

Australian government ministers make last-minute apology in terrorism contempt case

By Mike Head
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A political and constitutional crisis was narrowly averted last week when three Liberal-National Coalition government ministers belatedly apologised to one of Australia's highest courts for accusing its judges of being "hard-left activists" who were soft on terrorists.

If the ministers had not retracted their comments and apologised "unreservedly and unconditionally," they would have been referred by the Court of Appeal, the state of Victoria's top court, for prosecution over contempt of court.

Any conviction on those charges could have disqualified them from sitting in parliament, potentially bringing down the already unstable Turnbull government, which is barely clinging to office with a one-seat majority in the House of Representatives.

Contempt of court can lead to imprisonment. Had the ministers received such a sentence, it could have triggered section 44 of the Australian Constitution, which specifies that anyone convicted of any offence punishable by imprisonment for one year or longer cannot sit in the parliament.

The entire episode exposes the increasingly desperate efforts of Prime Minister Malcolm Turnbull's government to stave off threats to its survival by ramping up the fraudulent "war on terrorism" and its support for US militarism.

The affair erupted on June 13, when the *Australian*, Rupert Murdoch's national flagship, splashed across its front page the incendiary comments of Health Minister Greg Hunt, Human Services Minister Alan Tudge and Assistant Treasurer Michael Sukkar. The newspaper featured the banner headline "Judiciary light on terrorism," accompanied by an editorial backing the ministers' attack.

Among the accusations levelled by the ministers against

the Court of Appeal judges were that the latter were conducting "ideological experiments," were "divorced from reality" and had "eroded any trust that remained in our legal system."

Aggravating the attack, the ministers issued it in the middle of two sentencing appeals. The Director of Public Prosecutions was in the process of seeking longer prison terms for two teenagers convicted of alleged terror plots. This made the comments *sub judice*, that is, calculated to influence and prejudice the outcome of a criminal trial already underway.

The three ministers are all lawyers, well acquainted with the law of contempt. The court declared that this compounded their offence, as did their initial refusal to apologise when summonsed to appear before the judges.

On June 16, the judges ruled that there was a prima facie case of contempt because the ministers and the *Australian* had failed to respect the doctrine of the separation of powers, breached the principle of *sub judice*, and undermined the public perception of the independence of the judiciary.

Turnbull made matters worse by deliberately rushing to the trio's defence. He declared that "in a free society, a person is entitled to criticise the conduct of the courts or of a judge." Attorney-General George Brandis made similarly defiant comments.

Turnbull's ministers, however, are not ordinary "persons." They are members of the executive who were deliberately seeking to influence the outcome of a sentencing hearing while it was in progress. As the court stated, this was a clear violation of *sub judice*, as well as an attack on the separation of powers and judicial independence from government.

Moreover, the comments were part of a campaign, orchestrated with the *Australian*, to shift the official

political agenda further to the right. The attack was timed to back the plans of federal and state governments to exploit the recent attacks in Manchester and London by calling a “terrorism summit,” aimed at rubberstamping new, far-reaching measures to bolster police and detention powers.

Hunt, a senior cabinet member, told the *Australian*: “We have a crisis on our hands with people who want to kill indiscriminately and yet some judges seem more concerned about the terrorists than the safety of the community.”

As the ministers later admitted, they had not even read the remarks of the judges whom they were denouncing. Instead, they relied upon a misleading report published by the Australian Broadcasting Corporation that the judges had criticised their New South Wales (NSW) counterparts for handing down more severe sentences in terrorism cases.

Actually, the opposite was true. The Victorian judges were addressing concerns raised by the High Court, Australia’s supreme court, about the discrepancy—a discrepancy they later “corrected” by substantially lengthening the sentences of the two young prisoners.

Last Friday, the judges rejected the newspaper’s claim that it was merely “the messenger” for the ministers’ statements. On behalf of the court, Chief Justice Marilyn Warren stated: “The *Australian* parties chose to publish the comments, and did so prominently on the front page of the newspaper, with a prominent and eye-catching headline. The newspaper added its own comments, and editorialised.”

Nevertheless, the court accepted the apologies of the ministers and the *Australian’s* publisher, editor and national affairs editor, who wrote the article. This was despite the “regrettable” week-long delay in the ministers’ apologies, which had “aggravated” the contempt.

Earlier that day, the court acceded to the prosecution’s applications. As a result, two troubled working-class youth will languish in jail for many more years.

The judges lengthened the sentence of Sevdet Besim, who was 18 when accused of participating in a “conspiracy” to “prepare” a 2015 attack in Melbourne on Anzac Day, an annual official commemoration of war. Besim’s imprisonment was extended from 10 years, with a non-parole period of seven and a half years, to 14 years, with a minimum period of 10 years and six months.

In a message to all Victorian judges, the court said “the starting point must be the maximum sentence for this

offence, which is, of course, life imprisonment.” The court criticised the trial judge for giving “too much weight” to the prisoner’s “plea of guilty ... prospects for rehabilitation ... youth and previous good character.”

Likewise, a teenager identified only as MHK, who was jailed for seven years for similarly “preparing” for a supposed “Mother’s Day terror plot” in 2015, then aged 17, had his sentence increased to 11 years with a non-parole period of 8 years and 3 months.

Reflecting the escalating political and media clamour, the court declared: “The protection of our society, and the upholding of its most fundamental values, necessitate that in cases such as this the sentencing considerations of general deterrence and denunciation must be given primacy above the ameliorating effect of youth.”

In other words, all considerations of youth and rehabilitation will be overruled in locking away those convicted of a terrorist-related offence for many years in maximum-security prisons.

Despite its brush with the law, the *Australian* hailed the outcome in a June 24 editorial. The court made “a fair and responsible ruling,” it declared, citing the court’s verdict that lesser sentences imposed a decade ago were “unduly lenient.” Exuding satisfaction, the editorial concluded: “The key public interest issue is that the judiciary has moved forward on penalising terrorism.”

Last Friday, the court stated “in the strongest terms that it is expected there will be no repetition of this type of appalling behaviour.” Regardless of such protestations, however, the reactionary “war on terrorism” will intensify.

Backed by the corporate media and the Labor Party, the government is whipping up fears of terrorism as a means of diverting rising economic and social tensions, justifying the handing of more draconian “law and order” powers to the police and intelligence agencies, expanding Australia’s involvement in the predatory US-led interventions in Afghanistan, Syria and the Philippines, and participating as a key “partner” in the US-led preparations for war on North Korea and, ultimately, China.

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