Australian government insists on sedition clauses in new terrorism legislation

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In a highly revealing political decision, Australian Prime Minister John Howard and his Attorney-General Philip Ruddock have brushed aside a Senate committee's call for the removal of sweeping sedition provisions from the Anti-Terrorism Bill 2005.

Members of the ruling Liberal Party on the upper house committee had joined with opposition Labor Senators in the Senate report, released on Tuesday, to suggest that the sedition clauses be excised from the Bill, pending a review of the measures in the New Year.

But Ruddock told the House of Representatives the sedition powers must remain. "I argue very strongly that they ought to continue in their present form," he said. "Sedition has become a more relevant offence."

Following his declaration, the government pushed the Bill through the House unamended using a gag motion to limit the debate to a perfunctory four-and-a-half hours. As foreshadowed weeks ago by Labor leader Kim Beazley, Labor backed the Bill after the government predictably rejected four Labor amendments. Only two MPs voted against the Bill: Independent Peter Andren and veteran Labor MP Harry Quick, who is due to retire at the next election.

The legislation is expected to be similarly bulldozed through the Senate by the end of next week, with Ruddock indicating that he may accept a few token amendments proposed by the Senate committee.

The government's stand highlights the purpose of the Bill. Its central aim is not to combat terrorism, but to hand the government and its security agencies unprecedented powers to silence political dissent. The sedition measures make this clear, allowing for organisations to be outlawed and individuals jailed for "urging disaffection" with the government or expressing sympathy for resistance to Australian military interventions, such as the one currently underway in Iraq.

By bracketing these clauses with other, equally far-reaching, "counter-terrorism" sections of the Bill, the government is attempting to legitimise and make "more relevant" the sedition powers that have lain dormant in Australia for 45 years. They were last used in 1960 to jail a public servant, Brian Cooper, who urged people in Papua New Guinea, then an Australian colony, to demand independence.

Before Cooper was victimised (and subsequently committed suicide), the laws were exploited in the 1940s and 1950s to frame-up and imprison leaders of the Communist Party, as part of a McCarthyite campaign orchestrated by the Menzies government and the Australian Security Intelligence Organisation (ASIO) to ban and dismantle the party.

The other major features of the Anti-Terrorism Bill have a similar political content. By imposing two extraordinary forms of detention without trial—"preventative detention" and "control orders"—the Bill will allow the government, ASIO and the police to secretly incarcerate anyone on the flimsiest grounds, like being suspected of intending to assist an unspecified terrorist act, even if no such act ever occurs.

Likewise, the Bill permits the government, acting on ASIO's "advice", to ban political parties by executive fiat for "advocating" or "praising" terrorism, which is defined to include many forms of political protest. It also provides for life imprisonment for "recklessly" donating money that could be used for terrorism, and hands ASIO and the police vast new powers to secretly break into homes, seize documents and stop and search people on the streets.

While sections of the media have promoted the Senate report as a "revolt" by government MPs, the weak-kneed and compliant character of its objections was illustrated by the fact that sedition was the only aspect of the Bill that the Legal and Constitutional Committee opposed. Even then, the revolt was farcical. Anticipating the government's refusal to drop the sedition components, the Senators proposed an alternative—making three changes to fine-tune them.

The three suggestions simply underscore the draconian reach of the sedition laws. One was that a link to force or violence be demonstrated and that the phrase "by any means whatever" be removed for some of the sedition offences. Another was to require intentional, rather than reckless, urging. The third was to replace the proposed "good faith" defence with a "defence for journalistic, educational, artistic, scientific, religious or public interest purposes".

Under the Bill, people can be jailed for seven years without evidence of any intention to encourage violence. To plead "good faith", they bear the burden of proving that their views sought to "constructively" identify official errors or mistakes for the purpose of correcting them.

Even if some of these aspects were modified, the Senate proposals would leave all the primary provisions untouched, notably those covering "disaffection" and resistance to Australian forces. There is no doubt that the intent of the measures is to stifle and punish any criticism that is regarded as a threat to the political and corporate establishment.

In fact, responding to concerns expressed by many Senate witnesses that the laws would force commentators and artists to self-censor their public views, Ruddock's department told the committee: "The policy is to 'chill' comments where they consist of urging the use of force or violence against our democratic and generally tolerant society in Australia."

Pointing to the extraordinarily vague wording of the laws, several submissions by arts, legal and media organisations noted that any government could use them arbitrarily to suppress free speech. One barrister, Laurence Maher, told the committee that the history of sedition had shown that "its only purpose and use has been to throttle

political dissent". Another legal expert, Chris Connolly, testified that "sedition has a long and undignified history," including the jailing of Gandhi and Nelson Mandela.

