

NEW TERRORIST LAWS THREATEN DEMOCRATIC RIGHTS

- ☐☐ **ASIO to get powers of arrest and detention for up to 48 hours**
- ☐☐ **The removal of the right to silence when under questioning**
- ☐☐ **The creation of terrorist offences and related legislation violating the rights to freedom of expression, assembly and association**
- ☐☐ **removal of privacy rights and increased powers for government to seize organisation's assets**
- ☐☐ **Denial of the right to legal representation**

In the wake of the attacks in the US on 11 September governments throughout the "west" are planning and have implemented a number of measures to protect against future terrorist attacks. Some of these measures are directed specifically against such attacks, but some of the measures are not and would, if implemented, affect the fundamental rights of the people living in these countries.

In Australia, the Federal election has delayed specific legislative changes from being implemented. However, Federal Cabinet has announced some extraordinary proposals and over the coming months proposed legislation will be made public.

The legislation is likely to be considered in February so it is important for civil society to act now and influence the debate over what are acceptable changes, if any, to our democratic and civil rights.

NEW POWERS FOR ASIO

While the precise proposals remain sketchy. The Prime Minister has said ASIO will be able to arrest and hold people for questioning for 48 hours after obtaining a warrant from a Federal Magistrate or the Administrative Appeals Tribunal. Both these bodies have been appointed by the present Federal Government, AAT members do not have the same independence and are not a judicial authority, with fixed terms and reappointment determined by the government. ASIO would move from spy agency to secret police.

Extremely concerning is the Attorney General's statement that people arrested could face up to five years in jail for refusing to answer questions, removing people's right to silence. People could be held incommunicado with no right to a lawyer.

Such powers would not be restricted to those suspected of terrorism, but anyone who might have information regarding politically motivated violence. The Attorney General has said this could include lawyers and journalists.

ORGANISATIONS BANNED

New legislation will be introduced based on the UK Terrorism Act 2000. This act allows the government to ban organisations and makes it an offence to be a member, attend a meeting, provide any support, and indeed even wear T-shirt with the organisation's symbol. As one critic has said, support for Nelson Mandela's ANC would have been banned if these laws had been in place during the time of the anti-apartheid movement. In Australia, support for the East Timorese's independence movement could have been banned. But the laws scope is not just restricted to solidarity with overseas independence groups. The definition of terrorism is so broad that many unions and community organisations involved in industrial disputes, organising public protest or dissent could be included.

Proposed amendments would also give greater power to government agencies to avoid privacy protections and access financial and other information and confiscate or freeze assets.

If Australia adopts the European model, the scope could be even wider. The European Parliament is currently discussing new laws which would define terrorism as any offences which "aim to seriously prejudice the political, economic or social structures of a country." Such a definition might include anyone arrested at protest about the environment, corporate globalisation, native title, or asylum seekers or union members taking industrial action.

GOVERNMENT PLANS COULD GO FURTHER

The United States, UK, Canada and New Zealand have already passed draconian new laws with broad definitions of terrorism; enabling government to ban organisations and penalise people who support such organisations. In the US and UK non-citizens can be detained without a court order. In Britain the detention is indefinite with a government appointed committee only reviewing the detention after 6 months. Police and intelligence agencies have been given extensive new powers to search people homes, tap phones and avoid privacy protections to access financial and personal information.

The Bush Administration plans to establish secret military tribunals whereby those suspected of terrorism activity will be brought before a US military commission. These military commissions can by-pass national legal protections and checks and balances in the legal system.

The Commission sits in secret. There is no right to appeal and could receive the death penalty. Those convicted have no right to appeal and could receive the death penalty.

ACT NOW

The existing criminal law is adequate to address any offences that fall within any common sense definition of terrorism. Murder, serious injury, aiding and abetting or conspiracy are all charges available to police, with serious penalties attached.

