

Australia: State Labor government hands police unprecedented powers

By Rowan Taylor
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Like the federal Howard government, the Labor administration in the Australian state of Victoria has exploited the “war on terrorism” to hand unparalleled powers to its police apparatus. With the enthusiastic support of the Liberal Party, Premier Steve Bracks’ government has enacted legislation that gives the state police the power—for the first time—to secretly enter, search and bug homes, as well as to forcibly enter and search premises.

The Terrorism (Community Protection) Act enables the police to obtain warrants to enter any premises, by force or impersonation if necessary, to search and seize anything without the knowledge of any occupier or owner.

Covert entry can be extended to neighbouring premises to search, seize property or carry out surveillance. The police can place permanent bugging devices, substitute one substance for another, and copy, photograph or record anything on the premises. Confidential lawyer-client files could be secretly copied.

The police can target entirely innocent people. No crime needs to be specified in the warrant—the police merely have to assert that the warrant will assist in the prevention of, or is in response to, a terrorist act or suspected or likely terrorist act. Such accusations could easily involve false affidavits, concocted evidence or be based on media witch-hunting.

Under a normal crime investigation warrant, the occupier must be informed and shown the warrant on entry, giving them the opportunity to challenge its validity in court. But now, a Supreme Court judge can issue a covert warrant on an *ex parte* (one-sided) application by the police.

The application must be heard in camera and can even be granted by telephone. Public scrutiny of these

proceedings has been made virtually impossible by outlawing the publication of any report or information about them. There is no mechanism for an occupier to test the legality of a warrant.

Although the police are required to report to the court on the outcome of the operation, the judge cannot revoke the warrant or intervene in its continued use. Nor can repeat warrants be denied.

The police are not required to provide details of the surveillance devices they plan to use, or how long they will remain in place. Judges cannot consider whether alternative means exist to obtain evidence, nor the value of the information sought as evidence.

There are no limitations on who can accompany the police in executing the warrants. This allows any informers and agents provocateurs to join the operations, further opening the door to the planting and fabrication of evidence.

The definition of a “terrorist act” is the same as that used in Howard’s anti-terrorism laws. It includes any act done or threat made “with the intention of advancing a political, religious or ideological cause” for the purpose of “coercing or influencing by intimidation” any government or section of the public. An exception is made for “advocacy, protest, dissent or industrial action,” but not if it could produce harm to a person, damage to property, a “serious risk” to public health or safety, or “serious interference” with a transport, information, telecommunications, financial, or essential service.

As with the federal legislation, the definition is so wide it could cover nurses taking strike action to fight budget cuts, or protestors blocking a federal government building.

The police can curtail the ability of anyone charged under these provisions to mount a proper defence or

unravel the truth, by pleading that disclosure of details of the covert police operation would prejudice the investigation, prevention or prosecution of a terrorist act or suspected terrorist act. On this pretext, the police can refuse to produce documents, give evidence, answer interrogatories or provide particulars.

The legislation also amends the Freedom of Information Act to exempt any document from disclosure if the police commissioner or a government department head decides that the document's release could damage the state's security, defence or international relations.

The Labor and Liberal parties joined together to override sharp warnings by civil liberties groups. Victorian Privacy Commissioner Paul Chadwick declared: "The new powers are severe. The freedoms they erode are precious. It is difficult to imagine a more serious adverse effect being carried out under law."

Chadwick described the covert warrant system as "secret policing under law." He proposed that a Public Interest Monitor be appointed to advise judges on whether a warrant should be denied on public interest grounds. Even this extremely limited safeguard proved too extreme for the Victorian parliament.

Liberty Victoria pointed out that police could potentially plant explosives on the premises of an unsuspecting person. The group pleaded for covert searches to be videotaped, but the government rejected the proposal.

Liberty Victoria President Greg Conellan noted the possibility of governments bugging political opponents, saying the legislation would give them "the power to legally do what (former US president) Richard Nixon did illegally. The potential for abuse is enormous."

In October 1997, the *Age* newspaper revealed that the Victorian police Special Branch had illegally monitored and maintained files on political activists and organisations, and infiltrated political and community groups. The previous Cain Labor government claimed to have disbanded the Special Branch in 1983, but simply replaced it with the Operation Intelligence Unit.

Since renamed the Security Intelligence Group (SIG), it continues to carry out political surveillance, including of Islamic associations, radical parties, refugee action groups and animal liberation organisations.

The new laws strengthen the hand of the SIG and the entire police force to spy on political opponents of the government, operate as agents provocateurs and carry out entrapment exercises. The federal police and the Australian Security Intelligence Organisation (ASIO) will be able to work closely with their Victorian counterparts in using these anti-terrorism laws to conduct political raids and exploit ASIO's new powers to detain people for interrogation without trial.

At the same time as legislating the Terrorism (Community Protection) Act, the Victorian state parliament passed the Terrorism (Commonwealth Powers) Act, handing over the state's anti-terrorism powers to the Howard government. The country's eight state and territory administrations, all controlled by the Labor Party, have agreed to refer these powers to Canberra in order to strengthen the security apparatus and ensure that the Howard government's legislation, which marks an unprecedented attack on democratic rights, is not ruled unconstitutional.

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