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Stephen de Tarczynski

MELBOURNE, Mar 25 (IPS) - Civil libertarians are concerned that significant powers wielded by authorities in order to conduct investigations into terrorism-related activities are being normalised and made available for less serious crimes.

Prospective new legislation introduced by the governing Labor Party will give police and other officials in Australia's most-populous state, New South Wales (NSW), the power to search premises and confiscate equipment.

Such actions, according to the proposed legislation, be carried out without the knowledge of those suspected to be involved in a range of offences including homicide, drugs and firearms offences, organised crime, kidnapping and money laundering.

Based on NSW's existing framework for investigating terror suspects - covert searches have controversially been available hitherto in relation to terrorism investigations - authorities will be able to covertly enter and search premises and look through and remove computers or other information storage devices in regards to offences punishable by seven years or more of jail time.

If passed without changes, the legislation will make covert search warrants available to police, the NSW Crime Commission and the Police Integrity Commission via applications to the state's Supreme Court.

"These covert searches will allow police to gain evidence while not tipping off criminals [that] they are under suspicion," said the state's Premier, Nathan Rees, earlier this month.

Authorised personnel will also be able to impersonate others for the purpose of executing the search warrant and will even be given powers to secretly enter premises not directly involved in the investigation.

"They may also gain access to the subject premises by entering adjoining and adjacent premises without the knowledge of the occupier of those premises," say the bill's explanatory notes.

Notice of the execution of a covert search warrant is required to be served to the occupiers of the subject premises within three years of the search, while occupiers of adjacent premises also entered covertly as part of the investigation are to be notified at the same time.

The law enforcement (powers and responsibilities) amendment bill 2009 is currently before the NSW parliament, awaiting passage through the upper house before it is enshrined in law.

The government insists that restrictions and safeguards will prevent the abuse of the new powers by authorities.

"These are tough new policing powers and the government has therefore taken care to ensure that the scheme is appropriately restricted and accompanied by strict judicial oversight and comprehensive safeguards," said parliamentary secretary Barry Collier when he introduced the bill to the legislative assembly on Mar.4, a week before it was voted through the lower house without amendment.

In addition to the power to issue covert search warrants being restricted to supreme court judges, law enforcement agencies will also be required to report "certain matters" to the issuing judge and attorney-general following a covert search, in addition to annual reports on the exercise of the new powers, a procedure also required of the NSW ombudsman which will have an ongoing oversight role.

But despite such checks, civil society groups have slammed the prospective laws.

"State agencies in democratic nations have always had to give notice of an intended search because the potential for abuse without notice is extreme," says Stephen Blanks, secretary of the NSW Council for Civil Liberties (NSWCCL).

"The concept of covert search warrants is contrary to the basic tenets of the rule of law," he adds.

Susan Harris-Rimmer, president of the Australian Lawyers for Human Rights (ALHR), argues that such powers are

appropriate for bodies like the Australian Security Intelligence Organisation for intelligence-gathering purposes but not for police who are interested only in "putting a particular person in jail."

Covert search warrants are "just not appropriate for ordinary crime fighting," she told IPS.

Along with representatives from other organisations - including the NSWCCCL, the Public Interest Advocacy Centre, the Combined Community Legal Centres Group and the Sydney Centre for International Law - Harris-Rimmer co-signed an open letter addressed to Premier Rees on Mar.20 that expressed concerns regarding the bill's impacts on rights.

The group has criticised the selection process of "eligible" Supreme Court judges entrusted with issuing the covert search warrants. Leaving responsibility to the attorney general for declaring a judge eligible "clearly breaches the doctrine of separation of powers and consequently the rule of law," representatives argue.

They say the failure of the government to release a report from last September, by the ombudsman on covert search warrants, undertaken in regards to terror-related activities, highlight the bill's lack of public scrutiny.

The bill was "introduced without public consultation and debate and is being pushed rapidly through the parliament," say the civil society members.

They also communicated their disquiet about "the gradual normalisation of extraordinary powers like covert search warrants, which breach a range of human rights, into general policing."

Harris-Rimmer regards such a transformation as a "slippery slope" upon which tough measures to combat perceived threats become part of everyday crime fighting.

It is a theme also expressed in a report released in February by the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights - a panel established by the International Commission of Jurists - which calls for remedial action to wind back what it regards as "damaging" counter-terror laws which have been enacted in many countries since the Sept.11 attacks on the United States in 2001.

The 'Assessing Damage, Urging Action' report warns that exceptional and "temporary" counter-terror measures "are becoming permanent features of law and practise, including in democratic societies."

The panel says that the criminal justice systems should be the key to legally combating terrorism, instead of what it calls "secret intelligence."

Harris-Rimmer told IPS that Australia should revert to relying on its criminal justice system.

"I understand the attraction for law enforcement agencies but we've had our criminal laws built up over centuries for a reason. They were the right balance between defending someone's right to be presumed innocent until proven guilty and the ability to get a prosecution," she says.

"That balance had worked over a long period of time and it's not something that should be thrown away," adds Harris-Rimmer.

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