# Australian government retains detention powers

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Riding roughshod over deep disquiet in the legal profession, as well as among broad layers of ordinary people, the Howard government has taken a series of decisions that underscore its determination to extinguish basic legal and democratic rights.

After being obliged to conduct reviews of key aspects of the new anti-terror laws—detention without trial, the outlawing of organisations and sedition—the government has rejected every recommendation for limiting or even clarifying the extraordinary powers it now wields. Instead, it has decided to retain these powers, designed to suppress political dissent on the pretext of protecting people from terrorism.

Attorney-General Philip Ruddock issued a media release last week welcoming the passage of the ASIO Legislation Amendment Bill 2006. The Australian Security Intelligence Organisation's (ASIO) "questioning and detention powers will continue for the next decade," he declared.

The measures maintain powers that were granted in 2003 to ASIO on the grounds that there would be a three-year sunset clause. The new 10-year extension makes a mockery of the very conception of a "sunset clause" and underscores the endless character of the "war on terrorism".

Under the provisions, ASIO can secretly detain anyone for up to a week for interrogation, simply by accusing them of having "information" relevant to terrorism. Further measures introduced late last year establish two new forms of secret detention without trial—"preventative" detention for up to 14 days and "control orders", including house arrest, for as long as 12 months.

The revised Bill followed a report by the Parliamentary Joint Committee on Intelligence and Security, in which Labor MPs joined their government counterparts in backing ASIO's powers as a "useful tool". The committee proposed a new five-year sunset clause, but the government pointed out that a decade-long extension would match the 10-year period agreed by the state and territory Labor leaders for last year's package of laws.

Ruddock said the government had "agreed to clarify the regime and enhance rights and safeguards where this will not undermine its fundamental purpose, nor impact unduly on its operation". The Bill actually lengthens the permitted questioning periods by discounting time spent on procedural matters, handling complaints, legal advice, medical attention, religious observances and recuperation breaks.

The supposed "rights and safeguards" only underscore the police-state character of the measures. Subjects now have a right to contact a lawyer—yet ASIO can still vet the lawyer. Subject-lawyer communications cannot be monitored under questioning warrants—but still can be in detention. Prisoners may be allowed to inform their families or employers of their detention—but only as a matter of discretion in restricted circumstances.

Once again, as with every piece of "terrorism" legislation since the first barrage in mid-2002, Labor has backed the Bill, after proposing token amendments. From the outset it has aligned itself completely with the "war on terror", which has been used to mount an historic offensive against fundamental civil liberties, as well as to justify the invasions of Iraq and Afghanistan.

Equally revealing was the complicity of the Australian Greens, who explicitly lined up behind the Bill. Greens' leader Bob Brown emphasised that the Green Senators would support the legislation, even though it was a "weak response" to the committee's suggestions for curbs on the detention powers.

This is not the first time that the Greens have lined up with anti-terrorism measures. Last November, after Howard orchestrated a "terrorist alert", they endorsed an amendment to redefine all terrorist offences in terms of "a" terrorist act, rather than "the" terrorist act—allowing the government to obtain convictions without producing evidence that any specific terrorist act had been planned.

There was nothing accidental about the votes of the two parties. While posturing at times as opponents of the political establishment in order to tap into widespread disaffection, the Greens, like Labor, have no basic disagreement with the "war on terror" or with the draconian

police powers that have been introduced under its auspices. Their only reservation has been that if the measures are too blatantly authoritarian, they will further discredit the parliamentary set-up.

The Australian Democrats were left to record the "sole voice" in opposition to the Bill. That is because they are in the process of fighting for political survival. Thoroughly discredited because of their support for the Howard government's industrial laws in 1996 and Goods and Services Tax in 1999, they face extinction at the next election unless they can somehow differentiate themselves from government and the other "opposition" parties. In the debate, Senator Andrew Bartlett admitted that he stood little chance of re-election next year.

Last week Ruddock also rejected recommendations by his own Security Legislation Review Committee for limits on two key measures that can suppress political dissent in the name of fighting terrorism—the government's power to outlaw organisations and the offence of "associating" with terrorists.

The Committee criticised the fact that the Attorney-General could ban groups as "terrorist" without giving affected people any notice, let alone the right to challenge the proscription. Anyone connected with a banned group would be liable to criminal prosecution, even if they had no knowledge that the group was a "terrorist organisation".

The report suggested a "fairer and more transparent process", either by appointing an independent committee to advise the Attorney-General or by handing his power to the Federal Court. But Ruddock immediately dismissed the proposals, without waiting for a proposed parliamentary review of the report. "It is more appropriate for the proscription power to be vested with the executive," he declared.

Ruddock's rejection of elementary due process underlines the extent to which the government wants to keep its hands completely free to ban political groups by executive fiat. In late 2004, Labor agreed to give Ruddock such unlimited power for the first time since 1951, when a referendum defeated the Menzies government's bid to outlaw the Communist Party.

The Committee also called for the scrapping of the crime of associating with terrorists, saying it "transgresses a fundamental human right—freedom of association—and interferes with ordinary family, religious and legal communication". Without offering any explanation, Ruddock declared there was "no justification" for removing the offence.

A retired Supreme Court Justice, Simon Sheller, headed the Committee, and its members were senior intelligence and government officials, plus two nominees from the legal profession. One of their professed concerns was that the anti-terror laws had contributed to a "growing sense of alienation from the wider community and an increase in distrust of authority" among "Muslim and Arab Australians". They urged measures to reduce, rather than provoke, the development of "home grown terrorism".

Ruddock and the government are intent, however, on pressing ahead with their agenda. This was underscored on May 29, when Ruddock brushed aside an Australian Law Reform Commission discussion paper that branded the government's revamped sedition laws as "illogical and anachronistic".

Howard and Ruddock used last year's "terrorist alert" to demand the redefinition of sedition in an "anti-terrorism" package agreed with the state and territory leaders. Under conditions of continued opposition to the government's involvement in the Iraq war, the new definition included "urging disaffection" with the government and "assisting" enemy forces—which could cover support for resistance to Australian military occupations—in Iraq, or in the Asia-Pacific region.

Such was the public outcry, including from media proprietors and lawyers, that the government had to promise a review by the Law Reform Commission. Its report recommended replacing "sedition" with "offences against political liberty and public order". Commission president Professor David Weisbrot said the sedition laws should be redrafted to avoid stifling dissent and the media. "Given its history, the term sedition is much too closely associated in the public mind with punishment of those who criticise the established order," he said.

Ruddock responded by issuing a media release, saying he was "predisposed" to accept the Commission's "practical suggestion of changing the name of the offence," so long as the "substance" remained the same. In other words, whatever the label, the threat to free speech will remain.