

Australian government demands parliament sits until it passes “preventative detention” law

Mike Head

30 November 2023

The Albanese Labor government issued an extraordinary ultimatum to the Australian parliament this week. It declared that both houses must keep sitting, beyond next week’s scheduled holiday shutdown, until they pass as yet unseen “preventative detention” legislation.

Home Affairs Minister Clare O’Neil declared, via Australian Broadcasting Corporation radio: “We are not leaving here until a preventative detention regime is in place.” O’Neil demanded, and obtained, the support of the Liberal-National Coalition for that pronouncement.

Without providing any details whatsoever, O’Neil vowed in parliament that the preventative detention regime would be “tough.”

This has vast political implications, including for basic democratic rights. Holding parliament in session until it rubberstamps such a repressive law is a lurch toward authoritarianism. It has a far-reaching legal and political logic.

In the first place, the government’s blatant aim is to flout a November 8 High Court order by re-imprisoning some, if not all, of the 141 immigration detainees the government was forced to release after the court ruled that their indefinite detention was unconstitutional.

Despite being demonised by the government, the Coalition and the corporate media as “murderers” and “sex offenders” who represent a “threat to the community,” only a handful of the detainees have ever been convicted of serious offences, and all have served their prison terms.

Among those released, according to court documents, three had murder convictions and several had sex offence convictions. If they had been citizens, they would be released after completing their sentences.

Many of the detainees are refugees or immigrants denied visas by governments on arbitrary grounds, such as lacking “good character” or because they were regarded as security threats by the Australian Security Intelligence Organisation (ASIO), the domestic political spy agency.

Under the “character test,” the immigration minister can cancel a visa and thrust a person into detention on such vague grounds as “past and present general conduct” or a risk that

they might become “disruptive” to the community in the future.

The inflammatory witch-hunt cannot be explained as just about the fate of several offenders. At least 21 of the detainees had been previously released into the community.

More broadly, the government’s edict again shatters the façade of parliament as a democratic institution. Working in tandem with the Coalition, the Labor Party is insisting that draconian laws must be imposed, without even time for the pretence of proper debate or consultation.

This is the second such event in two weeks. On November 16, the government teamed up with the Coalition to ram through both houses of parliament, in just 12 hours, a bill that inflicted a new form of indefinite detention. It imposed electronic monitoring ankle bracelets, curfews and other draconian restrictions on all the released detainees, potentially for the rest of their lives.

Now the political establishment is going even further. The proposed legislation would rip aside an essential democratic right—not to be imprisoned without trial—overriding even the extremely limited protections of basic legal rights in Australia’s colonial-era 1901 Constitution.

That constitution contains no bill of rights at all, but sets out a formal separation of powers between the executive and the judiciary. In recent decades, judges have ruled that this mostly forbids imprisonment and other forms of “punishment” without a judicial process, except in wartime.

Blanket indefinite detention, even in the name of locking up previously convicted murderers and sex offenders, would cross that line, as numbers of constitutional lawyers have warned publicly.

Moreover, the very concept of preventative detention involves a “thought crime”—that is, being imprisoned for what a person might do in the future, according to the government’s police and intelligence agencies, not for any crime they have actually committed.

These events point to a reactionary political atmosphere being whipped up by the ruling parties and the media, full of incendiary allegations about threats to community safety. This is under conditions in which all the politicians involved are also

vehemently supporting Israel's US-backed genocidal assault on the people of Gaza in blatant defiance of international law.

Significantly, while the avidly right-wing Coalition, led by Peter Dutton, has played a vicious part in this, the Labor government has opposed it from the right and sought to outdo it. O'Neil has repeatedly reiterated Labor's opposition to the release of any of the detainees, whom she has vilified as "disgusting."

For now, the police-state measures being rushed through parliament are targeting one of the most vulnerable sections of the working class—asylum seekers and immigrants—but they set precedents that can be used more widely as opposition deepens to the bipartisan agenda of US-led wars and domestic austerity.

Similar laws could be introduced for use against anyone accused of conduct or views deemed an unacceptable threat to "community safety" or "national security." Governments internationally are moving already to ban protests against the Gaza genocide, falsely accusing participants of antisemitism or "hate speech."

It is not even clear yet what precise form the government's proposed preventative detention regime will take. Currently, because of the partial constitutional ban on executive-ordered punishment, federal Preventative Detention Orders are limited to 48 hours, supposedly to prevent an imminent "terrorist act."

These orders have never been used. They were introduced in 2005 amid the "war on terrorism" scare campaign that was mounted to justify US-led invasions of Afghanistan and Iraq, accompanied by unprecedented vague "counter-terrorism" laws and police powers.

Labor and the Coalition, Australia's two main ruling parties, are intent on vastly expanding the nature and scope of such provisions. They are doing so even though two High Court challenges have been launched already against the manacled and curfew laws they rushed through on November 16. One challenge is by a Chinese refugee and the other by an Afghan refugee.

The speed with which these two challenges have been filed in the High Court points to the strong legal opinion that the laws are unconstitutional. But the political establishment is seeking to overturn or evade even the limited constitutional protections against arbitrary imprisonment.

The High Court judges themselves appear to have scrambled to emphasise the narrow character of their November 8 ruling for the release of immigration detainees who were being incarcerated indefinitely because they were unable to be deported to any other country.

This Tuesday, in an unusually short time, the court delivered its reasons for its ruling. In effect, it gave the government guidance as to how it could re-detain the prisoners.

First, the seven judges stated unanimously that the underlying regime of mandatory detention of asylum seekers remained intact, as it has been since it was first introduced by the Keating Labor government in 1992.

Under this regime, nearly 1,000 people are still in indefinite immigration detention. Tens of thousands of refugees, including thousands of children, have been subjected to its cruelty and trauma since 1992. Both Labor and Coalition governments have defied domestic protests and repeated condemnations by UN human rights and arbitrary detention bodies to retain this barbaric regime.

Second, the judges said their ruling did not prevent the re-detention of people if it became "practicable in the reasonably foreseeable future" to remove them from Australia. That highlights the technicality of the test applied by the court. It still permits detention, or re-detention, if deportation is "reasonably foreseeable."

Third, the court advised that detention could be reimposed "on some other applicable statutory basis," such as a preventative detention law. That paved the way for Labor's plans.

Over the past month, the Labor government has taken other steps to eviscerate the constitutional protections against arbitrary detention. It has dispatched two groups of refugees, one from Sri Lanka and the other from Indonesia, to a reopened detention camp on the desolate tiny former colonised island of Nauru. Such "offshore" incarceration is excluded from domestic law, creating a legal back hole.

Backed by the Coalition, the government also introduced legislation this week to give it new powers, via the courts, to revoke the Australian citizenships of dual citizens convicted of political offences such as terrorism, treason, espionage and "foreign interference." This is another bipartisan move to evade a similar High Court ruling that such a power amounted to punishment and was therefore invalid unless a judicial order was involved.

All these citizenship-stripping offences are defined in sweeping terms that can extend to many expressions of political opposition, including to US-led militarism. Once deprived of citizenship, people can be detained or deported. They also lose such core democratic rights as voting and access to employment and health, welfare and education services.

Fundamental legal and political rights, the results of centuries of struggle against despotic forms of rule, are under direct attack. This is a sharp warning of the repressive mechanisms being put in place to preserve capitalist rule against the growing development of mass opposition to war, widening social inequality and deteriorating living conditions.



To contact the WSWWS and the Socialist Equality Party visit:

[wsws.org/contact](https://www.wsws.org/contact)