Australian government gets “carte blanche” to outlaw organisations

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Last week, a parliamentary committee report documented how the Howard government manipulated and exaggerated information supplied by Australian, US and British intelligence agencies to join the illegal invasion of Iraq on false claims that Saddam Hussein was ready to use stockpiles of “weapons of mass destruction.”

Just days later, parliament passed laws allowing the government wide scope to apply similar methods to outlaw organisations at home and jail their members for up to 25 years. Acting on the advice of the Australian Security Intelligence Organisation (ASIO), the attorney-general will be able to proscribe any party or group as a “terrorist organisation.”

The only requirement under the new version of section 102 of the Criminal Code is that the attorney-general—currently Philip Ruddock—“be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).” This sweeping and vague language leaves the door wide open for political abuse and frame-ups.

In effect, a single cabinet minister has become judge, jury and executioner for any organisation accused by ASIO or its foreign intelligence partners of having terrorist connections, whether in Australia or overseas. As soon as a proscription regulation is gazetted, alleged members or supporters of that organisation can be rounded up and charged with some of the most serious offences in the Criminal Code. They can be convicted and jailed even if they know nothing about the organisation’s supposed activities, or that it was about to be proscribed.

Overnight, they will become criminals, not because they have committed any act, “terrorist” or otherwise, but because they are accused of having links, even in the most remote manner, with an organisation that the government and the security agencies claim has been “directly or indirectly” involved in financing, assisting or encouraging a supposed “terrorist act”—regardless of whether such an act actually occurs.

The Criminal Code Amendment (Terrorist Organisations) Bill is unprecedented. It hands virtually unfettered power to the government, acting by executive fiat—without any effective parliamentary or judicial oversight—to outlaw any political grouping and criminalise its supporters. No Australian government has attempted to exercise such far-reaching powers since the 1951 referendum defeat of the Menzies government’s bid to amend the Constitution to give it the power to outlaw the Communist Party and any organisation deemed to be controlled by “communists.”

The passage of the legislation takes to a new level Labor’s bipartisanship with the government in politically exploiting the “war on terror.” Once Labor signalled its agreement, the government pushed the measures through both houses of parliament—the House of Representatives and the Senate—in less than 48 hours, with virtually no debate.

Under the leadership of Mark Latham, elected last December, the Labor Party has abandoned its previous reservations about the Bill. The government first brought forward the proscription laws in 2002 as part of its package of “anti-terrorism” legislation, using the pretext of the September 11 terror attacks in the United States to argue that basic legal and democratic rights had to be set aside.

At that time, Labor’s leader Simon Crean told parliament that the opposition “will not agree to their carte blanche approach in giving the Attorney-General the sweeping powers that John Howard always wanted but would only ever act on if it suited his political purposes.” Thanks to Labor, Howard’s government now has these “carte blanche” powers.

Even in 2002, Labor did not oppose the measures outright. Supported by the Australian Democrats and Greens in the Senate, it amended the legislation to allow the government to outlaw groups listed as terrorist by the UN Security Council. Since then, Labor, the Democrats and Greens have also voted for specific legislation banning three Islamic fundamentalist groups, Hamas, Hezbollah and Lashkar-e-Taiba.

Moreover, the 2002 laws retained a backdoor method for banning organisations by freezing their funds, even if the UN Security Council did not list them as terrorist. The government can freeze assets or proscribe groups if a UN Security Council freezing order has been issued. Anyone collecting or providing donations for the organisation can be jailed for five years. If the funds are used for terrorist purposes, the penalty is life.

More than 14 entities have been outlawed since 2002, and more than 350 have had their funds frozen. According to ASIO’s annual reports, they include political and nationalist organisations, such as the Popular Front for the Liberation of Palestine, the Mujahedin-E Khalq, the Tamil Tigers (LTTE), the Kurdish Workers Party (PKK), the Sikh Youth Federation and a number of Irish, European and South American groups.

Using other new powers in the counter-terrorism legislation, ASIO and the Federal Police have conducted scores of house raids, interrogations and detentions of alleged supporters of some of these organisations, without a single terrorist-related charge being laid.

The latest measures give ASIO and the government far greater scope to utilise these methods. The counter-terrorism laws define “terrorism” in the broadest possible terms. The definition covers acts or threats that advance “a political, religious or ideological cause” for

the purpose of "coercing or influencing by intimidation" any government or section of the public. "Advocacy, protest, dissent or industrial action" is exempted but not if it involves harm to a person, "serious damage" to property, "serious risk" to public health or safety, or "serious interference" with an information, telecommunications, financial, essential services or transport system.

