

Another major terrorist trial begins in Australia

Mike Head

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After being held in some of Australia's worst isolation cells in "super-max" high-security prison units for more than three years, five Islamic men will finally face trial—expected to last more than a year—in Sydney this week. Amid heavy police security, a jury was empanelled last week, and the prosecution is due to open its case today.

Expected to involve 700 witnesses, this is the second "terror" trial inherited by Prime Minister Kevin Rudd's government from its predecessor, the Howard government. All the circumstances point to the proceedings having been politically motivated from the outset—to foment fears of terrorism and overcome growing public scepticism towards the "war on terror".

Like the seven-month trial of 12 men that ended with mixed results in Melbourne six weeks ago (see "Contradictory verdicts in Australia's largest terrorism trial"), the prosecution dates back to Howard's November 2005 declaration of an "imminent" terrorist threat.

Most of the men placed on trial in Melbourne and Sydney were arrested in highly publicised police raids. Codenamed "Operation Pendennis", the arrests came just days after Howard, with the Labor Party's backing, used the alleged "emergency" to recall the Senate to push through the first instalment of sweeping extensions to the already draconian anti-terrorism laws introduced since 2002.

The crucial amendment substituted the words "a terrorist act" for "the terrorist act" in all the federal anti-terror provisions. In effect, the change allowed people to be arrested and jailed, potentially for life, without the prosecution having to produce any evidence that a specific terrorist act was being prepared, let alone carried out. It is now sufficient to accuse someone of a vague terrorist intention, without any proof of time, place,

method or materials.

Little more than a month after the arrests, the highly controversial anti-terror bills were passed in their entirety, imposing two new forms of detention without charge, including "control orders"—a form of house arrest. They also outlawed "advocacy" of terrorism, and expanded sedition to include voicing support for groups resisting Australian military interventions, such as those in Iraq and the South Pacific.

Both the groups of men arrested in Sydney and Melbourne became immediate victims of the "emergency" amendment. They were rounded up amid sensational media claims of plots to blow up strategic sites in the two cities and possibly kill thousands of people. The charges laid against the two groups, however, were different.

The Melbourne men were primarily accused of being members of an unnamed terrorist organisation, which supposedly consisted only of themselves. Some members of the group were charged with various ancillary offences, none of which related to a specific terrorist act. Ultimately, seven of the 12 Melbourne defendants were found guilty of one or more offence, and could face 10 to 50 years imprisonment.

The sole charge laid against the Sydney men is even more vague and carries the more serious punishment of life imprisonment. Their charge—"conspiring to commit acts in preparation for a terrorist act"—requires virtually no evidence of any activity, let alone of a location, date or method for the alleged terrorist plan. Conspiracy is a historically notorious charge that has traditionally been laid when police have insufficient evidence of any crime, yet it carries the same penalty as the substantive offence.

Two sections of the Criminal Code are involved. Under s. 101.6, if a person "does any act in preparation for, or planning, a terrorist act," they face life imprisonment, even if "a terrorist act does not occur" or "the person's

act is not done in preparation for, or planning, a specific terrorist act”.

For a conspiracy, under s. 11.5, all that is required is “an agreement” between two or more people to intend to commit an offence, even if “committing the offence is impossible”. The only limiting proviso is that one of the agreeing parties “must have committed an overt act pursuant to the agreement”. The Criminal Code does not specify what such an overt act must be. For example, the act could be merely making a phone call to inquire about buying a map.

Conspiracy trials have another notorious feature. Where the alleged conspirators are tried together, evidence of one’s statements may be evidence against the others. This allows hearsay evidence prejudicial to individual conspirators to be admitted into evidence. For instance, one defendant’s statement about something incriminating he had heard another say can be put before a jury, without any independent evidence of the content of that potentially damaging statement.

As in the Melbourne trial, the chief prosecutor Richard Maidment SC opened the proceedings in Sydney with a series of dramatic allegations. Giving potential jurors a “thumbnail sketch” of his case last week, he said the accused were among a group of at least nine men allegedly planning one or more terror-related acts. Maidment said the kind of terrorist acts “contemplated” by the men included the detonation of an explosive device, or devices, or the use of weapons.

Maidment said the men obtained large quantities of firearms and ammunition between July 2004 and November 2005, as well as chemicals such as acetone and hydrogen peroxide. They also had written instructions on how to manufacture explosives “capable of causing substantial damage and loss of life”, he said.

At the same time, Maidment insinuated that the men’s religious convictions rendered them guilty. He said literature, images and videos were found in their possession which advocated the activities of “notorious persons such as Osama bin Laden”. Maidment stated: “Each of these men were apparently strong adherents to the Islamic faith and were each motivated by a particular religious, political or ideological cause, that being the pursuit of violent jihad... In essence that meant that the accused were motivated to carry out violent activities against members of the Australian community as a whole, in pursuit of their ideals.”

It seems that this material will be used during the trial to blacken the men in the eyes of the jury and will no doubt

generate further media hysteria. Justice Anthony Whealy told the jury pool they would be confronted by graphic images of dead and maimed bodies, including of children. He warned that jurors who might be uncomfortable about viewing “disturbing images”, as well as anyone who felt they could not keep matters of national security secret, should ask to be excused from the trial.

Many unanswered questions remain about the proceedings, including why just five men are currently in the dock after nine were committed for trial last year. Over the past eight months, lawyers for the accused and the prosecution have been involved in more than 100 days of pre-trial arguments, during which Justice Whealy has delivered 65 judgments. All but two of the judgments—dealing with the location of the trial and the glassed-in dock—have been suppressed (the judge ruled that the glass-enclosed dock used to separate the men from the rest of the court should be removed because it could stop them receiving a fair trial).

Federal legislation passed with Labor’s backing in 2004 permits the attorney-general to ask a court to be closed to the public whenever he certifies that “national security” would be affected. Judges can allow government witnesses to testify in disguise via video and, in some circumstances, exclude defendants and their lawyers from the proceedings. These provisions violate the centuries-old legal rights of an accused person to hear all the prosecution’s evidence, cross-examine its witnesses to test their veracity and credibility, and expose its case to public examination.

The WSWS is in no position to independently assess the case against the five men on trial, but the historical record points to a politically motivated prosecution, based on flimsy evidence. The fact that the trial is still proceeding under the Rudd government is another indicator of Labor’s commitment to the “war on terror” as a vehicle for justifying police-state measures at home, including the punishment of religious and political ideas, as well as military aggression in the oil and gas-rich Middle East and Central Asia.



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