

Australian government forced to delay "anti-terrorism" laws

By Mike Head
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The Howard government has suffered a significant setback with its far-reaching "counter-terrorism" legislation. After a Senate report criticised the measures, government backbenchers last week refused to accept even a revised version of the laws. The resulting standoff forced the government to withdraw the bills from the Senate, postponing them until at least June 17, when the Senate is next due to sit.

The Senate Legal and Constitutional Committee's May 8 report was the first time since Prime Minister John Howard came to office in 1996 that government MPs have joined their opposition counterparts in publicly opposing legislation proposed by cabinet.

Determined to proceed with the bills, Attorney General Daryl Williams spent hours in crisis meetings, unsuccessfully trying to convince government MPs to pass the laws in a modified form, and conducting backroom negotiations to hammer out a deal with the Labor party. All last week, the government insisted that the legislation remained an "urgent priority". On the evening of May 16, however, an hour-long meeting of Liberal and National Party MPs rejected a final "compromise" proposal drafted by an emergency cabinet meeting.

The conflict marks something of a breach in the relentless campaign waged by the government, backed by Labor, over the past eight months to use the terrorist attacks of September 11 to justify sweeping attacks on basic democratic rights.

Cabinet first announced the measures in outline form last October 2, declaring them essential for the US-led "war on terrorism". Howard and his ministers calculated that they could exploit September 11 and the Bush administration's militarist response to introduce unprecedented powers to crack down on many forms of political dissent.

The resulting package of six bills defined "treason"—punishable by life imprisonment—so widely that it could include relief workers who provide aid to victims of military conflicts involving Australian troops. "Terrorism"—also made a life offence—would include protests, pickets and blockades where any damage was caused "in the pursuit of a political, religious or ideological cause".

The Attorney General would have absolute power to ban organisations that he regarded as a threat to "security," with all members liable to 25 years jail. ASIO, the domestic surveillance agency, could detain people, including children, incommunicado for indefinite questioning, with no access to legal advice and without charge, merely on suspicion of having information relevant to "terrorism".

Although the legislation was prepared over several months, Williams only unveiled the full details when parliament resumed in February for the first time since the November general election. In doing so, he bluntly asserted the need to relinquish basic rights. "We believe the community is prepared to make sacrifices of individual civil liberties in order that the community generally is protected from those threats."

Assured of Labor's support, the government planned to push the bills through quickly. The measures passed through the House of Representatives within 24 hours, with Labor's agreement. Labor leader

Simon Crean told parliament: "We do not oppose these bills."

However, in order to head off concerns already being expressed among civil liberties and other organisations, Crean proposed that the legislation be referred to Senate committees, where amendments could be discussed to ensure that the bills "have broad community support".

This was intended primarily as a sop. The Senate committee was given just six weeks over Easter to conduct hearings and produce a report. Members of the public had less than two weeks to prepare submissions.

The mass media played its part, remaining virtually silent about the legislation and its draconian measures. Media proprietors protested vigorously about one aspect of the package that could have affected them—the imposition of severe jail terms for leaking official information—and Williams quickly dropped those provisions. But the news outlets did nothing to alert ordinary people to the overall assault on fundamental rights such as freedom of speech and association and protection from arbitrary detention.

Nevertheless, public opposition began to grow. Even with near-impossible deadlines, the Senate committee was bombarded with submissions—431 officially—from a broad range of organisations and individuals, including judges, lawyers, churches, aid groups, trade unions, academics and civil liberties associations.

Many submissions challenged the government's claim that the laws were genuinely required to combat terrorism. Traditionally conservative bodies cast doubt on the government's rationale. The Law Council of Australia, the peak body of the legal profession, listed some 24 Acts of Parliament that already specifically punish every conceivable terrorist crime, such as murder, grievous bodily harm, criminal damage, arson, conspiracy and attempt.

Other submissions expressed concern that the legislation could breach international human rights standards, notably the International Covenant on Civil and Political Rights, which protects freedom of expression, assembly and association, prohibits arbitrary arrest and detention. A number of groups warned that the powers could be used to harass and victimise members of the Islamic and Arab communities. Many submissions objected to the imposition of strict liability, effectively reversing the burden of proof and the presumption of innocence for crimes punishable by life in jail.

In its May 8 report, the committee, chaired by Liberal Senator Marise Payne, proposed modifications to the laws, because aspects of the package were "unacceptable to a large proportion of the Australian community". While insisting that new legislation was justified, the report called for limits on the power to ban organisations, a tightening of the definitions of "terrorism" and "treason" and the abandonment of the strict liability clauses.

News of the report, which gave the laws general publicity for the first time, provoked even more opposition. Labor MPs and community organisations reported receiving "thousands" of e-mail and phone protests against the measures.

In order to get the bills passed, Howard and Williams offered to follow most of the committee's recommendations. But two key sticking points remained: the power to proscribe associations and the reversed onus of proof.

Government backbenchers rejected cabinet's so-called compromise plan to permit four ministers, rather than just the Attorney General, to decide on banning orders. Howard and Williams also ruled out giving the power to the courts, which are formally independent of the government of the day.

Such provisions have existed in the Crimes Act for nearly a century, allowing courts to declare an organisation "unlawful" for advocating the overthrow of the government, the destruction of public property or seditious acts. Yet, no government has ever applied for a court order.

