

Australia: Rudd government toughens anti-terror laws

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Just one week after a series of “terrorist” police raids, Prime Minister Kevin Rudd’s government has unveiled a package of measures to strengthen anti-terrorism laws introduced since 2002.

Some of the proposed amendments would dramatically increase the scope of the laws to cover legitimate political dissent. The government wants to expand the definition of terrorism to include conduct that causes psychological harm, rather than physical harm, and create new offences such as terrorist hoaxes, threats and “inciting violence”.

Other changes would considerably boost the powers of the government and the Australian Federal Police (AFP). They include “emergency” police searches of homes without warrants, provisions to make it even harder to get bail and streamlined secrecy measures for semi-public trials.

Releasing a 442-page discussion paper on national security legislation last week, Attorney-General Robert McClelland denied that there was any link between the timing of the release and the August 4 raids, which resulted in five Lebanese and Somali-born men being charged with an unlikely plot to storm a Sydney military base in a suicide mission. (See: “Australian police carry out sweeping new ‘anti-terror’ raids”)

At a media conference, McClelland admitted that the discussion paper had been prepared well in advance. Asked by a journalist to explain the delay in releasing it, the attorney-general replied: “It’s been a matter of discussion, a matter of timing”. He claimed that the government wanted a “mature” discussion, away from the “intense emotion” evoked by the August 4 arrests and the earlier Jakarta bombings.

But the timing reveals the same methodology as that of the former Howard government, which used the 9/11 attacks in the US, the 2002 Bali bombings and its own terrorist scare in 2005 to push through terror laws that overturned basic legal and democratic rights such as no detention without trial. The laws aroused such deep public opposition that it took the Howard government up to 18 months to shepherd some of

them through parliamentary inquiries. In the Labor government’s case, it is proposing only a six-week public discussion period, ending on September 25.

McClelland refused to criticise the previous government, saying it was “required to act, and acted expeditiously”. He added that it was now time to “shift our focus to a frame of reference that is long term, so that the public accepts the legislation”. In other words, the Rudd government’s aim is to entrench the Howard government’s unprecedented laws.

One of the most far-reaching proposals is to extend the definition of terrorism, which currently requires an act or plan to cause “serious harm that is physical harm” to a person, or “serious damage” to property. The government plans to drop the word “physical,” so that psychological harm is included. This would cover non-violent conduct that supposedly frightens or traumatises someone. Even a threat to damage someone’s economic interests—for example, by calling for the occupation of a factory to fight mass sackings—could be classified as terrorism.

The terrorism definition would be further widened by covering threats to take action that “is likely to cause” serious harm, even if no such action occurs, or is planned. And a new “terrorism hoax offence,” punishable by up to 10 years imprisonment, would be added for intentionally inducing a false belief that a terrorist act has occurred or is likely to occur.

Police powers would be boosted by allowing the AFP, without a judicial warrant, to enter, search, seize and use force in any premises, including private dwellings, where an officer suspects that there is “material relevant to a terrorism offence,” regardless of whether the offence has occurred, and there is an imminent risk to public health or safety. Under the guise of dealing with “emergencies,” the federal police are being handed secret entry powers, matching those that state and territory Labor governments have given their police forces since 2002.

The Rudd government also wants federal police to have the clear right to detain people for almost eight days for questioning before laying any charges. At present, police

have just 20 hours, but they can apply to a magistrate for unlimited “dead time” extensions for breaks in questioning for any “reasonable” purpose.

This proposal is being presented as a “cap” on interrogation time after the public outcry over the failed frame-up of Indian doctor Mohamed Haneef in 2007. Haneef was detained for 13 days before being charged with providing support to terrorism. Ten days later, the charge was dropped after the allegations against him were publicly exposed as false.

When the detention power was introduced in 2002, both the Howard government and the then Labor opposition claimed that detention would never last more than a day or two. The Haneef case revealed that the interrogation period can be extended indefinitely. But the government’s plan to add a “limit” of seven days on top of the 20 hours gives the police a licence to hold a “suspect” for that length of time without charge.

Under powers introduced in 2003 and 2005, the police and the Australian Security Intelligence Organisation (ASIO) also have three other means of detaining people without trial: under ASIO’s questioning and detention power or by obtaining “preventative detention” or “control” orders.

While claiming to moderate the provisions employed against Haneef, the government is seeking to prevent courts releasing prisoners on bail. In Haneef’s case, the Howard government flouted a court ruling to release him on bail by revoking his work visa and consigning him to immigration detention. Under the 2002 laws, courts can only grant bail in “exceptional circumstances”—reversing the traditional presumption in favour of bail. But the Labor government is seeking to go further by stopping prisoners being released until prosecutors can appeal to superior courts—potentially all the way to the High Court—against a bail decision.

Likewise, Labor wants to reinforce measures, introduced in 2004, to permit terrorist trials to be conducted partially or completely behind closed doors, and to block a defendant and defence lawyers from seeing crucial prosecution evidence. The package would give the attorney-general new flexibility in deciding what “national security information” can be withheld, and create offences, punishable by up to two years imprisonment, for lawyers to disclose such information.

Sedition, which was broadened in 2005, would be substantially retained but re-badged as “urging violence” against the government or groups, with an extension to cover urging violence against individuals on the basis of political opinion. In the name of protecting individuals from incitement of hatred, the changes further restrict political free speech.

During his media conference, McClelland also proposed a

“Protocol” with media proprietors to prevent the publication of information about police anti-terrorism operations. This would be a secret arrangement to keep the public in the dark, like the old “D-notice” system, while leaving the government, security agencies and the media free to leak prejudicial accusations against those arrested, as happened with the August 4 arrests.

McClelland’s suggestion was welcomed by the Murdoch media, with an *Australian* editorial commending it as “sensible”. The newspaper also praised the government for strengthening aspects of the terror laws, while insisting that the overall result of the six-week consultation period must maintain the “rigorous approach” adopted by the Howard government.

So far, according to the media coverage, there has been limited criticism of the Labor government’s plans. Notably, Haneef’s former barrister, Stephen Keim SC, told the *Australian* that the extension to “psychological” harm made worse the problems produced by the broad definition of terrorism, and that the seven-day cap on detention was too long.

Amnesty International spokeswoman Katie Wood told the *Sydney Morning Herald* that the seven-day cap on detention without charge was “excessive and could still amount to arbitrary detention” and described the increased powers for police to enter premises without judicial oversight as “very troubling”.

An *Age* editorial expressed concerns. It noted that the inclusion of “psychological” harm could have qualified Orson Welles as a terrorist “for his panic-inducing broadcast of *The War of the Worlds*”. At the same time, the newspaper held out the illusion that the discussion paper provided an opportunity for a debate to ensure that the Rudd government got the “balance right”.

The reality is that after 20 months in office, the Labor government is intent on bolstering, and entrenching, the police-state measures of its predecessor.



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