

Australia: new bipartisan assault on basic legal rights

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In the wake of the October 9 federal elections, Australian Attorney-General Philip Ruddock has wasted little time in unveiling a new escalation of the Howard government's war on democratic rights. Speaking on national television on October 24, barely two weeks after the government's victory, Ruddock declared that three national security bills would be ushered through national parliament during November, on the pretext of combatting terrorism.

Ruddock declared he would reintroduce the "urgent" laws, previously referred to a Senate committee, irrespective of whether the ruling Liberal-National Coalition obtained an absolute majority in the upper house (the final results, announced on October 27, confirmed the government's Senate majority).

Not one mention was made of these bills during the entire election campaign. In fact, Ruddock, who featured heavily in the 2001 election, was hardly seen or heard during this year's campaign—indicating the government's nervousness about growing public scepticism and hostility toward the scare campaigns on refugees and terrorism that he has spearheaded over the past three years.

In the months before the elections were called, Ruddock tried to use the Madrid train bombings in March, followed by a string of dubious "terrorism" prosecutions, to whip up fresh fears and anxieties. While he succeeded in obtaining the Labor Party's backing for a barrage of "anti-terrorism" legislation prior to the election, the government's hopes of stampeding public opinion with startling reports of "terror cells" in major cities largely fell flat.

Only two months ago, Ruddock issued a media release boasting that Australia was already "leading the world in implementing anti-terrorism legislation". He specifically thanked Labor for backing the passage of the third of three Anti-Terrorism Bills, which made it a serious offence to even "associate" with any person or organisation accused of involvement with terrorism. With the election out of the way, Ruddock is again counting on Labor's assistance to further boost the powers of the security and intelligence agencies.

Ruddock said he might even revisit a law allowing children as young as 12 to be secretly detained, strip-searched and interrogated by the Australian Federal Police (AFP) and the Australian Security Intelligence Organisation (ASIO). In mid-2003, after more than a year of opposition by civil libertarians, lawyers and ordinary people to draft legislation that would give ASIO and the AFP the unprecedented power to detain and question people without trial, the government agreed to set a minimum age limit of 16 for detainees. Labor then agreed to help push the controversial detention bill through the Senate.

Each of the three bills that Ruddock intends to re-introduce has far-reaching implications. One, the National Security Information (Criminal Proceedings) Bill, will permit trials on terrorism, espionage, treason and "other security-related" charges to be held in complete or partial secrecy. Closed court sessions will be able to hear charges, censor evidence, allow government witnesses to testify in disguise via video and, in some

circumstances, exclude defendants and their lawyers from trial proceedings.

To activate the process, the Attorney-General—at present, Ruddock—simply has to issue a certificate stating that evidence given in the trial is likely to "prejudice national security". If the judge agrees, in an initial closed hearing, he or she can order that all or part of the trial be held in camera. Evidence can be withheld from a jury, or presented to it in a filtered form, violating the right to a jury trial. Lawyers who refuse or fail to obtain an Attorney-General's Department security clearance can be barred, possibly leaving the accused unrepresented.

These provisions clear the way for secret trials on any charges that the government and judges allege might affect national security. They overturn centuries-old principles, derived from the struggle against the Catholic Inquisition and feudal-based absolutist monarchies, of open trials by jury, subject to public and media scrutiny.

The right to a public hearing of any criminal charge is regarded as so fundamental that it is enshrined in international law, by Article 10 of the Universal Declaration of Human Rights. Article 14 of the International Covenant on Civil and Political Rights insists on the right to be present and have legal representation during any trial. Even under the Australian Constitution, which has no bill of rights, the right to a trial by jury for federal indictable offences is preserved by section 80.

Another measure, the Surveillance Devices Bill, will permit the AFP and other federal agencies to use a wide range of phone-tapping, bugging, computer hacking, tracking and optical devices to monitor and gather information. Police will have to obtain warrants from a judge or tribunal member for some devices, but senior police can issue emergency authorisations in "urgent" circumstances, including "serious risk to property". No warrants will be needed for other devices, notably remote tracking equipment, and telescopes, cameras and other optical technology.

These laws will throw a blanket of secrecy over all police surveillance operations, not just those relating to terrorism. They will outlaw the unauthorised release of any information about surveillance activities, as well as any information gathered in the course of such operations. Breaches will be punishable by up to 10 years jail. Police authorities, however, will be able to publicise any information they receive if they regard it as necessary to reduce the risk of violence or property damage.

Thus, anyone placed under surveillance will be barred from publicly exposing or protesting against the spying operation, while police can selectively leak material to the media, claiming to be protecting the public from harm. Similar provisions will be inserted into state laws.

This legislation underscores the bipartisan agreement between Labor and the government. The surveillance bill began as an initiative of a prime ministerial summit with the state premiers—all now from the Labor Party—in April 2002, and was drafted with the participation of the state attorneys-general.

Ruddock's third proposed law, the Telecommunications (Interception) Amendment (Stored Communications) Bill, will likewise extend the

power of the police and other law enforcement agencies to intercept email, SMS messaging and telephone voicemail. Easily obtainable search warrants, rather than more restricted telecommunications intercept warrants, will be available for investigations of a wide range of offences.

In line with the federal government's measures, the state Labor governments in New South Wales and Victoria have announced their own vast extensions of police powers. NSW police will be given unprecedented powers to search homes and offices without informing the occupants for six months, as well as extended powers to bug suspects continuously for up to three months.

Covert search warrants will permit police to enter premises, seize property, copy documents, operate computers and other electronic equipment, and conduct forensic tests. Premier Bob Carr said a judge could issue such a warrant on "a reasonable suspicion that a relevant offence has been or is likely to be committed, a search would substantially assist in preventing or responding to it and it is necessary for the search to be conducted without the occupier's knowledge". A judge could also extend the six-month period in which the occupant need not be notified.

