Australia's "Anti-Terrorism" Bill: the framework for a police state

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Over the past month, Prime Minister John Howard and the six Australian state premiers and two territory chief ministers have joined hands to draft draconian new laws that will erect the juridical scaffolding for a police-state. The Anti-Terrorism Bill 2005 is unprecedented in both its content and in the conspiratorial methods that have been employed to push it through the state and federal parliaments.

"Anti-terror" legislation introduced in the aftermath of September 11, 2001 already provides for major attacks on basic democratic rights, allowing secret detention and interrogation by intelligence officials for up to a week without charge, closed-door trials and powers to ban political organisations by executive fiat.

The new laws take these attacks far further. First and foremost, they grant unilateral powers to the federal and state police to intern "suspects" without charge or trial. Under the legislation, someone whom police think may be involved in a future terrorist act, or may have information about such an act, can be seized for "preventative detention" for up to 48 hours. A hand-picked judge, former judge or magistrate operating in a "personal capacity" (i.e., not as a court, but as part of the executive) can then rubberstamp the internment for up to 14 days in an initial "ex parte" hearing, that is without the "suspect" even being present.

The suspect will not have the right to know why he or she is being detained. They will be held incommunicado and any conversations they hold with a lawyer can be monitored—removing any semblance of lawyer-client privilege. Anyone—including family members, lawyers and the media—who reveals that the person has been detained, can be jailed for five years. Parents cannot even tell each other if their son or daughter is being held. These extraordinary provisions are designed to ensure that no one knows how many people have been rounded up, or why.

Secondly, specially designated "issuing courts" will grant "control orders"—which can include house arrest, the fitting of personal tracking devices and bans on employment and all forms of communication—also without any initial notice or hearing. Like preventative detainees, those under house arrest can be barred from alerting anyone to their internment. The control orders can last 12 months and be renewed continuously. Detainees can only challenge them, possibly weeks or months later, in the same special courts.

The new laws overturn the presumption of innocence. They will allow governments and their security agencies to lock someone away based solely on what they allege the "suspect" might be intending to do in the future. Internment can be imposed on the flimsiest of pretexts, such as "reasonable suspicion" of an "intention" to engage in a terrorist act, or "reasonable grounds" for considering that an order would "substantially assist" in preventing a terrorist act.

A vast range of serious criminal offences has been already introduced since 2001 covering every conceivable participation in, or support for, terrorism, including preparing, training for, assisting, financing and attempting a terrorist act. The latest measures are specifically designed for use where the police and intelligence agencies cannot produce any evidence of such involvement.

Many of the new powers will also operate retrospectively. Attorney-General Philip Ruddock has signalled that among the first to be rounded up will be people who have trained in the past with organisations that have since been classified as terrorist, even though the groups were not banned at the time.

Moreover, preventative detention and control orders can be imposed on top of each other. This is in addition to existing provisions, introduced in 2003, for the Australian Security Intelligence Organisation (ASIO) and the police to secretly detain a person for seven days for interrogation. This means that the authorities will be able to detain someone for a week of questioning, followed by 14 days of "preventative detention" and a year or more of house arrest.

The legislation clears the way for practices commonly identified with totalitarian regimes. People can simply "disappear" into police custody, without the media, or anyone else, being able to report it. Lengthy house arrest can be imposed on political opponents; the use of secret evidence will become commonplace; and security forces will have "shoot-to-kill" powers.

As various lawyers' organisations have pointed out, preventative detention and control orders can be used for dragnet operations, secretly hauling hundreds of people off the streets and isolating them from the outside world. Under the earlier laws pushed through since 2001, "terrorist acts" are defined so widely that they include any political protest that could cause violence or serious harm to any person or property.

At the most fundamental level, the purpose of the new provisions is to silence political dissent. Any organisation that "advocates", "praises" or "counsels" a terrorist act can be outlawed, automatically exposing its members, supporters and financial donors to imprisonment as well. "Praising" terrorism could mean merely expressing sympathy for, or calling for an understanding of, the social and economic roots of terrorism.