The danger of these proposals is that many of the protections and principals of the criminal law will be done away with broad powers placed in the hands of an unaccountable and secret police. The need for security should not come at the price of those democratic rights that have been won through centuries of struggle.

- * circulate this information and tell your family, friends and workmates about these dangerous proposals
- * write to politicians informing them of your concerns and opposition to the proposals (some addresses below)

WRITE, RING, FAX

Prime Minister John Howard
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Simon Crean
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Tel: (02) 6277 4045 Fax: (02) 6277 2307
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John Faulkner (ALP Senate)
Parliament House
Tel: (02) 6277 3233
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Natasha Stott Despoja
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All mail can be addressed to: Parliament House, Canberra ACT 2600

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Terrorism Laws Update

December 20, 2001

Federal Cabinet met on December 18 and approved a number of new proposals, in addition to those approved on October 2. In addition, on 6 October the Commonwealth implemented United Nations regulations to block financial transactions that might assist terrorists and on 16 October the Prime Minister announced the intention to introduce new anti-hoax laws.

A number of these proposals have significant implications for the rights to freedom of expression, assembly and association. They will also significantly erode privacy rights.

Federal Parliament begins sitting on February 12. The Greens and Democrats have said they will oppose much of the legislation. The ALP has said that while it will wish to send the legislation to a Senate committee for an inquiry, it believes the inquiry could be done quickly, and that overall it is supportive. It is likely that the legislation will go to a vote on March 19-21 so we have less than three months to influence the ALP.

New ASIO powers

ASIO will be able to arrest and hold people for questioning for 48 hours after obtaining a warrant from a Federal Magistrate or the Administrative Appeals Tribunal. Both these bodies have been appointed by the present Federal Government, AAT members do not have the same independence and are not a judicial authority, with fixed terms and reappointment determined by the government. ASIO would move from spy agency to secret police.

Extremely concerning is the Attorney General's statement that people arrested could face up to five years in jail for refusing to answer questions, removing people's right to silence. People could be held incommunicado with no right to a lawyer.

Such powers would not be restricted to those suspected of terrorism, but anyone who might have information regarding politically motivated violence. The Attorney General has said this could include lawyers and journalists.

Terrorist Offences

It is unclear if proposed legislation will mirror that of the UK where organisations are banned and offences flow from assisting banned organisations, however the proposed definition of terrorism is still extremely broad. Potentially it could encompass a range of political and union activity.

The Criminal Code will be amended to include a definition of terrorist activity :

as an act or omission that constitutes an offence under the UN and other international counter-terrorism instruments, or an act committed for a political, religious or ideological purpose designed to intimidate the public with regard to its security and intended to cause serious damage to persons, property or infrastructure.

The Criminal Code will also cover ancillary conduct such as aiding, abetting, conspiracy, attempt and incitement. Funding of terrorism will also be explicitly criminalised in the Criminal Code. This will cover collection, receipt, use and provision of funds for the preparation and planning of terrorist activities.

The offences will carry a maximum penalty of life imprisonment.

Increased Surveillance Powers

Australian intelligence and police agencies already have extensive surveillance powers.

However at present the government believes an agency with a valid search warrant cannot access e-mail communications unless they have been read, or otherwise consciously dealt with, by the intended recipient. The *Telecommunications (Interception) Act 1979* will be amended to permit access to unread e-mails where another form of lawful access to the system or device capable of displaying the communication is held by the relevant agency.

The Act will also be amended to include terrorism offences in the definition of class 1 offences for the purposes of telecommunications interception warrants. This is significant, as it will potentially bring within the scope of the Act a range of political organisations that could be covered by the broad scope of the terrorism definition.

Financial Accounts

Amendments will be made to the *Financial Transaction Reports Act 1988* to allow the reporting of possible terrorist-related transactions and international funds transfers. The Act will also be amended to enable AUSTRAC to share financial transaction reports information with other countries and to enable ASIO and the AFP to share such information with equivalent agencies overseas.

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