

# Australian government instigates move to jail journalists

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In a measure of how far the Australian government will go to gag the media and abrogate basic democratic rights, it has been pushing for the jailing of two prominent political reporters for refusing to disclose the source of leaked official documents.

Over the past month, Prime Minister John Howard and his department have insisted that Gerard McManus and Michael Harvey of the Melbourne *Herald Sun* face contempt charges in the Victorian County Court. If convicted, the pair could be imprisoned indefinitely until they “purge” their contempt by naming their source.

Their “offence” had nothing to do with “national security” or terrorism. All they did was embarrass the government by exposing its plan to deny war veterans a recommended \$500 million increase in benefits.

In February 2004, the journalists wrote a story headlined, “Cabinet’s \$500-million rebuff to veterans”. It reported that Howard’s cabinet had scaled down from \$650 million to \$150 million an inquiry’s recommendations to review veterans’ TPI (Totally Permanently Incapacitated) entitlements.

Following the exposure, which enraged veterans and their supporters, the government was forced to make a tactical retreat in the months leading up to the federal elections, and double its initial proposal.

Such leaks have been standard fare in parliamentary politics and the mass media for decades. They are also one of the few means by which the public can be alerted to the lies and cover-ups that have become the Howard government’s standard *modus operandi*.

Its instinctive response to the McManus-Harvey story was to call in the Australian Federal Police (AFP) to investigate and to launch a major prosecution against a public servant. Desmond Patrick Kelly, 52, of the Veterans Affairs Department has pleaded not guilty to “unauthorised disclosure of information” under the Crimes Act 1914. Nevertheless, he remains suspended from employment and faces up to two years imprisonment if convicted.

The Commonwealth Director of Public Prosecutions then

called McManus and Harvey as prosecution witnesses at pre-trial hearings before County Court Chief Judge Michael Rozenes. The two journalists initially refused to answer questions on the grounds that they might incriminate themselves. After they were offered immunity from prosecution, they objected to questions that required them to breach the journalists’ code of ethics, which states: “Where confidences are accepted, respect them in all circumstances.”

On August 23, Judge Rozenes described their stand as a “clear contempt of court” and said a range of penalties could apply, including a prison term. He allowed them to remain free but ordered them to appear before him a month later to face possible charges.

This ultimatum generated significant opposition from journalists, veterans organisations and civil liberties groups. Reporters Without Borders said it “would constitute an extremely dangerous precedent for press freedom in the country”. The journalists union, the Media, Entertainment and Arts Alliance, warned that media political coverage would be “reduced to the thin gruel of press releases, [parliamentary] Question Time and staged political stunts”.

But Howard personally backed the legal action, saying that while he regarded the two journalists as “good blokes”, it was “worthwhile preserving the principle that the government does have a right in the public interest of conducting some confidential discussion”.

Likewise, Howard’s departmental secretary, Dr Peter Shergold, recently told a conference: “If some people seem surprised that I have called in the police to deal with leaks, they shouldn’t be—I always have and I always will.”

Kelly is not the only public service whistleblower being persecuted by the Howard government. AFP Commissioner Mick Keelty recently told a Senate estimates committee that between 2000 and June this year, eight people had been charged under the secrecy provisions of the Crimes Act. Six were convicted, and two cases were still pending in the court. Between 2002 and June 2005, ministers and their departments referred 37 leaks to the AFP for investigation.

The AFP recently questioned Marcus Priest, the legal affairs editor of *Australian Financial Review*, over the source of a briefing alleged to have come from the Workplace Relations Department. Last November, AFP officers raided the Canberra office of the *National Indigenous Times* in search of cabinet documents relating to Aboriginal welfare.

These methods are symptomatic of a government that is facing growing opposition and dissent to its lies and falsifications—including from within sections of the state apparatus itself. In the notorious 2001 “children overboard” affair, naval personnel exposed the government’s claims that asylum seekers threw infants into the sea in a bid to force the navy to rescue them. In 2003, the government’s fraudulent “weapons of mass destruction” claims, which it used to justify its participation in the criminal invasion of Iraq, were exposed by former intelligence officer, Andrew Wilkie.

The Howard government would not be the first to jail journalists. In 1989, under the Hawke Labor government, Tony Barrass from the Western Australian *Sunday Times* was imprisoned for a week and fined \$10,000 for refusing to reveal the source of leaked Tax Office information. Since then, three journalists have been jailed for up to three months for contempt of court and several others have been given suspended sentences, fines or community service orders.

Nevertheless, the moves against McManus and Harvey and the post-2000 rash of police investigations and prosecutions take these anti-democratic measures to a new level.

One complication in the McManus-Harvey case is that the *Herald Sun* is a Murdoch newspaper, and News Limited publications have run several columns and editorials opposing the contempt threat. Significantly, the *Australian* also printed an edited speech by a relatively high-ranking representative, the group’s editorial manager Warren Beeby, criticising the punishment of journalists for “embarrassing a mean government”.

News Limited has always demanded a free hand to selectively publish sensitive material when it furthers the Murdoch empire’s political agenda. At the same time it regularly offers its services to run pro-government leaks. In fact, the pursuit of the two journalists has highlighted the Howard government’s hypocrisy in prosecuting Kelly and other public servants while regularly feeding secret documents to the Murdoch media for its own political purposes.

In one notorious instance, classified security information was leaked to *Herald Sun* columnist Andrew Bolt about Australia’s involvement in Iraq in a bid to discredit Wilkie, who resigned his intelligence post over the lies told to justify

the invasion.

Only last month, Attorney-General Philip Ruddock blocked calls for an investigation into another leak, about the Australian Security Intelligence Organisation’s (ASIO) allegations against deported American antiwar activist Scott Parkin. Featured on the front page of the *Australian*, the allegations were aimed at silencing criticism over Parkin’s removal. When challenged, Ruddock refused to even say whether the leak would be probed, insisting that it would compromise “national security” to do so.

On September 30, Ruddock belatedly stepped into the McManus-Harvey case, announcing that he would ask the judge to take into account planned Australian Law Reform Commission recommendations that would partially protect journalists from naming confidential sources. If the judge agrees (the case is due back in court shortly), McManus and Harvey may escape with fines or the contempt charges could be postponed.

The Law Reform Commission recommendations have not been finalised yet, and will not be translated into law until next year at the earliest. Apparently, they will be modelled on current state legislation in New South Wales, which is designed to leave governments and the courts with broad discretion to threaten journalists with contempt charges.

In comments reported by the *Herald Sun*, Ruddock said penalties would remain for publishing material that jeopardised intelligence inquiries, undermined criminal investigations or had “serious financial consequences”, such as affecting the money markets. There is no guarantee whatsoever that these laws will protect journalists like McManus and Harvey, who have been hauled before the courts for the “crime” of politically embarrassing the government.

Ruddock’s intervention is designed to defuse the outcry over the threatened jailing of the two well-known journalists, while paving the way for new laws that will retain and legitimise the use of contempt charges to intimidate and silence any even mildly oppositional voice within the media.



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