Dutton moves to expand police state under cover of COVID-19

The Morrison government is taking advantage of the distractions created by the coronavirus crisis to try to ram through yet another suite of fascist “national security” legislation. Already Australia has passed a world-record 85 such laws since the September 2001 (“9/11”) attacks in the USA ushered in the so-called Global War on Terror, vastly expanding both the powers of Canberra’s intelligence establishment and the secrecy with which those powers are exercised. Bills recently put before the pandemic-truncated Parliament by Minister for Home Affairs Peter Dutton would hand fresh, far-reaching powers to the intelligence agencies, strip away much of what constraints and democratic oversight remain, and advance Australia another long step down the road towards a full-blown police state.

Dutton’s most blatant piece of fascism is the Australian Security Intelligence Organisation Amendment Bill 2020, introduced on 13 May supposedly to “modernise” the powers of ASIO, Australia’s domestic spying agency. Bad enough that it would allow ASIO to detain and interrogate children as young as 14 whom it deems “likely” to engage in espionage, “politically motivated violence” and/or “foreign interference”, instead of only terrorism suspects aged 16 and over as at present. But that is just the beginning. In what barrister and Australian Lawyers Alliance spokesman Greg Barns, in an analysis published later the same day in *The Age*, dubbed a “serious attack on the fundamental right of a person, whether they be 14 or 40, to choose their own lawyer”, the ASIO Bill also allows for either a government-selected judge or a member of the Administrative Appeals Tribunal (the ostensibly independent body that reviews decisions made under federal laws) to “stop a person ASIO is seeking to question from contacting their lawyer if ‘satisfied, based on circumstances relating to the lawyer, that, if the subject is permitted to contact the lawyer, a person involved in activity prejudicial to security may be alerted that the activity is being investigated, or that a record or other thing the subject may be requested to produce might be destroyed, damaged or altered’.” No evidence is required, Barns wrote: “All ASIO would have to do is tell the judge or AAT member that they have heard from ‘sources’ that the lawyer requested by the detainee is a security risk.”

Suspects denied their own lawyer would instead have a “suitable” one assigned them by the judge or AAT member. And where a suspect’s own lawyer *is* initially approved, ASIO can revoke that approval at will if, per the bill’s Explanatory Memorandum, it decides that “the lawyer’s conduct is unduly disrupting questioning … [such as when] a lawyer repeatedly interrupts questioning (other than to make reasonable requests for clarification or a break to provide advice), in a way that prevents or hinders questions being asked or answered.” Wrote Barns: “So if the ASIO officers are badgering or harassing a frightened 14-year old, or asking questions that are completely irrelevant, they have *carte blanche*.” Pauline Wright, president of the Law Council of Australia (LCA), wrote 14 May in the *Guardian* that “the conferral of coercive questioning powers on an intelligence agency is a highly extraordinary and unusual measure, which has no equivalent under the laws of Australia’s counterparts in the Five Eyes alliance”, the global spying alliance whose members (Australia, Canada, New Zealand, the UK and the USA) comprise the heartland of the Anglo-American Empire.

The bill also proposes to expand ASIO’s surveillance powers while reducing outside scrutiny thereof. Instead of going to a judge for a warrant, Barns wrote, ASIO officers would be empowered to spy on and track whoever they want—including by planting electronic tracking devices in, say, their bags or vehicles—and “*will only have to get the OK to do so from another ASIO officer* …. This approval can be oral, so long as paperwork is filed two days later.” (Emphasis added.)

Labor on board as usual

Both Barns and Wright insisted, as have other legal experts and civil rights activists, that the ASIO Bill demands the legislature’s full attention and must be subjected to vigorous scrutiny and debate, rather than waved through by a Parliament distracted by the COVID-19 crisis. So much is true; but pandemic or no, the real danger is the curse of “bipartisanship”—the euphemism Canberra uses to hide the fact that for over 30 years Australia has been a one party dictatorship where any truly important policy area is concerned.

The Greens have already stated their opposition to the bill, with party justice spokesman Senator Nick McKim of Tasmania noting in a 13 May media release that Dutton had offered no explanation as to why the new powers were even necessary. “The National Terrorism Threat in Australia hasn’t increased for more than five years”, Sen. McKim said, “and yet we have been confronted with wave after wave of legislation.” Most of the crossbench in both houses, in particular Tasmanian independent MP Andrew Wilkie, himself a former intelligence analyst and whistleblower who in September 2015 famously described Australia as already a “pre-police state”, could be expected to feel the same way.

