

New phone-tapping powers in Australia

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A further wave of police-state laws is currently being pushed through the Australian parliament without the Howard government even claiming any new terrorist threat. The measures—six bills so far—are in addition to the detention without trial, sedition and “advocating terrorism” legislation passed by the federal and state parliaments just before Christmas.

Virtually no media coverage has been given to the latest laws, even though they will authorise the government and its security agencies for the first time to intercept the telephone and email communications of completely innocent people. They will also extend the Australian Security and Intelligence Organisation’s (ASIO) secret detention and interrogation powers for a decade, effectively making them permanent.

The Telecommunications Interception (Amendment) Act 2006, which was pushed through both houses of parliament last week, permits the federal police and ASIO to covertly monitor or read anyone’s phone calls, emails, SMSs and other “stored communications”. This power extends to so-called “B-Parties”—innocent people who have, even if unwittingly, communicated with someone suspected of a crime or of being a threat to “national security”.

Intimate or confidential conversations that “B-Parties” have with other people, including family members, friends, work colleagues, lawyers and doctors, can be bugged. This includes discussions with a lawyer under legal professional privilege. The authorities can use the information collected for many purposes, including to initiate prosecutions, even if it is irrelevant to the original suspect.

To obtain an interception warrant, ASIO need only show that it is “likely to assist” in obtaining intelligence “related to security”. These vague terms leave vast room for arbitrary or political use. There is no protection against the government eavesdropping on conversations involving Members of Parliament and

journalists, who rely on confidential sources.

By intercepting calls to mobile phones, the authorities can also trace a person’s movements. Federal and state police and other law enforcement agencies can have a tap in place for up to 45 days, while ASIO warrants last for three months.

Claiming that it was “urgent” to do so, Attorney-General Philip Ruddock bulldozed the bill through in a matter of days, brushing aside a Senate report in which MPs, including government backbenchers, appealed for a series of modifications to soften the Bill’s obvious “Big Brother” connotations.

These amendments included confining interceptions to people “suspected of engaging in the planning of, or other involvement in, terrorist acts or murder”. The defeat of that amendment only serves to confirm that these measures, like the more than 30 other pieces of “anti-terrorism” legislation already passed since 2002, are not about protecting ordinary people from terrorism. Rather, their purpose is to hand draconian powers to the security and intelligence agencies to spy on and move against ordinary people.

The “war on terror” has already been used as a cover for a rapid expansion of tapping. According to the latest official statistics released by Ruddock, 3,028 intercept warrants were granted in 2003-2004, a 41 percent rise since 2000-2001. In the early 1990s, less than 250 warrants were authorised annually.

These figures provide only a partial picture, however, because they exclude ASIO warrants, the numbers of which are kept secret from the public. Moreover, the legislation requires the major telecommunications providers, such as Telstra, to provide ASIO with intercept data which they have obtained, ostensibly for the purpose of maintaining network integrity.

In addition, there are now powers to plant surveillance and tracking devices on people, vehicles and premises, whether or not the subjects are alleged to

be involved in any crime. During the first half of 2005, 257 warrants were issued under the newly-introduced Surveillance Devices Act 2004.

On March 29, Ruddock tabled amendments to strengthen and continue, until 2016 at least, ASIO's interrogation and detention powers, which were first introduced in 2003 with a three-year sunset clause. Under this regime, ASIO can interrogate someone for up to 48 hours, if an interpreter is required, or detain them for up to a week for questioning, simply because it alleges they may have information relating to terrorism. This is an addition to the measures introduced late last year, which allow for secret "preventative" detention for up to 14 days and for house arrest for as long as a year at a time.

Ruddock's move followed a bipartisan review by the Parliamentary Joint Committee on Intelligence and Security, in which Labor MPs joined their government counterparts in backing the powers as a "useful tool". Although the committee recommended a new five-year sunset clause, Ruddock said a decade-long extension would match the 10-year period agreed by the state Labor governments for last year's laws.

Ruddock claimed the amendments enhanced "rights and safeguards" for people under questioning or detention. He did not mention the lengthening of questioning periods by discounting time spent on procedural matters, handling complaints, legal advice, medical attention, religious observances and recuperation breaks.

A handful of minor concessions only underscore the far-reaching character of the powers. Subjects will have an explicit right to contact a lawyer—but ASIO can still vet the lawyer; the monitoring of subject-lawyer communications will be banned under questioning warrants—yet, will still be allowed in detention; and the authorities may permit subjects to inform their families or employers of their detention—but only as a matter of discretion in some circumstances.

The parliamentary report gave a censored glimpse of the use of the powers between mid-2003, when they were introduced, and mid-2005. It said questioning had occurred 14 times, while no one had been formally detained. The questioning, described as "polite and dispassionate, if persistent," lasted for as long as 43 hours spread over nine days. Apparently little evidence was produced, because only four people were charged

with any offence as a result.

Predictably, none of the 25 former judges handpicked to serve as "issuing authorities" to authorise and monitor the interrogations had rejected a request by the attorney-general for a questioning warrant. Yet, lawyers who testified before the committee expressed outrage that the warrants gave them and their clients no information whatsoever about the alleged reasons for the questioning.

ASIO has probably carried out many more interrogations without warrants, or parliamentary knowledge, by threatening its targets with detention if they did not cooperate. ASIO's and the government's contempt for democratic scrutiny was underlined by the fact that passages were deleted from the report "at the request of ASIO," even though the committee "did not accept that the content ... constituted a national security concern".

In one day, Ruddock also introduced a range of Bills to strengthen the powers of intelligence and law enforcement agencies relating to "border compliance", "aviation transport security", "maritime transport and offshore facilities" and "powers of intervention at sea".

All of this has happened with barely a mention, let alone a criticism, in the mainstream media. Once again, there is no real opposition within the media and political establishment to the tearing up of fundamental democratic rights and complete acceptance of the Howard government's bogus "war on terrorism".



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