Most revealing is the radical extension of the law of sedition. "Urging disaffection" against the government, promoting "feelings of ill-will or hostility between different groups" or urging conduct to assist an "organisation or country engaged in armed hostilities" against the Australian military, whether or not a state of war has been declared, will all be illegal. Those convicted will face seven years' jail, and organisations that support such sentiments can be declared "unlawful associations".

These laws allow for the criminalisation of any criticism of the government, or support for resistance to Australian military interventions, including the occupations of Afghanistan and Iraq or operations in the Asia-Pacific region, such as the dispatch of troops to the Solomon Islands, Papua New Guinea, Indonesia or the Philippines. Legal advice obtained by the Australian Broadcasting Corporation's "Media Watch" program has confirmed that journalist John Pilger, who last year compared the Iraqi resistance to the legitimate struggle against the Nazi-imposed Vichy

regime in France during World War II, could have been prosecuted for sedition under the legislation, along with the ABC for broadcasting his comments.

The new laws have nothing to do with protecting ordinary people from terrorism. Howard proposed them in the wake of the July 7 bombings in London, claiming that new powers were needed to combat "home-grown" terrorists. But, as anonymous security sources have told the *Sydney Morning Herald*, the measures were on the drawing boards long before July 7.

No terrorist incidents have taken place in Australia. Nevertheless Howard, like Bush in the US and Blair in Britain, has seized on every attack elsewhere, from September 11, 2001, to the 2002 Bali blasts to the London bombings and the most recent Bali attacks, to make ever-deeper inroads into basic legal and political rights.

The deeply reactionary substance of the new laws is underscored by the extraordinary political conspiracy surrounding their development. Howard and his state Labor counterparts signed off on the measures on September 27 at a two-hour, closed-door Council of Australian Governments (COAG) "counter-terrorism" summit.

The federal government needed the premiers' support because the laws explicitly flout the Australian Constitution. While the Constitution contains no bill of rights or any other specific protection against tyranny, it does enshrine the separation of legislative, executive and judicial power. It outlaws any form of imprisonment or punishment of a citizen without a properly constituted court hearing.

In violation of this fundamental proposition, Howard and the state and territory leaders agreed that federal authorities can impose "preventative detention" for up to 48 hours and that the states and territories, which are not strictly bound by the separation of powers doctrine, can extend the detention for up to 14 days.

In order to provide a semblance of constitutionality, the premiers initially requested that detention and control orders be granted by judges, behind closed doors. This would, they calculated, give the appearance of judicial oversight. But, as various legal experts pointed out, this could also be ruled unconstitutional, because it amounts to asking judges to exercise executive power. The Labor premiers responded by expressing concern, not that the Constitution was being undermined, but that the laws might be struck down in the High Court.

After a series of meetings involving state and federal legal authorities, Howard gave a verbal commitment to judicial review of detention orders whereupon the state premiers, in the words of New South Wales Labor leader Morris Iemma, declared they would stand "shoulder to shoulder" with him.

Besides subverting the constitution, the other main purpose of the COAG agreement was to prevent any parliamentary debate, let alone genuine public discussion, on the most draconian laws ever introduced in Australia.

In 2002 and 2003, the introduction of anti-terror laws was preceded by weeks of parliamentary committee hearings, where MPs were deluged by hundreds of opposing submissions. As a result, the ASIO detention scheme was delayed by a year. Ultimately the laws were slightly modified, before being passed with the support of the Labor Party. This time, it was the state and territory Labor leaders who proposed the COAG process as a means of jointly keeping the public in the dark.

Their plans were thrown into disarray when Australian Capital Territory (ACT) chief minister, Jon Stanhope, publicly released the initial draft Bill on his Internet site. While he supported the Bill at the COAG meeting, Stanhope became concerned about the legal and political implications of implementing it. Among other things, he received legal advice that the legislation was unconstitutional and in breach of his own government's Human Rights Act.