Given the overwhelming opposition voiced by most of the 294 submissions received by the committee, the three amendments were designed to appease and head off the outcry provoked by the sedition provisions. Significantly, the Australian Press Council, representing the mainstream media outlets, including News Limited, Fairfax and AAP, stated that the "legislation may endanger the operation of a free press in a democratic society".

Howard and Ruddock's determination to proceed with the sedition clauses, rather than wait for a New Year "review", is a warning that the government intends to use its new powers as soon as possible. It appears that web sites may be among their first targets. Ruddock told parliament that sedition had become "more relevant" because "the Internet and computer technology have made it much easier to disseminate material that urges violence".

On the rest of the Bill, the Senate report offered a series of trivial recommendations for so-called extra "safeguards" of legal rights, all the while assuring the government that "none of its recommended amendments will unduly impinge on effective law enforcement or the objectives of the [measures]."

Sydney Morning Herald commentators Marian Wilkinson and David Marr described it as "tinkering at the edges". In fact the report was nothing but a bid to make the Bill more politically palatable in the light of growing public opposition.

The committee noted widespread concern at the impact of the Bill on "the presumption of innocence, freedom from unlawful and arbitrary detention and the right to a fair trial". Nevertheless, it embraced the Bill's fundamental features: detention without charge or hearing, renewable house arrests for 12 months at a time and life imprisonment without any requirement for proof of involvement in a specific terrorist act.

Even odious aspects that came to light during the committee's brief hearings last week were accepted. They include the retrospective effect of control orders, which may be based on past conduct, such as overseas training, that was not outlawed at the time; the possible detention of journalists and other people who witness a terrorist attack; the lack of any guarantee of detainees' rights; and the potential for the banning of organisations to lead to the blanket imprisonment of hundreds of their members, supporters and donors.

It is not possible to examine here each of the 52 recommendations made by the committee, but two examples of the report's suggested "safeguards" are representative of the rest. Recommendation 7 was that a detainee be given reasons for his or her detention and copies of the material allegedly gathered against them, subject to excisions made of material "likely to prejudice on national security". That exception would give the authorities ample scope to deny detainees access to basic information they need to challenge their incarceration.

Similarly, recommendation 14 was to permit monitoring of detainees' consultations with their lawyers "only where the nominated AFP [Australian Federal Police] officer has reasonable grounds to believe that the consultation will interfere with the purpose of the order". In other words, the police can monitor conversations with lawyers—violating the basic principle of lawyer-client confidentiality—whenever they want.

Perhaps the most meaningless recommendation was to cut the proposed sunset clauses in the Bill from 10 to 5 years. Whether the legislation is initially enacted for 10 or 5 years makes no real difference—the framework for a police-state will have been erected.

One other revealing suggestion was recommendation 1: that the government continue to fund its "terrorism related information campaign," with a special focus on the Australian Muslim community. Up until now, this PR campaign has largely consisted of pervasive advertising, appealing to people to "be alert but not alarmed" and report all suspicious activity.

For all the claims by the government and the media that the public strongly supports the Anti-Terrorism Bill, the Senators are evidently conscious that its fear campaign is wearing thin.

All in all, the Senate report and the official response present a damning picture of the state of parliamentary democracy. Afforded a token three weeks to produce a report on the "war on terrorism's" greatest-yet assault on civil liberties, the Senators wrote a suitably cosmetic document.

The Australian Democrats stated their agreement with the report, while advancing several further amendments. While saying they would vote against the Bill, the Greens welcomed the suggested "improved safeguards" and said they would accept detention without charge if the government made a case that there were "extraordinary reasons".

Regardless of whether the government adopts any of the recommendations, Howard and Ruddock have been advised that no government or Labor Senator is likely to cross the floor when the Bill is voted on next week. Instead, leading Liberals on the committee have been meeting behind closed doors with Ruddock to hammer out a final package.

As for Labor, its stance was summed up in the amendment that Beazley moved in the House of Representatives on Tuesday. Apart from echoing the bipartisan Senate report, it regurgitated Labor's efforts to attack the government from the right, condemning it for "failing to take necessary and practical measures to adequately protect Australians from terrorist threats".

Meanwhile, the state and territory Labor governments are all pushing through complementary legislation for "preventative detention" and "control orders," as agreed with Howard at the September 27 Council of Australian Governments meeting. The New South Wales Bar Association has pointed out that the NSW Bill would permit consecutive 14-day periods of detention, effectively allowing police to detain people indefinitely.