

Australia:

New laws cloak ASIO detentions in secrecy

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Closely supported by the Labor Party and with barely a mention in the media, the Howard government last week pushed laws through parliament that effectively gag all public protest against, or even reporting of, the use of the new detention and interrogation powers of ASIO, the Australian domestic intelligence service.

It is now a crime, punishable by up to five year's jail, to publicly mention any operation involving ASIO's unprecedented powers—given to it less than six months ago—to detain and interrogate people without charge, simply on the allegation that they may have information relating to terrorism.

Under the provisions introduced last week, the very fact that someone has been detained cannot be talked about publicly for up to 28 days, until after the detention warrant expires. No other information about the detention can be disclosed for two years.

The ASIO (Australian Security Intelligence Organisation) Legislation Amendment Act represents a fundamental attack on the freedom of the press. Even if ASIO itself breaks the law, for example by detaining someone for more than seven days without obtaining a new warrant, any journalist who reports the case could be imprisoned.

In effect, these measures outlaw political campaigns against arbitrary or illegal detentions. If someone sees a person being hauled away by ASIO or federal police for questioning, they cannot disclose that fact to anyone—not even a family member, friend, civil liberties group, member of parliament or political party. If a detainee's family or associates somehow find out about the detention, they cannot publicly comment on it in any way.

The ASIO detention laws passed earlier this year already prohibited detainees or their lawyers from alerting their families, the media or anyone else that they had been detained. This gag has now been broadened to cover all people, not just detainees and lawyers, and extended for the full 28-day period of a warrant.

A further two-year prohibition has been imposed on the public disclosure by anyone of “operational information”

that was obtained, directly or indirectly, from the questioning process. “Operational information” is defined in the widest possible terms. It covers all ASIO information, sources of ASIO information and any “operational capability, method or plan” of ASIO.

Such serious offences normally require a criminal intent. But strict liability has been imposed on detainees and lawyers—it will be no defence if they inadvertently disclose information or were not aware that it was “operational information”. Other people can be convicted if they were “reckless”—if a court rules that they should have known that they were disclosing operational information, even if they did not intend to do so.

It is now possible for ASIO to cloak all its operations in complete secrecy, simply by obtaining a questioning warrant from Attorney-General Philip Ruddock. For that reason alone, the latest legislation makes it more likely that ASIO will use, and abuse, its detention powers, which can easily be exploited for political purposes to victimise government opponents.

Australia has no Bill of Rights preventing such a measure. During the 1990s, the High Court cautiously ruled that the Constitution contains an implied freedom of political communication, but the legislation attempts to side step any Constitutional challenge by stating that it is not meant to infringe that doctrine.

Passed by the Senate late last Friday, the Act also strengthens ASIO's powers in two other major respects.

First, it doubles the time that a detainee can be interrogated, from 24 to 48 hours during a week-long detention, if the prisoner requires an interpreter because they are not fluent in English or have impaired hearing or any other disability. This means that they can be questioned throughout six eight-hour blocks within seven days.

Given that the interrogation can begin without a lawyer being present, that ASIO can veto a detainee's choice of lawyer and that a lawyer cannot interrupt or object to the questioning in any case, this provision can clearly be used to browbeat and intimidate detainees. It is also an open breach

of Article 26 of the International Covenant on Civil and Political Rights, which states that all persons are equal before the law and prohibits discrimination on a number of grounds, including language.

Second, the legislation requires all those subjected to a questioning warrant to surrender their passport and makes it an offence for them to leave the country before the 28-day warrant expires. The Australian Passports Act 1938 already permitted the foreign minister to withhold a passport from anyone who “might prejudice the security of Australia or of a foreign country” but those affected could at least appeal to an administrative tribunal. The new laws grant ASIO virtually unfettered power to strip anyone of their right to travel freely, with no right of appeal.

The government insisted on pushing these provisions through unamended in the last parliamentary session before Christmas, despite strong protests from civil liberties and media organisations.

Amnesty International declared: “The level of secrecy and lack of public scrutiny provided for by this Bill has the potential to allow human rights violations to go unnoticed and in a climate of impunity.” Liberty Victoria stated: “These secrecy offences pose a grave threat to Australia’s democracy and could enable the government of the day to impose a ‘war of terror’ against its political opponents or vulnerable sections of the community.”

Australia’s main media proprietors’ groups—Fairfax, News Ltd, SBS, the ABC, the Australian Press Council and Commercial Radio Australia—warned: “This has the potential to completely remove from public scrutiny all discussion of ASIO’s activities in relation to terrorism.”

Lawyers representing Sydney families whose homes have been raided by ASIO in recent months have already complained to the media of heavy-handed and unlawful ASIO and federal police tactics, including threats to detain occupants if they do not answer questions. Under the new laws, such complaints themselves are illegal.

Attorney-General Ruddock, echoed by Labor and the media, claimed that the new laws were needed to remedy weaknesses in ASIO’s detention powers revealed by the Willie Brigitte affair. Brigitte, a French citizen, was removed from the country in October on alleged visa violations after the French intelligence services advised ASIO that he was suspected of terrorist connections.

Ruddock maintained that because Brigitte was a French speaker and required an interpreter, ASIO could not have held him long enough to interrogate him effectively. Ruddock’s claims are patently false. The government decided not to use its detention powers against Brigitte because it had no evidence against him—not even enough to justify a questioning warrant.

Labor blocked with the government to reject a series of minor amendments by the Greens and Democrats that would have referred the legislation to a parliamentary committee, or partly exempted media organisations (provided that their reports were not a “threat to national security”).

Both the government and Labor expressed blatant contempt for media freedom and the public’s right to know. Finance Minister Nick Minchin declared that the government would not “place the media above the law,” while Labor’s Senator Robert Ray insisted that journalists were not a “protected species”.

During the brief parliamentary debate, Ruddock expressed his gratitude to Labor for agreeing to pass the legislation without amendment. Labor’s complicity, just days after the election of Mark Latham as its new leader, confirms that the bipartisan assault on democratic rights will continue under Latham.

Since the September 11, 2001 attacks in the United States, Labor has repeatedly joined hands with the government to overturn fundamental rights on the pretext of combatting terrorism. “Terrorism”—defined so widely that it covers many traditional forms of political action and protest—has become a crime punishable by life imprisonment; the government has been given the authority to ban political parties that allegedly support terrorism; and ASIO has been handed previously unthinkable powers, including detention without trial.

None of these provisions has anything to do with protecting ordinary people against terrorism. Every conceivable terrorist act, including murder, hijacking, kidnapping, bombing and arson, was already a serious crime. ASIO already had a vast array of powers to tap phones, bug homes, intercept mail, hack into computers and infiltrate organisations. This demonstrates that the real purpose of the new powers is to utilise the “war on terror” for a far broader use of police state-style measures under conditions of growing social and political discontent.



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