Under listening device warrants, police will have the power to secretly monitor conversations in any place for up to 90 days, extending the current limit of 21 days.

In another initiative, prisoners accused of involvement with terrorism, or classified by prison authorities as a "special risk to national security", will be housed in "super max" isolation cells, modelled on French and Israeli facilities. Carr's cabinet has approved regulations to introduce a new prisoner classification, "AA terrorist inmates", that will see them treated more harshly than any other inmates. Their contact visits will be restricted and their mail closely screened. This means that "security" prisoners can be cut off from their families, supporters and the media.

Earlier this year, the Carr government threw a university student, Izhar ul-Haque, into a maximum-security isolation cell for 42 days after he was charged with training with a Pakistani organisation, Lashkar e Toiba, which was proscribed, some time after ul-Haque's association with it, as a terrorist group under federal law. The young man was finally released on bail when a Supreme Court judge ruled that he posed no risk to the community.

Addressing state parliament on October 21, Carr claimed that the proposed new secret entry and search powers, which are copied from US jurisdictions, would cover cases such as that of Willy Brigitte, a French citizen who was deported from Australia earlier this year after being accused of having connections to Lashkar e Toiba.

NSW Council for Civil Liberties president Cameron Murphy rejected this argument as "plainly rubbish". He told journalists that ASIO and the Howard government had had ample power to detain, interrogate and charge Brigitte, but chose instead to deport him on visa irregularities. Murphy said NSW already had "the toughest anti-terror laws in the world ... There's no evidence these additional powers will assist in finding and prosecuting terrorists".

In Victoria, Premier Steve Bracks used the pretext of cracking down on a spate of gangland murders to introduce the Major Crimes (Investigative Powers) Bill, which will provide state police with powers like those given to the AFP and ASIO last year to secretly detain and interrogate people without trial.

Anyone could be brought before a government-appointed Chief Examiner—a US-style special prosecutor with the powers of a state Supreme Court judge. If they refuse to appear, answer questions or produce documents, they could be charged with contempt and jailed for up to five years at a time. Police Minister Andre Haermeyer said uncooperative witnesses could, in effect, be jailed indefinitely for contempt until they agreed to talk.

Not only would suspects and witnesses lose their right to remain silent, they could not decline to answer questions on the grounds of self-

incrimination, thus eliminating traditional safeguards against police-state methods of coercion and torture.

Interviewees would have the right to legal representation, but the Chief Examiner, like ASIO, could prevent particular lawyers from appearing. As with ASIO's detention regime, interrogations would be conducted in secret, with detainees and journalists facing 12 months jail if they report, or even publicly disclose, the hearings.

A second bill would give police the power to seize the assets of suspects, even before they were charged, let alone convicted, of any offence. Those subjected to asset confiscation would have to prove that their assets were not illegally obtained, reversing the onus of proof in criminal cases.

While Bracks presented the measures as necessary to fight organised crime, they can be used against anyone suspected of knowledge of any "major crime"—defined only as a serious offence punishable by more than 10 years in prison, involving two or more people and substantial planning. This category could cover a range of politically-motivated activities, including alleged riots, arson and break-ins at official buildings.

Under a battery of laws introduced by the Howard government, and matched by all the states, over the past three years, "terrorism" has been defined so widely that it covers traditional forms of political action and protest, including strikes, pickets and street demonstrations. Terrorism has become a crime punishable by life imprisonment, and the federal government can swiftly ban political parties that allegedly support it, and then jail their members, "informal members", supporters and "associates".

Assisted by Labor, Howard and his ministers, notably Ruddock, have utilised the September 11, 2001 terrorist attacks in the United States to introduce previously unthinkable measures. Targeted individuals can be monitored night and day, have their homes and computers secretly searched, and be hauled in for interrogation without any opportunity to notify their families or the media.

These provisions are not about protecting ordinary people from terrorism. Every conceivable terrorist act—including murder, hijacking, kidnapping, bombing and arson—was already a serious crime. ASIO and the police required no further powers—they could already tap phones, bug homes, intercept mail, hack into computers and infiltrate organisations. The underlying purpose of these ever-escalating powers is to utilise the "war on terror" to introduce repressive measures to deal with deepening social and political discontent in the coming period.

If there is a real danger of terrorist attacks in Australia, the Howard government is to blame. By participating in the criminal war on Iraq, unconditionally aligning itself with the Bush administration's global militarism and mounting neo-colonial interventions of its own in East Timor and the Solomon Islands, the government has fuelled resentments and hostilities that will undoubtedly provide terrorist outfits with new recruits.

ASIO director Dennis Richardson last week finally admitted that the invasion of Iraq might have increased the terrorist threat, both in Australia and internationally. Richardson conceded that the US-led campaign in Iraq had helped Al Qaeda recruit potential terrorists.

Foreign Minister Alexander Downer immediately denied Richardson's suggestion, restating the government's line that Islamic fundamentalists were simply ideologically opposed to "democracy" and "appalled by the prospect of Iraq in the heartland of the Islamic world becoming a liberal democracy". His comments reveal the government's extreme sensitivity to any observation, no matter how guarded, that points to the obvious connections between the occupation of Iraq and the danger of terrorism.

In reality, neither in Iraq nor domestically do the actions of Washington and its allies have anything to do with democracy. Iraq remains militarily occupied, under US control, with a puppet government. At home, the three participants in the invasion—the governments of the US, Britain and

Australia—have each introduced the types of measures usually associated with military or fascist dictatorships: detention without trial, secret hearings and vast powers of surveillance.



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