried to join hands with the government in resuming its assault on democratic rights.

Crean and Faulkner adhered to their pledge even after it was revealed that the supposed “compromise” offered by the government was more draconian than the version of the ASIO Bill that was withdrawn last December. Labor was quite ready to allow ASIO to use “rolling warrants” to detain people indefinitely. Once the details became public, Labor quickly agreed to a meaningless proviso that ASIO must provide new information to justify each extension of detention.

Labor would have supported the original ASIO Bill, to which it gave in-principle support as soon as the Howard government mooted it after September 11. But the legislation aroused deep public opposition, forcing the government to detach the Bill from its sweeping package of “anti-terrorism” laws, refer it to a parliamentary committee and consider minor modifications proposed by backbench Liberals, as well as Labor and the other parliamentary opposition parties, the Greens and Democrats.

In last Thursday’s final vote, the Greens and Democrats opposed the legislation but helped legitimise its introduction by embracing the so-called “war on terrorism” and proposing limited changes to the Bill. After collaborating with the government to pass the measures, Faulkner thanked the Greens and Democrats for their “constructive” contributions to the debate.

Faulkner hailed the outcome as “a triumph of the Senate and joint parliamentary committee process,” with Greens leader Bob Brown and Democrats spokesman Brian Greig echoing his words. Nothing could more clearly express the gulf between ordinary people and the entire parliamentary establishment and the futility of expecting any defence of democratic rights in that arena.



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