That will not matter, however, if the Labor Party “opposition” supports the bill—as it most likely will, given it backed the recommendations of a 2018 review by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) around which Dutton’s amendments are designed. According to ABC News on 14 May, Shadow Attorney-General Mark Dreyfus MP insisted to media that this and any other bills that so “deeply affect civil liberties” would be given “very rigorous scrutiny” by the PJCIS, which is currently reviewing it at Dutton’s request. As the *Australian Alert Service* has reported, however, the

PJCIS is with very rare exception a mere rubber stamp for the intelligence agencies whose activities it is supposed to oversee; its present Labor deputy chair, Victorian MP Anthony Byrne, is reportedly so cosy with the intelligence agencies that they consider him “one of their own”; and its chairman, WA Liberal MP and former Special Air Service (SAS) officer Andrew Hastie, has very well known tendencies in the same direction. LCA president Wright observed in her Guardian article that there is a “sense of urgency [around the bill] given that ASIO’s current questioning powers are due to sunset [i.e. expire] on 7 September”, by which time amendments must have been passed for it to keep operating. The timing is doubtless deliberate: Labor’s usual modus operandi when in opposition is to make token complaints about bad laws, then wave them through anyway on the premise of their supposed urgency while mouthing vague promises to fix them next time it’s in government, which it never gets around to fulfilling.

Remember Snowden

Dutton’s other recent assault on civil liberties was introduced in March and is also being reviewed by the PJCIS, but thus far has garnered little attention from the mainstream media—which is odd, since it directly affects them.

The Telecommunications Legislation Amendment (International Production Orders) Bill 2020, or IPO Bill for short, is another purported “modernisation” effort, sparked according to its Explanatory Memorandum by the need to “establish a new framework to assist Australia’s international crime cooperation efforts by improving Australian agencies’ access to overseas communications data”.

“The exponential rise of global connectivity and reliance on cloud computing”, the memo explains, “means that intelligence and evidence that was once stored within Australia and available under a domestic warrant or authorisation is now … often only obtainable through international cooperation. … To address this issue, Australia is seeking to negotiate agreements with like-minded foreign governments for reciprocal cross-border access to communications data.” For “like-minded foreign governments”, read Five Eyes. The first such agreement will be one already being negotiated with the USA for special treatment under its *Clarification of Overseas Use of Data Act 2018* (*CLOUD Act*), which entitles US intelligence and police agencies to demand data held by US-owned companies no matter where in the world it is stored, but purports to deny other countries’ agencies the right to access US-owned data held on their own soil.

Despite Dutton’s best efforts, it remains illegal for the Australian Signals Directorate (ASD), Canberra’s electronic spying agency, to run surveillance operations inside Australia except on a case-by-case emergency basis. Dutton’s IPO Bill would sidestep this by allowing ASIO, authorised either by the AAT or a *verbal directive* from the Attorney-General, to access real-time surveillance information (phone taps included) collected by the intelligence agencies of the aforementioned “like-minded countries”. Does this sound familiar? It should, because US National Security Agency (NSA) whistleblower Edward Snowden revealed in 2013 that all of the Five Eyes countries had been doing the same thing *illegally* for many years, with the eager assistance of major US tech companies and no democratic oversight whatsoever; and given Snowden’s revelation gave rise to no legal consequences, they may be presumed to have continued doing so. The IPO Bill would retrospectively legitimise information so gathered.

Labor may be fine with making over ASIO into a modern-day Stasi, but the IPO Bill was apparently a bridge too far for Shadow Attorney-General Dreyfus. Crikey political editor Bernard Keane reported 15 May that while questioning Home Affairs officials on the bill the day before, Dreyfus exposed a loophole that would create “a runaround on existing procedures designed to protect journalists’ sources”. Wrote Keane, “When the Abbott government introduced mass surveillance laws in 2015, the mainstream media belatedly realised that journalists’ phone and IT records would be easily accessed … under ‘data retention’ laws. In response, a ‘Journalist Information Warrant’ (JIW) process was hastily put together that would require agencies to apply for a special warrant, with more stringent thresholds and procedural safeguards, like a Public Interest Advocate, if agencies wanted to obtain data relating to a journalist’s sources.” The IPO Bill contains no such safeguards. If passed it would give ASIO and the Australian Federal Police free rein to hunt down whistleblowers and make public-interest journalism a thing of the past.
