

# The Australian Democrats and Greens and the ASIO detention bill

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After 18 months of intense political manoeuvring in the face of public opposition, the Australian Senate voted overwhelmingly on June 26 to pass the Howard government's ASIO Terrorism Bill, giving the country's political police—the Australian Security Intelligence Organisation—unprecedented police state-style powers.

The legislation overturns basic rights forged over centuries in the struggle against the absolutist British monarchy, including the fundamental principle of habeas corpus—no detention without trial. For the first time in Australia's history, the state now has the power to detain and question anyone without charge.

Acting on the flimsiest allegation that a person may have information relating to terrorism, ASIO and Federal Police officers can raid their 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.

If detainees refuse to answer any question or hand over any material that ASIO alleges they possess, they face five year's jail. If ASIO alleges they have information, the onus is on them to prove that they do not. This reverses the traditional burden of proof and violates one of the most basic legal principles—the presumption of innocence.

In all essential aspects, the final Bill was no different from the original version produced by the government in the wake of the September 11 attacks in the US. On the pretext of fighting terrorism, ASIO still has the power to forcibly round up anyone—even if they are not suspected of any offence and no act of terrorism has actually occurred. ASIO can question them in secret, deny them access to lawyers of their choice and hold them for weeks, by continually obtaining new detention warrants.

The final hours of the debate in the Senate provided a picture of the decay of parliamentary democracy, as well as the cynical role played by the Australian Democrats

and Greens. After the Labor Party joined hands with the government to push the legislation through, the two minor opposition parties, which formally voted against it, joined in the mutual self-congratulations on the outcome.

First, Justice Minister Chris Ellison crowed about the government's victory, thanking Labor for dropping its pretences of opposition to ASIO's new powers. "I welcome the opposition's decision to finally put aside any political game playing in favour of national security and to support the passage of this important counter-terrorism legislation."

Labor's Senate leader John Faulkner then thanked the Democrats and Greens for their "respected and appreciated" contributions to the process. "I am going to do something that we do not often do in Senate debates, because I want to acknowledge the efforts of the minor parties in relation to this debate. The truth is that the work of representatives from the Australian Democrats and the Australian Greens on the parliamentary committees has made a dramatic difference to this bill. I also want to say that many constructive contributions were made."

Bob Brown, the leader of the Australian Greens, reciprocated. "I want to thank Senator Faulkner for the magnanimity of his words a while ago... I think it is a very black day for human rights and civil rights in this nation of ours. Nevertheless, we are part of a democracy. The vigour with which the crossbench have defended very important components of that eroding democracy is a compliment to the role the Senate plays in that democracy."

For all Brown's protestations about human rights, which will be examined shortly, his view of democracy is revealing. Neither the government nor Labor had any popular mandate to violate fundamental democratic rights. On the contrary, the majority of Senators were elected to oppose the Howard government. Instead, they legitimised the police state measures.

Brian Grieg of the Australian Democrats was equally pleased to have his party's efforts recognised. "I too would like to acknowledge the kind words from Senator Faulkner. His acknowledgment of the crossbench work is appreciated... I think the entire exercise has been a tremendous illustration of what an asset the Senate is to the parliamentary process."

What explains Labor's profound gratitude for the role played by the Democrats and Greens? From the outset, while objecting to aspects of the legislation, they moved scores of "constructive" amendments to appease public concern.

When the Bill was first unveiled in early 2002, Labor immediately volunteered in-principle support, but the legislation provoked widespread hostility, as did the remainder of the government's "anti-terrorism" package. Labor and the government were forced to convene parliamentary inquiries to consider objections. Community and professional groups, as well as media and journalists' organisations and ordinary people, produced more than 600 submissions, many opposing the legislation outright.

The Greens and Democrats were quite prepared to pass the legislation but sought modifications to overcome "strong and well-founded community opposition". Grieg emphasised that the Democrats would "enthusiastically support balanced legislative measures" to address terrorism.

Thus, the two parties proposed to exempt children under 18 from detention, in order to avoid breaching the international covenant on the rights of the child. Ultimately, the government and Labor partially accepted their advice, agreeing on an age limit of 16.

Likewise, the minor parties recommended that detainees have access to legal advice. In the end, Labor and the government adopted a plan to allow limited access to a lawyer, with ASIO retaining the power to object to the detainee's choice of lawyer. Even if accepted by ASIO, the lawyer is forbidden to intervene during interrogation or inform detainees' family or friends of their detention.

The role of the Democrats and Greens continued to the end. Senator Brown proposed limiting the initial period of detention to three days rather than seven days, because a seven-day period was "punitive" and therefore "possibly unconstitutional".

At the last minute, the two parties suggested exempting lawyers, doctors and clergy from proving that they do not have information or material demanded by ASIO. Their amendment would not have prevented ASIO from forcing

the disclosure of information, in breach of privacy rights and the legal protections that have traditionally applied to communications with clients and religious worshippers. It merely would have obliged ASIO to bear the burden of proving that the alleged information existed.

Confident of Labor's backing, the government summarily dismissed the proposal.

In the final debate, Brown indicated that except for these objections the Greens would have voted for the legislation. He declared that by asking the government to limit the initial detention warrant to three days, Labor had struck the right "balance" between national security and civil liberties. Once the government rejected the suggestion—as Labor knew it would—the "balance" was lost.

Brown expressed the nationalism and commitment to the established political order that underpinned the role of all the parliamentary parties. Responding to accusations by Ellison that the opposition parties had endangered national security by calling for changes to the Bill, both Brown and Labor Senator Robert Ray objected vehemently.

Ray, a right-wing former defence minister, complained that making helpful suggestions was being depicted as a "lack of patriotism". Despite the professed differences between them, Brown immediately lined up with his Labor colleague. "I agree with Senator Ray," he stated. "We all have to accept that we are Australians good and true who want this country to be safe and secure."

As the failure of ASIO and the rest of the intelligence agencies to warn about the Bali bombing demonstrates—and there are still unanswered questions about the extent to which they and the government had prior knowledge of a likely atrocity—these agencies do not exist to safeguard working people.

The unparalleled boosting of ASIO's powers is part and parcel of the Howard government's embrace of the Bush administration's "war on terrorism" in order to trample on democratic rights at home while embarking on neo-colonial interventions in Afghanistan, Iraq and the Pacific.



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