

Australian government launches new attacks on free speech

Mike Head**15 February 2002**

Like the Bush administration, Prime Minister John Howard's government in Australia is intent on exploiting the September 11 terror attacks in the US to further curtail free speech and suppress opposition to its policies.

With parliament resuming this week for the first time since last November's federal election, the government has introduced an array of measures in the name of the war on terrorism. "In light of the events of September 11, national security has naturally taken a front seat," Attorney-General Daryl Williams declared last week. "Implementing reforms to bolster our armoury in the war against terrorism is a key focus of this government."

One piece of legislation will significantly expand the powers of ASIO, the domestic political police, including giving its officers, for the first time, the authority to detain anyone for interrogation without charge for 48 hours. In addition, "terrorism" will be re-defined to cover a range of dissenting political activity.

Also at the top of the agenda is the *Criminal Code Amendment (Espionage and Related Offences) Bill*. The legislation extends and toughens two sets of laws, one against alleged espionage, the other against the leaking of government information. Both have serious implications for basic democratic rights.

When he first introduced the Bill last September 27, Williams presented it as dealing only with "espionage". He said it aimed to foil people like former Australian Defence Intelligence Organisation (DIO) officer Jean-Pierre Wispelaere, who has been detained in the US since 1999 on charges of trying to sell confidential US documents that he allegedly obtained while working for DIO.

But the legislation also broadens the existing "official secrets" provisions of the Crimes Act, outlawing the leaking by public servants and journalists of any government information at all, regardless of whether it raises issues of "national security".

Under the Bill, people can be jailed for two years for revealing any "official record of information". An explanatory memorandum states that such information is

"not necessarily designated with a security classification". If anyone leaks or publishes information "intending to prejudice the Commonwealth's security or defence," they can be imprisoned for seven years.

Facing media criticism, Williams issued a news release last week claiming that: "The new legislation is aimed at protecting Australia's national security and not at hampering or preventing public disclosure. The Bill will include provisions dealing with unauthorised disclosure of information but these are simply intended to restate the existing provisions under the Crimes Act in more modern language."

This is a blatant deception. Apart from extending the protection of official secrets to include any government document, the Bill makes it easier to jail journalists or anyone else found with a leaked government document. Mere possession of official information will be enough. The prosecution will no longer have to prove that a recipient knew or ought to have known that the information's release was unauthorised. Instead, recipients must prove that they checked with the relevant authority.

Furthermore, the Bill does not provide for a defence of public interest. It seeks to override a legal ruling that has stood since 1980 when the High Court Justice Anthony Mason held that unauthorised disclosure should only be prevented when it was "likely to injure the public interest," on the grounds of affecting "national security, relations with foreign countries or the ordinary business of government".

In that case, Mason declined to grant the Fraser government an injunction to stop the publication in the *Sydney Morning Herald*, the *Age* and a book, of secret Foreign Affairs files and cables on topics such as the Indonesian invasion of East Timor, the agreements covering US bases in Australia, the structure of the US and British intelligence services and Australia's support for the Shah of Iran.

Having been refused an injunction, and confronting obvious policy differences within the military and media establishment, the Fraser government ultimately took a

political decision not to prosecute the newspapers' owners, the Fairfax media company and Angus and Robertson, the book publishers. Howard's administration wants to use the atmosphere whipped up since the September 11 attacks to reverse that precedent and clear the way for political prosecutions.

The "espionage" section of the legislation is equally insidious. It states that anyone who discloses information about national "security or defence", "with the intention to prejudice" that security, or releases information that is in Australia's control relating to the security of another country, can be imprisoned for 25 years.

As well as more than trebling the potential jail term for espionage from 7 to 25 years, the Bill widens the Crimes Act, which protects information on Australia's "safety or defence". The new term "security or defence" is defined to include "the operations, capabilities and technologies of, and methods and sources used by, the country's intelligence or security agencies".

Thus, it will be espionage to reveal or publish official material about the operations of Australian security agencies, including the armed forces, DIO, ASIO, ASIS (the overseas spy agency), DSD (military signals intelligence) and the Office of National Assessments, the Prime Minister's own intelligence thinktank. Currently, the ASIO Act and other measures prohibit revealing the identities of intelligence officers, but the new provision is far more general and carries a much heavier penalty.

It could apply to the current revelation that the Howard government used the DSD to monitor communications with the Norwegian freighter the *Tampa* during last year's confrontation over the government's refusal to allow the ship's rescued refugees to enter Australia. According to the *Sydney Daily Telegraph*, details of the use of DSD intelligence for domestic political purposes came from "a senior government source close to Cabinet".

And for the first time, anyone who exposes the intelligence activities of the government's security partners—the chief ones being the US and Britain, whose agencies include the CIA, FBI and MI5—can be charged with espionage. After Wispelaere's arrest, the US agencies reportedly demanded tougher measures to protect their interests and the Howard government, which has been eager to strengthen ties with Washington, was anxious to oblige.

These provisions provide enormous scope for persecuting those accused of opposing the "war against terrorism" or any other military intervention. For instance, they will outlaw revelations about the operations of the SAS special forces in Afghanistan or the navy's participation in the naval blockade of Iraq, or the bombing activities of the American military and its other allies.

If the legislation had been enacted in 1999 it could have been used against the leaking of DSD and other intelligence information showing the Howard government's prior knowledge of Indonesian-backed violence in East Timor—violence that the government later used cynically to dispatch troops to protect Australian commercial and strategic interests.

Moreover, any charges under the legislation—whether of "spying" or "leaking"—can be heard behind closed doors. "In the interests of national security or defence," courts or tribunals can exclude all members of the public from the whole or part of a hearing, and ban publication of any or all of the proceedings. This provision, which already exists in the federal Crimes Act, will be extended to include the new definition of "security or defence".

Civil liberties groups, lawyers and journalists have condemned the legislation. Whistleblowers Australia president Dr Jean Lennane called the jail threats "one of the steps between democracy and totalitarianism". Australian Council for Civil Liberties president Terry O'Gorman said the changes would have "a chilling effect" on the preparedness of public servants to leak information.

Media proprietors have also criticised the new "leaking" laws. The Fairfax group, publishers of the *Melbourne Age*, *Sydney Morning Herald* and *Australian Financial Review*, has written to Williams stating that the legislation will "hamper public discussion". Its letter warned that the Bill could be successfully challenged in the High Court for breaching the Constitution's implied freedom of political communication.

These criticisms, however, have not been extended to the "espionage" provisions. While the media owners are keen to protect their capacity to publish leaks that may damage, undermine or put pressure on the government of the day, they are fully committed to upholding the "national security" interests of Australian ruling circles and their international allies.

These concerns are reflected in the response of the opposition. Labor Party leaders have accused the government of "overkill" in seeking to imprison public servants and journalists, while emphasising that they have "no problems" with increased jail terms for espionage.



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