The government reacted furiously to Stanhope's actions, branding him "irresponsible". Its worst fears were rapidly realised when, having read the Bill's provisions, civil rights groups, lawyers' organisations, academics, and journalists, began condemning it. South African-born Nobel Prize-winning novelist J.M. Coetzee said: "I used to think that the people who created (South Africa's) laws that effectively suspended the rule of law were moral barbarians. Now I know that they were just pioneers ahead of their time... All of this and much more during apartheid in South Africa, was done in the name of the fight against terror."

Even the government's own Human Rights and Equal Opportunities Commission president confirmed an array of legal opinions that the Bill breached international human rights law, including the International Covenant on Civil and Political Rights. The legal profession's peak body, the Law Council, called on judges to boycott the new regime.

When another draft was sent to the COAG participants at the end of last week, it was accompanied by a letter threatening prosecution if it were publicly released. Acting on legal advice, Stanhope complied, declaring he would "risk a legal response" from the Commonwealth if he breached the confidentiality provisions.

Regardless of the mounting public opposition, the Labor Party continues to extend its bipartisan support for the new laws. Federal opposition leader Kim Beazley declared that he would back the final Bill without even reading it, or bothering to consult his party colleagues.

The de facto coalition that has coalesced around the anti-terror laws cannot be explained simply by the anti-democratic tendencies of the individuals involved, whether Howard, Ruddock or "Bomber" Beazley and his "law and order" state Labor colleagues. It is rooted in deeper economic, social and political processes.

It is no accident that the three governments directly responsible for the criminal invasion and occupation of Afghanistan and Iraq—the American, British and Australian—have all introduced police-state measures to suppress dissent at home. Howard's new Bill is, in fact, modelled on aspects of Bush's infamous Patriot Act and the Blair Labour government's Prevention of Terrorism legislation, although it goes even further in restricting access to lawyers and courts.

The war on Iraq was launched to assert unchallenged US hegemony over the resource-rich and strategically vital Middle East, marking a new period of neo-colonial aggression. Despite mass antiwar sentiment across Australia, Howard signed on in order to win US backing for the use of similar methods in defence of Australian corporate interests in the Asia-Pacific.

The policy of war abroad is invariably bound up with political repression at home. Just as ordinary Iraqis are denounced as "terrorists" for resisting the US-led occupation, anyone in Australia expressing support for them can be jailed for sedition or for advocating terrorism.

At the same time, the bipartisan attack on wages, jobs and conditions and the growth of unprecedented levels of social inequality are fuelling increasing hostility, on the part of wide layers of the population, to the entire official establishment. The politics of social compromise and concessions that characterised the years of the post-war economic boom, have given away to social tensions and a deepening social polarisation that will not be contained through the old political channels. That is why both the government and the opposition are jointly moving to dispense with democratic forms of rule.

Last September's deportation of Scott Parkin, an American antiwar and anti-corporate activist, for endangering the "safety or good order of the Australian community," is a foretaste of how ASIO and the federal and state police will use the new laws. With reports that ASIO has a list of 80 or so people lined up for control orders because they allegedly trained with Islamic groups overseas, there is no doubt that Muslims will be among the first to be victimised. But the methods pioneered against them will inevitably pave the way for wider application.

In the early 1990s, asylum seekers—the most vulnerable and isolated

sections of the population—became the first targets for mandatory detention. Indefinite detention without trial, introduced by a Labor government in 1992, was continued and upheld by successive governments, and supported by the trade unions. This laid the basis, politically and legally, for the advent of Howard's new anti-democratic laws.

Far from functioning as the defender of basic legal rights, the courts have helped destroy them. Last year, a majority of High Court judges sanctioned the indefinite detention of asylum seekers, even for life, regardless of the harsh and cruel conditions they were forced to endure in the government's detention centres. Several judges suggested that citizens could also be subjected to indefinite detention, provided it was for community "protection" rather than punitive purposes.

The record demonstrates that neither parliament nor the judiciary will defend even the most fundamental civil liberties. Notwithstanding the appeals of the Greens, the Australian Democrats and various dissident backbenchers, no amount of popular pressure will reverse their course. The defence of democratic rights requires nothing less than the development of an independent political movement of the working class, fighting for a socialist strategy aimed directly against the profit system itself—the real source of war, social reaction and inequality.