Using this definition, the attorney-general could proscribe any group that organises a demonstration or strike in which a person was injured or felt endangered. Striking nurses who shut down hospital wards to demand greater health spending, for example, could be accused of endangering public health and charged as members of a terrorist organisation. So could anyone planning or participating in a protest outside parliament, a government building or a financial institution, such as a bank or stock exchange, where damage allegedly occurs.

People accused of even the most tenuous links to banned groups face lengthy jail terms. Any person who provides support to the activities of a terrorist organisation, knowing it to be terrorist, can be jailed for 25 years. If they are "reckless" as to whether the organisation is terrorist or not, it is 15 years. Mere membership, including "informal membership" or taking "steps to become a member" carries up to 10 years imprisonment.

To avoid conviction, those accused have to prove that they took "reasonable steps" to cease membership "as soon as practicable" after knowing the organisation was terrorist. This places the burden of proof on defendants, reversing the traditional presumption of innocence.

In announcing Labor's support for the Bill, shadow attorney-general Robert McClelland claimed that, as a result of negotiations with Ruddock, the Bill now contained "robust safeguards" against political abuse. These "safeguards" are meaningless.

The first is that the attorney-general must brief the leader of the parliamentary opposition before outlawing any group. This formality will not stop a proscription. Instead, it will strengthen the bipartisanship that has already seen Labor march lock-step with the government, ultimately passing every law it has demanded to pursue the "war on terror."

The second "safeguard" is that a bipartisan parliamentary committee, the Joint Committee on ASIO, the Australian Security Intelligence Service (ASIS) and the Defence Signals Directorate (DSD,) will review proscription regulations and recommend whether they should be disallowed. This is the same committee that issued last week's report on the misuse of intelligence to justify the war on Iraq, only to conclude that the government had done nothing wrong. Having proven its value to the government in whitewashing its lies on Iraq, it has been entrusted with the task of rubberstamping its domestic proscriptions.

By a majority vote, either house of parliament can disallow a regulation, but this may not happen until weeks, or even months, after a group has been outlawed, depending on how soon parliament sits. In the meantime, the group would already have been disbanded, its finances seized, its supporters detained and its reputation destroyed.

Another so-called safeguard is a clause allowing a banned group or any individual to appeal to the attorney-general to reconsider his decision. The minister will almost certainly refuse to do so, but may take months to issue a response. The only purpose of this procedure is to delay any ultimate application for judicial review, allowing the personal and political damage to continue in the meantime.

The Bill contains no specific right of appeal to a court. A legal challenge could occur only under the existing procedures for judicial review, by which a court cannot overturn a regulation, merely rule that it was legally defective, issued beyond power or "unreasonable". Given the vagueness of the discretion given to the attorney-general, such rulings are highly unlikely.

Lawyers and civil liberties groups have condemned the measures. The Law Council of Australia, the legal profession's peak body, has labelled them "dangerous"—"both for the basic rights of citizens of Australia and for members of the legal profession who may be called upon to defend them". It said any member of an outlawed group could only seek judicial review after a banning order "thus placing them at jeopardy of prosecution should their application fail."

This draconian regime has nothing to do with protecting ordinary people from terrorism. The existing laws of aiding, abetting and conspiracy cover involvement in every conceivable terrorist activity. And as the Law Council pointed out, the federal government can apply to the courts for the banning of "unlawful associations". This power, contained in the Crimes Act since the 1920s, has never been used because it requires proof of support for, or actual involvement in, acts of violence or property damage.

The only possible conclusion is that the government seeks these powers for other political purposes, notably for use against political dissent and social unrest. Labor's support for these measures underscores the lack of any support in the political establishment for even the most fundamental legal and democratic rights. Not a critical word has appeared in the media. As for the Democrats and Greens, they opposed the measures in the Senate but emphasised that they were willing to continue outlawing individual organisations via specific legislation.

Buoyed by Labor's backing, Attorney-General Ruddock is preparing even harsher laws. He triumphantly welcomed Labor's "back-flip" and declared that he will test Labor again by proposing further measures. He has foreshadowed copying some of the British Labour government's latest innovations, which include greater powers of detention without trial, an even wider definition of terrorism, more use of intercepted communications and appointment of security-cleared judges to run terrorism trials.

In addition, the Australian Law Reform Commission is currently drafting a National Security Information Procedures Act, which could establish closed courts to hear terrorism charges, permit evidence to be censored, allow government witnesses to testify in disguise via video and even exclude defendants and their lawyers from trial proceedings.