Witnesses at Australian Senate hearings warn: “terror” laws aimed at dissent

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Three days of hearings held by an Australian Senate committee last week into the Howard government’s unprecedented Anti-Terrorism Bill 2005 provided a partial glimpse of the extent of public opposition to the Bill.

On November 3 the government gave the committee a farcical three weeks—until November 28—to hand down a report on the 140 pages of draconian legislation. Since it was drafted, Prime Minister John Howard and his attorney-general Philip Ruddock—with the collaboration of the state Labor premiers—have done everything they could to keep the legislation out of the public arena as much as possible.

Nevertheless, despite giving potential objectors just a week’s notice, the Senate’s Legal and Constitutional Committee was deluged by more than 260 submissions, which were overwhelmingly hostile to the Bill. Only a few of the authors were invited to appear before the committee, alongside government, police and security officials.

The range and strength of the submissions belied the atmosphere of “terrorist” hysteria that the Howard government, its state Labor partners and the media attempted to create around the massive police and Australian Security Intelligence Organisation (ASIO) raids in Sydney and Melbourne on November 8 and 9. Amid sensational headlines, 18 Muslim men were arrested, just days after the Bill was tabled in parliament.

Among those writing to denounce the Bill as a fundamental attack on free speech and basic rights were artists, film makers, journalists, doctors, lawyers, academics, teachers, civil liberties groups, media organisations, antiwar and environmental groups and religious organisations, as well as individual members of the public.

Nearly every essential aspect of the Bill was condemned—above all, the introduction of two far-reaching forms of “preventative” detention without trial, the abolition of the need for the security agencies to provide evidence of any specific terrorist act, the outlawing of the “advocacy” of terrorism and the dramatic extension of sedition laws.

Lawyers warned that the laws were so wide they could be used to prosecute supporters of Tamil and Palestinian organisations, anti-Iraq-war demonstrators and protesters chanting “Bring Johnny [Howard] down!” Others said the recent riots by youth across France could be defined as terrorism or sedition under the Bill, along with statements such as “9/11 was a hoax”, “America had it coming” or “we must resist the occupiers”. Even worshippers whose preacher delivered a sermon calling for victory to the mujahedeen in Iraq could be jailed for 10 years as members of a “terrorist organisation”.

Civil liberties representatives noted that the introduction of “recklessness” as sufficient intent for “financing terrorism” could expose many innocent people to life imprisonment for donating funds to various causes, such as a “spiritual movement opposed to capitalist materialism”. They also poured scorn on the government’s claim that it had provided for “good faith” defences to protect genuine political comment from being classified as seditious. Speaking on behalf of the New South Wales Civil Liberties Council, David Bernie pointed out that unions could be outlawed for urging people to act illegally in opposition to the Howard government’s new industrial relations legislation.

Likewise, Law Council of Australia president John North, representing about 50,000 lawyers, strongly criticised the inclusion of “recklessness” in the revamped sedition laws. Broadening sedition to cover “urging violence in the community, urging a person to assist the enemy and urging a person to assist those in armed hostilities” would “not only cause journalists a great deal of problems but also stop peace activists and other political protesters from being able to carry on in the normal course of events and thereby affect freedom of speech.”

Another witness before the committee, film maker and script writer Bob Connolly, revealed that the intimidating effect of the sedition provisions on artistic and literary expression was already being felt. He said Currency Press, an Australian publisher of plays, had declined to publish three works because of concerns that they could be classified as seditious. They were Connolly’s screenplay *Three Dollars*, Hannie Rayson’s play *Two Brothers* and Stephen Sewell’s play *Myth, Propaganda and Disaster in Nazi Germany and Contemporary America*.

Legal experts warned that a wide range of works could be threatened, including satirical or ambiguous paintings of suicide bombers, a current hip-hop song called *Burn Down the Parliament*, and a theatrical review entitled *Stuff All Happens*. The Australian Press Council, which represents the major media owners, said “a large number of artistic endeavours would fall within the scope of the law of sedition as it is framed,” including “the lyrics of many of the songs recorded by Midnight Oil and by Yothu Yindi, especially *Treaty*,” a song about Aboriginal land claims.

The Press Council also drew attention to the secrecy provisions

in the Bill, which prohibit the reporting of any detention and can compel journalists to surrender documents, including those identifying their sources. “Even in circumstances where a person has been detained illegally or inappropriately, the media are unable to investigate or report upon the detention. If detainees have suffered torture or abuse during their detention, they cannot inform the media of this, and the media are prohibited from reporting the abuse.”