The government's determination to create a unilateral and unchecked proscription power—one that can be exercised on purely political grounds—is revealing. More than any other provision in the six bills, this measure clearly has nothing to do with protecting the population against terrorism. It is certainly not required under the UN Resolution that is one purported reason for the legislation. UN Security Council Resolution 1373, adopted last September 28, simply insists that member states take punitive action against terrorists.

The only possible conclusion is that the government is intent on exercising the power to outlaw dissenting organisations, including political parties, for the first time since the referendum defeat of the Menzies government's attempt to ban the Communist Party in 1950-51.

The government's stance on strict liability would enable the security agencies to frame-up individuals who may innocently possess documents or items used for terrorist purposes. Last week, the Australian Bankers Association warned that even bank tellers could face criminal charges for taking deposits from proscribed organisations.

By adopting the Legal and Constitutional Committee's other proposals, the government will not substantially reduce the potential power to suppress political dissent.

The Senate report suggested altering the "treason" wording to exempt aid agencies. But its proposed amendment could still punish political or physical opposition to Australian military operations in Afghanistan, the Persian Gulf, Timor or anywhere else. Friends and relatives could still be charged with treason for failing to report such activities to ASIO or the police.

On "terrorism" the committee proposed matching the equivalent US and British legislation by adding the requirement of proving an intention to intimidate the government or the public. This amendment, however, would still enable the authorities to accuse protesters of intimidating people and hence prosecute them as terrorists.

The committee advised the Attorney General to slightly narrow the grounds for banning an organisation. The present vague and open-ended criteria include "likely to endanger the security or integrity of the Commonwealth or any other country". The committee merely suggested inserting the word "territorial" before "integrity". That would still leave vast room for the cabinet to ban a group on the grounds of threatening national security.

At the same time, there is no suggestion of watering down the accompanying ASIO Bill, which provides for detention for interrogation. Any detainee who refuses to answer ASIO's questions or supply requested information would be jailed for up to five years. A different parliamentary committee is due to report on that measure next month.

Opposition to the legislation has come from many quarters. Far-right formations such as One Nation, small "I" liberals within the government and even members of Howard's own conservative wing of the Liberal Party have raised concerns about how the laws could criminalise any dissenting political opinion.

Other commentators have warned that the credibility of the political

system itself could be damaged. The Senate report cited several submissions pointing to the glaring contradiction inherent in overturning long-standing legal and democratic principles in the name of protecting liberty. The measures could undermine popular acceptance of the "rule of law," academic Eva Cox noted. "If you deny people the capacity to sometimes be unlawful in minor ways, as a form of protest, this is exactly the sort of situation that leads people to take up terrorism."

Nevertheless, Labor is just as anxious as the government to push the legislation through, albeit with token amendments. Crean has repeatedly offered bipartisan support for a revised package and restated Labor's commitment to the anti-terrorist "war".

He and his colleagues did not raise a word against last week's Budget boost to the size and resources of the security and intelligence agencies that will exercise the new powers. ASIO, together with ASIS, the external spy agency, military intelligence and the Prime Minister's Office of National Assessments, will receive increased funding of nearly \$100 million over four years.

The highly armed federal police Strike Team directed against terrorism and "politically motivated violence" will be doubled in size and a new Sydney-based counter-terrorism Tactical Assault Group will be formed. The latter, a 200-strong SAS unit, could be mobilised against "domestic violence" under military call-out legislation passed with Labor's backing in 2000.

Even as the rifts appeared among government MPs, Labor's Senate leader John Faulkner and shadow justice minister Daryl Melham, published an article in the *Melbourne Age* on May 13 to emphasise their support for revamped legislation. "There is a need for strong measures to counter the threat of terrorism," they wrote. "Australia must play its part in the international effort against terrorism and develop appropriate domestic legislation that helps safeguard Australians."

Moreover, Faulkner joined Crean in bureaucratically suppressing Labor's own dissidents. Just before the Senate report was released, the two Labor leaders insisted that Senator Barney Cooney, a Labor representative on the committee, withdraw a minority report in which he condemned the legislation in stronger terms.

In comments later leaked to the media, Cooney wrote: "These bills are flawed legislation. They steer the law in a new and unfortunate direction and away from fundamental principles which underpin our society... They encapsulate and engender fear and anxiety, prejudice and parochialism, discrimination and bias... If the legislation passed in its present form, it would give the government wide and invasive powers."

Mindful of the widespread public concern Faulkner, Labor's chief negotiator with the government, is conducting a cynical manoeuvre. On the one hand, he has publicly raised the possibility of blocking the legislation in the Senate unless the proscription power is removed altogether. At the same time, he has refused to release Labor's proposed amendments, so as not to prejudice his talks with Howard and Williams.

While warning of a potential government-Labor deal, another Senate opposition party, the Australian Democrats, has not ruled out passing amended provisions. The party's representative on the Senate committee, Brian Greig, emphasised that the Democrats would "enthusiastically support balanced legislative measures" to address terrorism. His comments differed little from his committee colleagues, advocating minor amendments to overcome "strong and well-founded community opposition" to the legislation.

Like Labor, the Democrats have fully backed the military intervention in Afghanistan and the entire open-ended war launched by Washington and its allies. From the outset, the Bush administration has demanded that its partners join it in overturning democratic rights, in the name of fighting terrorism. This week the US State Department specifically praised Australia's record since September 11. Its report, *Patterns of Global Terrorism 2001*, approvingly cited the drafting of "new

counter-terrorism legislation". The message will not be lost on the government or its parliamentary opposition.

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