As well as decrying the totalitarian character of the laws, many of the individual submission writers protested against the conspiratorial manner in which they were being rammed through federal and state parliaments, and accused the Howard government of whipping up fears for its own political purposes.

Because of their sheer volume, it is impossible here to do justice to the submissions, but several examples give a flavour of the concerns expressed. A doctor wrote:

“I am writing with deep disquiet concerning the proposed Commonwealth laws against terrorism shortly to be put before Parliament. Not only do they break the first great precept of English law, **habeas corpus**, but they put in place laws and regulations which cut huge swathes across the foundational principles of democracy: the rights of free speech, the right to free association, the right to timely legal representation, the right to bail application without untimely delay and the right to be informed of charges made against one. Of these, the right to free speech is the most important. **None of these rights should ever be curtailed in a free society, or we risk joining the very abomination of state terrorism which we are trying to avoid**” (emphasis in original).

Another person stated: “This Bill involves momentous changes to Australian law, yet the government is rushing through the passage of this Bill. The government’s actions speak not only of contempt for Australian citizens but also for their democratically elected representatives.... By allowing police to exercise power without proof, it is quite possible that evidence of the person’s political or religious beliefs alone would suffice. This raises the spectre of thought-crimes. This is an especially real danger for ‘suspect’ persons, whether they be Muslims, political activists or those who oppose the government’s political positions.”

Two other people wrote: “They [the laws] would have far-reaching and long-term negative effects on the civil liberties and human rights of all Australians.... The Howard government has already unlawfully detained many innocent citizens and residents under the Immigration Act, without due process. It shamelessly promoted and then capitalised on fear in the community to maintain its power. Lies about ‘Children Overboard’, the rush to commit Australian troops to Iraq on the false pretext of WMDs, and ad campaigns designed to make us suspicious of other people for no good reason, are just a few examples.” (A full list and copies of most submissions can be read at: http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/submissions
/sublist.htm).

The most chilling remarks came from the government’s witnesses, notably Geoff McDonald, an assistant secretary of Ruddock’s Attorney-General’s Department. He aggressively defended the Bill, particularly the “urgent” passage of its first instalment, which was pushed through both houses of parliament unanimously on November 2 and 3.

This mini-Bill changed the wording of terrorist offences from “the” terrorist act to “a” terrorist act. In effect, it means that people can be convicted of planning or preparing for terrorism and sentenced to life imprisonment without the police producing any evidence of a specific time, date, location or method of the supposed attack.

McDonald declared it was “absolutely necessary” to make the change, in order to remove the need for the prosecution to prove “the absolute specific details” of any activity for which a person was charged. Moreover, he confirmed that the amendment was expressly intended to operate retrospectively, so that people could be arrested and jailed for conduct that was not illegal at the time.

As opponents of the Bill remarked at the hearings, such retrospective criminalisation has traditionally been regarded as anathema to civil liberties, and a hallmark of arbitrary and dictatorial rule.

McDonald also dismissed suggestions that the sedition clauses, which Howard and Ruddock previously promised to “review” in the New Year, should be excised from the Bill until then. In a highly significant comment, he insisted that sedition was more “relevant” today than during the postwar years of the twentieth century because the rise of the Internet had weakened official control over the media.

Facing criticism that sedition had become a “dead-letter law” because it had not been used in Australia since the late 1950s, he complained that the Internet was akin to the “pamphleteering and small-scale publishing” of the early years of the twentieth century. This indicates that the government is disturbed by the emergence of independent reportage and commentary on the Internet, and intends to use the sedition provisions to target web sites, their authors and publishers.

Further, McDonald pointedly rejected objections that existing laws prohibiting “incitement” of violence were adequate to jail people who agitated for political violence. He stated that the major problem with incitement offences was that the prosecution had to prove an intention that violence be committed. In other words, one of the central aims of the new sedition measures is to make it possible to imprison people who advocate opposition or resistance to government actions without any intention to encourage violence.

McDonald’s testimony confirms that the sedition provisions, far from being peripheral to the Bill, as some small “l” liberal critics have argued, reveal its essential purpose. Confronted by rising opposition to its program of war and unprecedented social inequality, the Howard government, assisted by Labor, is assembling police-state powers to use against any political and artistic dissent that is deemed a threat to the official establishment.